Made on behalf of:	**Applicant/Proposed Class Representative**
Name of witness:	**Phillip Gwyn James Evans**
Number of statement:	**1**
Exhibits:	**PGE1 – PGE5**
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 PHILLIP GWYN JAMES EVANS

I, **PHILLIP GWYN JAMES EVANS,** of a private residential address in Bristol, United Kingdom, will say as follows:

Introduction

1. I am the proposed class representative in respect of the above proposed collective proceedings (the "**Proposed Collective Proceedings**"), which I seek to bring as opt-out collective proceedings on behalf of two classes of persons who, between 18 December 2007 and 31 January 2013,

entered into certain types of foreign exchange ("**FX**") transactions in the European Economic Area. The Proposed Collective Proceedings are brought under section 47B of the Competition Act 1998 (the "**Act**").

2. The particulars of the Proposed Collective Proceedings are set out in the Collective Proceedings Claim Form dated 10 December 2019 by which I seek a collective proceedings order ("**CPO**") from the Competition Appeal Tribunal (the "**Tribunal**") along with an order pursuant to section 47B(8) of the Act authorising me to act as the class representative in the Proposed Collective Proceedings.

3. I make this witness statement in support of my application for a CPO. In particular, I will address my suitability to act as a class representative in the Proposed Collective Proceedings, specifically by reference to the considerations set out in Rule 78 of the Competition Appeal Tribunal Rules 2015 (the "**CAT Rules**") and the accompanying guidance in the Tribunal's Guide to Proceedings (the "**Guide to Proceedings**").

4. I confirm that, unless otherwise stated, the contents of this witness statement are within my knowledge. The same is 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. In particular, where I state in this witness statement that my understanding is based on discussions with my legal representatives, I confirm, for the avoidance of doubt, that I do not waive legal professional privilege in this or any regard.

5. There is now produced and shown to me exhibits PGE1 – PGE5 which I refer to below and which I exhibit to this statement.

Overview of the considerations for authorisation of a class representative

6. I understand that, pursuant to section 47B(8) of the Act and Rule 78 of the CAT Rules, the Tribunal may authorise a person to act as a class representative:

   a. whether or not that person is a class member; and

   b. only if the Tribunal considers that it is just and reasonable for the applicant to act as a class representative in collective proceedings.

7. Rule 78(2) of the CAT Rules details several further considerations that the Tribunal shall consider in determining whether it is just and reasonable for a person to act as a class representative.

The considerations that are relevant to determining whether a person may act as the class representative in proposed collective proceedings include whether the person:

a. Would fairly and adequately act in the interests of the class members. This consideration is explained further in Rule 78(3) of the CAT Rules. I understand that the Tribunal will take into account all the circumstances in determining whether the class representative would act fairly and adequately in the interests of the class members, which includes:

    i. Whether the proposed class representative is a member of the class, and if so, their suitability to manage the proceedings.

    ii. If the proposed class representative is not a member of the class, whether it is a pre-existing body and the nature and functions of that body.

    iii. Whether the proposed class representative has prepared a plan for the collective proceedings that satisfactorily includes:

        1. A method for bringing the proceedings on behalf of represented persons and for notifying represented persons of the progress of the proceedings.

        2. A procedure for governance and consultation which takes into account the size and nature of the class.

        3. Any estimate of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the proposed class representative shall provide.

b. Does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of class members.

c. Will be able to pay the defendant's recoverable costs if ordered to do so.

8. In addition, I understand there is another applicant seeking approval to act as class representative in respect of claims that are, at least in part, the same as those set out in the Collective Proceedings Claim Form. On 29 July 2019, an application was filed with the Tribunal to commence collective proceedings under section 47B of the Act by Michael O'Higgins FX Class Representative Limited (the "**O'Higgins Application**"). The overlaps between the O'Higgins Application and the Proposed Collective Proceedings, and the differences between the two

claims, are explained further in paragraphs 126 - 127 of the Collective Proceedings Claim Form. In short, the main points of overlap are:

a. They are based upon the same two Decisions of the European Commission (discussed further in paragraphs 13 – 16 below);

b. They are brought against largely identical Proposed Defendants, save that: (i) the O'Higgins Application proposes to bring claims against most of the addressees of the two Decisions mentioned in the previous sub-paragraph; whereas (ii) the Proposed Collective Proceedings are brought against all addressees;

c. They concern FX transactions entered into in the same time period, being 18 December 2007 – 31 January 2013 (which is the total period covered by the European Commission's Decisions);

d. They relate to two specific types of FX transactions, namely "Spot" transactions and "Outright Forward" transactions, which I explain further at paragraph 21 below; and

e. The FX transactions must be entered into either with: (i) the Proposed Defendants; or (ii) any entity forming part of a list of "*Relevant Financial Institutions*" which is included with the proposed class definition. The list of Relevant Financial Institutions in the O'Higgins Application includes 39 financial institutions, whereas the list in the Proposed Collective Proceedings includes 57 financial institutions (which include the 39 institutions listed in the O'Higgins Application).

9. It has been explained to me by my legal representatives that, in these circumstances, the Tribunal will consider which person would be the most suitable to act as class representative pursuant to Rule 78(2)(c) of the CAT Rules.

10. I will address each of the considerations summarised above in the rest of this witness statement, in order to demonstrate that I should be authorised by the Tribunal to be the class representative in the Proposed Collective Proceedings.

11. The rest of this statement is structured as follows:

a. First, I provide an overview of the Proposed Collective Proceedings.

b. Second, I explain my reasons for wanting to act as the class representative in respect of the Proposed Collective Proceedings.

c. Third, I detail the reasons I consider that I have the skills and resources necessary to take on the role of class representative and to act fairly and adequately in the interests of class members.

d. Fourth, I explain why I do not have, in relation to the common issues for class members, a material interest that is in conflict with the interests of the class members.

e. Fifth, I provide details of the funding arrangements I have entered into in respect of the Proposed Collective Proceedings, in order to show that I would be in a position to pay the Proposed Defendant's recoverable costs, if ordered to do so.

f. Sixth, I make some preliminary observations as to the basis upon which I would be the most appropriate class representative.

Overview of the Proposed Collective Proceedings

12. The claims in respect of which I seek permission to act as class representative in the Proposed Collective Proceedings are for loss and damage suffered by two classes of person (the "**Proposed Classes**"), which are defined in detail in paragraphs 72 – 104 of the Collective Proceedings Claim Form. By way of summary, the Proposed Classes are as follows:

> **Class A**
>
> *All persons who entered into one or more FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) where each of those same transaction(s):*
>
> *(a) Was entered into, directly or indirectly via an Intermediary:*
>
> *i. With a Defendant, during that Defendant's Relevant Class A Period;*
>
> *ii. In the European Economic Area; and*
>
> *(b) Involved a currency pair consisting of two G10 Currencies.*
>
> *Class A does not include Excluded Persons and Excluded Transactions.*
>
> **Class B**
>
> *All persons who entered into one or more FX Spot Transaction(s) and/or FX Outright Forward Transaction(s) where each of those same transaction(s):*
>
> *(a) Was entered into, directly or indirectly via an Intermediary:*
>
> *i. With a Relevant Financial Institution, between 18 December 2007 and 31 January 2013, and/or a Defendant during that Defendant's Relevant Class B Period;*

ii. In the European Economic Area; and

(b) Involved a currency pair consisting of two G10 Currencies.

Class B does not include Excluded Persons and Excluded Transactions.

13. I understand from my legal representatives that the Proposed Collective Proceedings are "follow-on" claims, as they seek to recover damages for losses suffered as a result of the Proposed Defendants' infringements of EU competition law, as found by the European Commission in two Decisions (the **"Decisions**"), which were adopted on 16 May 2019:

    a. Decision in Case COMP/40135 *Forex – Three Way Banana Split* (the **"Three Way Banana Split Decision**"); and

    b. Decision in Case COMP/40135 *Forex – Essex Express* (the **"Essex Express Decision**").

14. In the Decisions, the Commission found that the addressees had participated in a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ("**TFEU**") and Article 53 of the EEA Agreement. The infringement, which is described in very similar terms in both Decisions, consisted of an underlying understanding reached among certain individual traders (who were employed by the Proposed Defendants) and implemented by them to exchange certain current or forward-looking commercially sensitive information about certain of their trading activities and occasionally to coordinate their trading activity with respect to FX spot trading of G10 currencies. The Decisions list the G10 currencies as the US Dollar (USD), Canadian Dollar (CAD), Japanese Yen (JPY), Australian Dollar (AUD), New Zealand Dollar (NZD), British Pound (GBP), Euro (EUR), Swiss Franc (CHF), Swedish Krona (SEK), Norwegian Krone (NOK) and Danish Krone (DKK).

15. The information exchanged between the individual FX traders took place on certain online chatrooms. The Decisions take their names from the chatrooms involved in the infringements established in the Decisions, as follows:

    a. The Three Way Banana Split Decision involved communications in three chatrooms called "Three way banana split", "Two and a half men" and "Only Marge"; and

    b. The Essex Express Decision encompasses communications in two chatrooms called "Essex Express 'n Jimmy" and "Grumpy Semi Old Men".

16. I understand from my legal representatives that the Decisions are binding on the Tribunal and the Proposed Defendants. As a result, it has been explained to me that the Proposed

Defendants will be unable to argue that the conduct identified in the Decisions was not an infringement of EU competition law. This means that the principal issue in the Proposed Collective Proceedings will concern the extent of the losses suffered by (and the amount of damages to be awarded to) the members of the Proposed Classes, as a result of the Proposed Defendants' proven unlawful conduct.

17. The Proposed Collective Proceedings seek, with the assistance of experts instructed by me, to rely on the infringements established by the Decisions and contend that they resulted in an overcharge on certain FX transactions. That overcharge consisted of an increase, or "widening", of the bid-ask spread charged on certain FX transactions, to levels that were higher than they would have been absent the infringements identified in the Decisions.

18. To explain this further, I understand from the experts instructed by me that typically when a customer seeks to enter into an FX transaction, they will be provided with a "two-way" price, which consists of:

    a. a "bid" price, which is the price at which a person providing FX trading services (known as an "**FX dealer**") offers to buy currency from the customer; and

    b. an "ask" price, which is the price at which an FX dealer offers to sell currency to a customer.

19. The "bid-ask spread" is the difference between the bid and the ask price. Wider spreads mean that: (i) the bid price decreases; and (ii) the ask price increases.

20. The Proposed Collective Proceedings allege that, as a result of the infringements identified in the Decisions, the Proposed Defendants were able to charge wider bid-ask spreads to customers. From the perspective of a customer, this means that:

    a. The bid price decreases, with the effect that the FX dealer will pay less when buying currency from the customer (in other words, the customer will receive less); and

    b. The ask price increases, with the effect that the FX dealer will charge more when selling currency (and, accordingly, the customer will pay a higher price for that currency).

21. The Proposed Collective Proceedings allege this harm was suffered on two types of FX transaction, namely:

    a. FX Spot Transactions, which are transactions involving the exchange of two currencies at a rate agreed on the date of that contract, but the actual exchange of currencies (known

as "settlement") takes place within two business days. FX Spot Transactions are included in the Proposed Collective Proceedings as Spot trading is the subject of the Decisions (see paragraph 14 above); and

b. FX Outright Forward Transactions, which are transactions involving the exchange of two currencies at a rate agreed on the date of the contract for settlement more than two business days later. FX Outright Forward Transactions are included in the Proposed Collective Proceedings as I understand from the experts instructed by me that the price of an FX Outright Forward Transaction is based in part upon the price of an equivalent FX Spot Transaction.

22. Further, the transactions included in the Proposed Collective Proceedings are those which:

a. Were entered into in the European Economic Area, which reflects the scope of the infringements found in the Decisions.

b. Involved a currency pair consisting of two G10 Currencies. I understand from the experts instructed by me that each FX transaction involves a currency pair, as it involves the exchange (i.e. the simultaneous purchase and sale) of two currencies. The Proposed Collective Proceedings concern G10 Currency Pairs as the Decisions concern Spot trading involving the G10 currencies.

c. Were entered into either with the Proposed Defendants (being the persons having participated in the infringements identified in the Decisions) or certain Relevant Financial Institutions. Transactions with Relevant Financial Institutions are included in the Proposed Collective Proceedings, as it is contended that the infringements identified in the Decisions had wider effects on bid-ask spreads prevailing in the market more generally. I understand from my legal and expert advisers that these are known as "umbrella effects" and will be explained further in the expert evidence served in support of the Proposed Collective Proceedings.

23. It should also be noted that the Proposed Classes do not include certain Excluded Persons and Excluded Transactions, which are explained further in paragraphs 103 – 104 of the Collective Proceedings Claim Form.

24. Accordingly, I seek the permission of the Tribunal to represent the Proposed Classes in recovering for the loss and damage suffered in the form of widened bid-ask spreads on the FX transactions described above, which was caused by the infringements established in the

Decisions. The Collective Proceedings Claim Form details an estimate of the amounts claimed as damages, which includes the application of interest.

Disclosure of the Decisions

25. As explained in paragraph 14 of the Collective Proceedings Claim Form, the Decisions have not yet been published by the Commission. Instead, the only publicly available information regarding the Decisions is provided in a short press release issued by the Commission on 16 May 2019, which is annexed to the Collective Proceedings Claim Form at Annex 2.

26. However, I agreed with my legal representatives that it was very important to try to obtain copies of the Decisions, both in order to assist the Tribunal and with a view to setting out the basis of the claims in the Proposed Collective Proceedings as fully as possible. As such my legal representatives sought disclosure of all or part of the Decisions from the Commission, prior to filing the Proposed Collective Proceedings.

27. Disclosure was sought from the Commission by invoking the EU's Access to Documents Regulation (which, I understand from my legal representatives, is 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). The request for disclosure of the Decisions was first made on 5 July 2019. Obtaining disclosure of the Decisions took much longer than we expected, but was finally provided by the Commission on 1 October 2019. Full details of the steps taken to obtain disclosure of the Decisions is provided in the witness statement of Anthony John Maton at paragraph 15. I confirm that I have read and agree with those paragraphs of Mr Maton's statement and that all correspondence sent to the Commission was reviewed and approved by me in advance.

28. I consider it to be very beneficial to have obtained copies of the Decisions from the Commission, because it has enabled my legal team to set out the claims against the Proposed Defendants in much greater detail than would have been the case absent disclosure.

My reasons for wanting to act as the class representative in the Proposed Collective Proceedings

29. Over the course of my career, I have held a number of senior roles in the fields of competition enforcement and consumer protection. I have substantial experience in advocating on behalf of consumers, and my roles have provided an important insight into the harm that can be caused by anti-competitive practices. As a result, I am committed to ensuring that markets work fairly, both for competitors and consumers.

30. As a result of the roles I have held throughout my career, I have developed a very strongly-held belief that the United Kingdom needs an effective collective actions regime that enables the recovery of damages on behalf of persons that have suffered harm as a result of breaches of competition law. Indeed, I have been advocating for such a regime for well over 20 years, and especially as part of my role as Principal Policy Advisor at Which?.

31. I consider a collective actions regime is particularly important in the case of cartels, which are among the most serious infringements of competition law and have the potential to cause considerable harm. In my view, where that harm has been caused, it is important that those suffering losses are able to obtain redress.

32. Consequently, I believe that the Proposed Collective Proceedings are a crucial means of obtaining redress for the persons that have suffered loss as a result of the infringements established by the Decisions. As explained further in paragraphs 34 – 63 below, I am committed to ensuring that the Proposed Collective Proceedings are run efficiently and effectively in the interests of the members of the Proposed Classes, and achieve their overall objective of recovering damages for the losses suffered. Indeed, from the outset of instructing my legal representatives, I have been keen to ensure that we: (i) fully understand the range of persons that might be affected by the infringements established by the Decisions; (ii) identify the damage they might have suffered; and (iii) strive to ensure this is reflected in the Proposed Collective Proceedings.

33. I am also mindful that, given the relatively early stage of the UK's collective actions regime, this claim will play an important role in shaping the overall regime, as the principles that will be established in these early cases will "set the tone" for the claims that may follow. This is a further reason I am committed to ensuring that the Proposed Collective Proceedings are run effectively, so as to make a positive contribution to the collective actions regime overall.

My ability to act fairly and adequately in the interests of the members of the Proposed Classes

34. I am committed to ensuring that members of the Proposed Classes are adequately and appropriately represented. To that end, I consider that I have the skills and resources necessary to take on the role of class representative and to act fairly and adequately in the interests of all members of the Proposed Classes. This is demonstrated by:

    a. My professional experiences, which I detail further in paragraphs 34 – 57 below.

b. The experience of the legal team I have instructed to advise and represent me, and the expertise of the consulting panel I have appointed to assist me in managing the Proposed Collective Proceedings. The experience of my legal advisers is detailed in the witness statement of Anthony Maton dated 10 December 2019.

c. The funding arrangements that my legal representatives and I have put in place for pursuing the Proposed Collective Proceedings.

d. The Litigation Plan for the proceedings that my legal representatives and I have produced, along with further assistance from Angeion Group, who are experts in the notice and administration aspects of collective proceedings. This is discussed further at paragraphs 64 – 65 below.

35. A copy of my CV is exhibited to this witness statement at PGE1. I would draw the Tribunal's attention to certain key aspects which demonstrate my ability and suitability to act as a class representative, which I have summarised below.

36. First, I have substantial professional experience in the field of competition law. This is evidenced by the following roles in particular:

a. From 1996 to 2005, I was Principal Policy Advisor at Which?, the largest private consumers' organisation in Europe. A significant part of my role involved advocating in respect of potential infringements of competition law and in respect of markets which were not functioning effectively in the interests of consumers. My work covered a number of sectors, including financial services. For example, I prepared a super-complaint in relation to the Northern Ireland retail banking industry that led to a Competition Commission inquiry. In addition, I was the lead researcher involved in efforts to promote and reform the Competition Act 1998 and Enterprise Act 2002 to enable UK consumers to take advantage of a collective action regime. This included drafting briefing notes, organising seminars and public meetings, and lobbying politicians and public officials for legislative change.

b. From 2009 to 2017, I was a Panel Member, and later an Inquiry Chair at the Competition and Markets Authority (formerly the Competition Commission). In this role, I was involved in conducting investigations into a wide variety of sectors and applying the relevant principles of competition law in a number of different (and often complex) situations.

37. Both of these roles provided an insight into the importance of ensuring that markets function effectively and of the substantial harm that can be caused by anti-competitive activities.

38. I have undertaken a number of other professional activities which evidence my experience in matters relating to competition law. In particular:

    a. I am a member of the International Advisory Board for both the Institute of Consumer Antitrust Studies at Loyola University in Chicago, and the American Antitrust Institute. As a Board member, I attend meetings and provide input in relation to competition law matters from a European perspective.

    b. I was formerly a member of the Advisory Board for the Centre for Competition Policy at the University of East Anglia (from 2005 to 2009). This role involved attending meetings and providing strategic input on competition considerations for the purposes of new policy development.

39. I also have an academic interest in competition law and matters relating to competition enforcement, as is evidenced by the list of my publications in my CV.

40. Second, I have significant experience in advocating on behalf of consumers, and on issues relating to markets that may be functioning sub-optimally. This was a key part of my roles at Which? and the Competition and Markets Authority. As part of those roles, I was involved in several cases which demonstrate my expertise in this area. For example, at Which? I was:

    a. The lead advocate concerning the reform of the Block Exemption Regulation in relation to the distribution of new cars in Europe. For example, I drafted submissions to the Office of Fair Trading, Parliament and the European Commission. I also attended meetings and made presentations at various institutions including the European Parliament and at trade events such as the London Motor Show. My work in this area contributed to a change in the Block Exemption Regulation to the benefit of consumers.

    b. Responsible for drafting several super-complaints across several sectors including dentistry, care homes and banking.

41. Similarly, at the Competition and Markets Authority, I worked alongside the consumer protection division in relation to, amongst other things, inquiries in relation to digital markets (comparison tools) and the treatment of vulnerable consumers across all sectors including banking. For example, I chaired meetings that led to the Vulnerable Consumers programme being established. This programme was designed to draw together relevant individuals from

across the Competition and Markets Authority for vulnerability issues to be considered across all of the Authority's projects and areas of work. This work led to, amongst other things, the protection of vulnerable consumers becoming a key strategic priority for the Authority as set out in its 2018/2019 Annual Report and in a paper published in February 2019 entitled 'Consumer vulnerability: challenges and potential solutions'.

42. In addition, I was a Panel Member or Inquiry Chair on a large number of inquiries (as set out in paragraph 48 below). In performing this role, I worked to counter consumer and purchaser detriments in markets as diverse as insurance software, construction, transportation and food manufacturing. As a Panel Member or Inquiry Chair, I was tasked with considering information presented to the inquiries and making the necessary decisions to progress the inquiries in conjunction with other Panel Members. I was also involved in the Steering Group for the International Consumer Policy and Enforcement Network.

43. Furthermore:

    a. From 2006 – 2009, I was a Board Member and Director of Consumer Policy at Fipra International, which is a public affairs consultancy based in Brussels. As part of this role, I assumed particular responsibility for advising on issues relating to competition, consumer and trade policies. I worked alongside senior executives of Fipra's clients to develop strategies for dealing with a range of consumer and competition problems. For example, I worked with a stakeholder in relation to a high-profile abuse of dominance case related to consumer harm. In carrying out this work, I engaged with stakeholders, regulators and other third parties, and advised the client on how to present its position to such parties.

    b. I have, since January 2018, been a member of the Scottish Government's Ministerial Taskforce on Consumers and Markets. This role involves working with other members of the taskforce to determine how to deal with consumer and competition problems in a devolved administration context. For example, I assisted with the consultation that led to the formation of Consumer Scotland, a new consumer body to represent the interests of consumers in Scotland.

44. Third, I have a strong background in economics. I am an economist by training, and have taught (on a number of related courses) at the London School of Economics, University of London and the University of North Carolina (London Programme).

45. It follows from the foregoing that I am well-placed to understand the legal and factual issues that arise in these Proposed Collective Proceedings, and will be able to represent members of the Proposed Classes effectively by providing appropriate instructions to my legal representatives and experts.

Suitability to manage the Proposed Collective Proceedings

46. I understand that acting as a class representative will involve managing a substantial and complex piece of litigation in the interests of members of the Proposed Classes, including by exercising control over the costs being incurred. I have considerable experience in managing large and complex projects, particularly in the field of competition law, which leaves me well equipped to perform this role.

47. This is demonstrated, in particular, in my roles as Group Member, and then Inquiry Chair at the Competition Commission and Competition and Markets Authority. In these roles I took part in the management and conduct of a number of inquiries into mergers, market investigations and regulatory reviews, which were often legally and factually very complex.

48. I was Inquiry Group Member in the following Competition Commission and Competition and Markets Authority cases between 2009 and 2016:

    a. the Sports Direct International/JJB Sports merger inquiry (7 August 2009 – 16 March 2010, phase 2 clearance);

    b. the Stena AB/DFDS Seaways Irish Sea Ferries merger inquiry (8 February – 29 June 2011, phase 2 clearance);

    c. the Kerry Foods/Headland Foods merger inquiry (12 July – 2 December 2011, phase 2 clearance);

    d. the McGill's Bus Services/Arriva Scotland West merger inquiry (18 April – 21 September 2012, phase 2 clearance); and

    e. the Aggregates, Cement and Ready-mix Concrete market investigation (18 January 2012 – 13 April 2016, phase 2 adverse effect on competition leading to remedies).

49. I was Inquiry Chair in the following CMA cases between 2014 and 2017;

    a. the Xchanging/Agencyport Software merger inquiry (30 September 2014 – 29 April 2015, phase 2 clearance);

b. the Reckitt Benckiser/K-Y brand merger inquiry (27 October 2014 – 20 June 2016, phase 2 clearance with remedies);

c. the Linergy/Ulster Farm By-Products merger inquiry (20 May 2015 – 6 January 2016, phase 2 clearance);

d. the FirstGroup undertakings review (30 October 2015 – 20 April 2016, release of undertakings relating to the completed acquisition by FirstBus plc of SB Holdings Ltd in 1996);

e. the Arriva Rail North/Northern Rail franchise merger inquiry (29 January – 22 December 2016, phase 2 clearance with remedies); and

f. the Firmus Energy, energy licence modification appeal (28 December 2016 – 3 November 2017, appeal by Firmus against a decision by NIAUR (Northern Ireland Authority for Utility Regulation) to modify the conditions of Firmus' Licence).

50. Although the Inquiry process in these cases is inquisitorial rather than adversarial as in court proceedings, the skill and experience I developed in these cases seem to me to be relevant for and applicable to the management of complex and substantial competition litigation.

51. In each of these inquiries, my role required effective management of multi-disciplinary teams of professionals, including legal and economic experts. I was also frequently required to synthesise a significant amount of information on unfamiliar and often technical matters in order to take key decisions that would shape the direction or outcome of the inquiry/investigation.

52. In particular, as an Inquiry Chair at the CMA I was directly involved in all material developments in the CMA's handling of each investigation by the case team. This included taking decisions on all relevant matters ranging from strategic issues to questions of disclosure of evidence to parties in each case, either as part of the Inquiry Group or on my own under delegated authority from the Inquiry Group.

53. A particularly important part of my Inquiry Chair role was to ensure that each inquiry was able to draw on the widest possible range of experience and expertise to take well-informed and effective decisions. This is, in my view, one of the most important parts of the role of a class representative: to provide effective oversight over the team of legal and expert representatives I have instructed in order to deliver the best possible outcome for members of the Proposed Classes.

54. My roles at Which? and the Competition and Markets Authority have also provided important experience of the litigation process. I frequently dealt with matters relating to litigation in my role at the CMA, in particular when our decisions were subject to challenge.

55. Accordingly, I am used to managing complex and substantial projects, especially involving participants from a range of different backgrounds. As a result, I consider that I will be well placed to exercise effective control over the management of the Proposed Collective Proceedings.

56. I am also conscious that undertaking the role of class representative is a significant and serious undertaking, particularly given the substantial size and scope of the Proposed Collective Proceedings. In this regard, I will ensure that I devote as much time as is necessary to exercise effective oversight of the Proposed Collective Proceedings.

57. Indeed, as I am currently self-employed, I have full control over my diary, and I am able to devote the necessary time to this role. While I have some positions of responsibility and undertake some consultancy work on a part-time basis, as detailed in my CV, none of these roles would in any way affect my ability to manage the Proposed Collective Proceedings and provide instructions to my legal representatives, the experts and Angeion.

Consultative Panel

58. I have full confidence in my ability to carry out the functions of class representative, for the reasons set out in paragraphs 34 – 57 above. Nevertheless, I am aware that beyond my legal advisers, I do not have access to other individuals who I could consult when taking decisions on the Proposed Collective Proceedings. In particular, I am conscious that the nature of opt-out proceedings is such that I will not be able to consult with all members of the Proposed Classes. Nevertheless, I believe it is important that all members of the Proposed Classes are able to understand the Proposed Collective Proceedings and the relevant developments throughout all stages, as is explained further in relation to the Litigation Plan at paragraphs 64 – 65 below. However, while I will, of course, seek to communicate with members of the Proposed Classes as clearly and transparently as possible about all aspects of the Proposed Collective Proceedings, I recognise that, particularly given the potentially substantial sizes of those classes, detailed individual dialogue with members of the Proposed Classes about the conduct of the Proposed Collective Proceedings is unlikely.

59. Accordingly, I have appointed a consultative panel with specific expertise which I can draw upon where necessary in taking decisions during the course of the Proposed Collective Proceedings. The current members of the consultative panel are as follows:

    a. Lord Carlile of Berriew CBE QC: Lord Carlile is our lead panel member, and a crossbench member of the House of Lords who was a part time judge for 28 years in the High Court and is a former member of the Competition Appeal Tribunal. He contributes considerable knowledge of competition law and Tribunal procedure.

    b. Professor Philip Marsden: Professor Marsden is a Professor of Law and Economics at the College of Europe, Bruges. Professor Marsden is very experienced in the fields of competition law and competition litigation, having worked as a prosecutor, defence counsel, enforcement official and advisor to corporates and governments at different stages throughout his career. Professor Marsden continues to act as a competition and enforcement decision-maker at various regulators, specialising in particular in financial services.

60. In addition, until 22 November 2019 the panel included Mr Phelim Keogan. During his membership of the panel, Mr Keogan contributed specialist knowledge in the field of FX trading. He is a former leader of Fidelity International's global currency management operations and international treasury dealing capabilities from 2002 to 2018. He also previously worked as the chief dealer for the Irish branch of the National Australia Bank, which is one of Australia's "big four" banks, where he oversaw interbank and corporate client trading activities in foreign exchange, wholesale deposits, derivatives and bond markets. Due to professional commitments, Mr Keogan stepped down from the panel on 22 November 2019. I therefore intend to appoint a further panel member with similar professional background and expertise.

61. A copy of the terms of reference of the Consultative Panel, which includes full biographies of the members of the panel are exhibited at PGE2.

62. While all decisions regarding the Proposed Collective Proceedings will be taken exclusively by me and will be my responsibility alone, I believe that my decision-making during the course of the Proposed Collective Proceedings will be significantly enhanced by my ability to discuss matters arising with the consultative panel and will ensure that my decisions are always taken in the best interests of the Proposed Classes, thereby ensuring that they are adequately and appropriately represented.

63. Indeed, I have already held meetings with the Consultative Panel as part of preparing the Proposed Collective Proceedings. Members of the Consultative Panel have been very engaged and are genuinely committed to ensuring that the Proposed Collective Proceedings are managed in a way that best advances the interests of the members of the Proposed Classes. They have already brought valuable experience to bear on the Proposed Collective Proceedings, which I am confident has enhanced the quality of the decisions taken so far. I am looking forward to continuing to work with them.

The Collective Proceedings Litigation Plan

64. In view of the size and complexity of the Proposed Collective Proceedings, I have, together with my legal advisors and Angeion, prepared a Litigation Plan for the Proposed Collective Proceedings which incorporates the Angeion Notice and Administration Plan (the "**Angeion Plan**"), which is exhibited at PGE3. The Litigation Plan addresses how I, my legal advisers and Angeion will ensure that the Proposed Collective Proceedings will be effectively and efficiently pursued in the interests of the Proposed Classes, including how I will ensure that I effectively communicate with the Proposed Classes.

65. I understand the importance of ensuring that the Proposed Collective Proceedings, and any CPO made in due course, are publicised as widely and as accurately as possible to all potential class members. The key elements of the Litigation Plan (and the Angeion Plan) are as follows:

    a. A clear communications plan has been put in place in order to communicate with the Proposed Classes, publicise the Proposed Collective Proceedings and to issue notices as required under the CAT Rules. The communications and notice aspects of the Litigation Plan include the following:

        i. The creation of a claim website at www.fxclaimuk.com (the "**Claim Website**"). The Claim Website will be updated during the proceedings and will contain access to important documents, FAQs, narrative descriptions of the Proposed Collective Proceedings and timeline, descriptions of class members' rights, actions they can take, and the ability to register to receive updates throughout the Proposed Collective Proceedings.

        ii. Directly contacting by post or email potential members of the Proposed Classes identified from publicly available datasets such as the HMRC trade information database, Pensions Funds Online and the Alternative Investment Management Association.

iii. Engaging Byfield Consultancy, a specialist legal public relations firm, to generate press interest and earned media[1] by issuing notices and press releases regarding developments in the Proposed Collective Proceedings to relevant national and international media.

iv. Paid print publication notices (i.e. adverts) in identified United Kingdom and European print media publications.

v. Paid online advertising and website banners on certain websites (including identified UK and European digital media publications) and through programmatic display advertising.[2]

vi. Sponsored search listings and search engine optimisation.

vii. Use of social media channels such as LinkedIn and Twitter to direct potential members of the Proposed Classes to the Claim Website.

viii. Email notices to members of the Proposed Classes who have registered to receive updates via the Claim Website.

b. A method for dealing with enquiries from members of the Proposed Classes which includes the ability for individuals to submit messages via the Claim Website, FAQs (which will be updated to take account of common themes or questions arising out of any enquiries received), and a Freephone telephone number (including access to live operators if damages are recovered and class members need to make a claim to receive their entitlement to the damages).

c. An outline of the considerations which will determine the process by which an aggregate award of damages or settlement sum would be distributed amongst Class Members.

No conflict of interest

66. I am not a member of the Proposed Classes, and as such I will be well-placed to act independently in the interests of all class members. Indeed, as explained in paragraphs 29 – 57

[1] This is a term used to refer to publicity that is generated free of charge in relation to the promotion of a particular issue in the media. Earned media can include articles in the press (print and online), word of mouth, blogs, etc.

[2] A method of digital advertising that (i) uses technology to target the websites which a particular target audience is likely to visit; and (ii) detects when an advertisement is performing well and replicates that strategy.

above, my key objective for the Proposed Collective Proceedings is to obtain the best possible outcome for the members of the Proposed Classes.

67. In recognition of the time commitment involved in acting as class representative, if authorised to do so by the Tribunal, I have agreed with the Funder (as defined below) to be reimbursed at the rate of £350 per hour, excluding VAT, for my time spent on the Proposed Collective Proceedings. This sum is commensurate with my hourly rate received for other consulting projects. The Funder has also agreed to reimburse any reasonable out-of-pocket expenses, such as travel costs.

68. Under no circumstances will I stand to receive any part of the damages which may be recovered for the members of the Proposed Classes.

69. Accordingly, I am not aware of any interest that is in conflict with the interests of members of the Proposed Classes so far as concerns the common issues to be decided in the Proposed Collective Proceedings.

Financial resources to pursue the Proposed Collective Proceedings

70. I am aware that the Tribunal will assess my ability to finance the Proposed Collective Proceedings, including my ability to pay the Proposed Defendants' recoverable costs if ordered to do so.

71. I am unable to personally fund the costs of pursuing the Proposed Collective Proceedings. I have therefore put in place the following arrangements to finance the Proposed Collective Proceedings:

    a. I have agreed partial conditional fee agreements (CFAs) with my legal advisors;

    b. I have entered into a litigation funding agreement with a commercial litigation funder; and

    c. I have also taken out after the event (ATE) insurance in respect of adverse costs.

72. I provide further details about these arrangements below.

<u>Conditional fee agreements</u>

73. I have agreed a partial CFA with my solicitors, Hausfeld, under which part of their fees are deferred and contingent on success in the Proposed Collective Proceedings.

74. In addition, Hausfeld have entered into partial CFAs with Counsel (Aidan Robertson QC, Victoria Wakefield QC, Joanne Box and Aaron Khan) on my behalf.

Litigation Funding Agreement

75. I have entered into a litigation funding agreement ("**LFA**") with Donnybrook Guernsey Limited (the "**Funder**"), a wholly owned subsidiary of Bench Walk Capital LLC, which is affiliated with Bench Walk Advisors, a well-known commercial litigation funder (the LFA is exhibited at PGE4). Under the LFA, the Funder has agreed to provide funding of up to of £18,654,088 (including total pre-CPO funding commitment of £4,294,366). In return, the Funder is to be paid a fee which, subject to the Tribunal's permission, will be paid out of undistributed damages.

76. I believe that the LFA is an appropriate means for me to finance the Proposed Collective Proceedings and does not create any conflict with my duties to the proposed class members. I make the following points:

a. As referred to in the LFA, before entering into it I had detailed discussions with my legal advisers about litigation funding generally as well as the terms of the LFA. I believe that in all the circumstances, and bearing in mind the complexity of the Proposed Collective Proceedings and the significant amount of funding required to pursue them, the LFA is the most appropriate means available to me to fund the costs of the Proposed Collective Proceedings (for the avoidance of doubt, I do not intend to waive any legal privilege in disclosing the fact of such discussions having taken place).

b. Bench Walk Advisors is a leading commercial litigation funder which is very experienced in funding English litigation. Both it and its principals are ranked in directories for litigation funding. I understand from my legal advisors that there is a voluntary code of conduct for litigation funders established by the Association of Litigation Funders of England and Wales. This code requires, among other things, that funders maintain adequate financial resources at all times in order to meet their obligations to fund. The Funder has agreed to adhere to the code of conduct as one of the terms of the LFA.

c. I am informed by my legal advisers that £18.65 million is sufficient to fund the Proposed Collective Proceedings to trial. The LFA also provides for the budget to be increased with the agreement of the Funder, if necessary.

d. I do not believe there is any inconsistency between my obligations to the Funder under the LFA and my duties to the Proposed Classes. My primary objective is to recover

compensation for each member of the Proposed Classes and I plan to work closely with my legal representatives and Angeion to ensure that any proceeds are distributed to the Proposed Classes to the maximum extent possible. I believe that the LFA is consistent with this. Indeed, it expressly obliges me to act fairly and adequately in the best interests of class members. In return for the provision of funding, I have agreed to ask the Tribunal's permission to make an order that undistributed claim proceeds be paid in respect of any unrecovered costs and to use this sum to pay a fee to the Funder. Given that the Funder's fee will therefore not be payable out of any sums that would otherwise be paid to class members, I do not believe my obligation to procure payment of the Funder's fee creates any conflict with my duties to the Proposed Class Members.

Ability to pay the Proposed Defendants' Costs

77. Under the LFA, the Funder has agreed to indemnify me in respect of any costs orders I become liable to pay up to the determination of my application for a CPO.

78. In relation to any costs orders made against me in respect of recoverable costs incurred after a CPO is made in my favour, I have entered into an after the event insurance policy with Quantum Legal Costs Cover Limited (QLCC) as agent for Hamilton Insurance DAC (the "**ATE Policy**") which is exhibited at PGE5. This has a limit of indemnity of £10 million. I understand that Hamilton Insurance DAC (formerly Ironshore Europe DAC) is A rated by Standard & Poor's.

79. I am informed by my legal advisors that the ATE Policy should provide sufficient adverse costs cover for a significant part of the Proposed Collective Proceedings. In addition, the LFA budget provides for me to acquire additional insurance, if necessary. I intend to acquire additional ATE insurance after the Proposed Collective Proceedings are filed and more generally to keep ATE insurance under review throughout the Proposed Collective Proceedings to ensure that there is adequate provision for the Proposed Defendants' recoverable costs.

Request for confidential treatment of LFA and ATE Policy

80. I understand that it is important to ensure that the Tribunal and Proposed Defendants have the opportunity to consider my funding arrangements. However, the LFA and ATE Policy are confidential agreements containing commercially sensitive information. I am therefore seeking the Tribunal's permission for both documents to be treated confidentially as between me, the Tribunal and the Proposed Defendants.

81. The confidential versions of the LFA and ATE Policy exhibited to this witness statement contain limited redactions. By way of explanation:

a. My personal residential address has been redacted from both agreements.

b. The Funder's fee has been redacted from the LFA. This has been kept confidential because it may provide the Proposed Defendants with potential insight into the Funder's risk assessment of the Proposed Collective Proceedings. I can, however, confirm that the Funder's Fee is based on a multiple of its deployed capital and a sliding percentage of Proceeds (as defined in the LFA) depending on the range of recoveries, which ranges between 5% and 20%.

c. The premiums have been redacted from the ATE Policy, for the same reason as the redaction of the Funder's fee in the LFA.

82. I recognise that, in due course, it will be important to make non-confidential versions of the LFA and ATE Policy available to members of the Proposed Classes (with any appropriate safeguards or redactions). I will therefore seek to agree non-confidential versions of both agreements with the Funder and insurer in due course and will discuss with my legal representatives an appropriate procedure for making these agreements available on request to the Proposed Classes (for example via the dedicated claim website).

Preliminary observations as to the basis upon which I would be the most appropriate class representative

83. As explained in paragraph 8 above, I understand there is another application for a CPO pending before the Tribunal brought by Michael O'Higgins FX Class Representative Limited, which seeks approval to act as class representative in respect of claims that are, at least in part, the same as those set out in the Collective Proceedings Claim Form.

84. It has been explained to me by my legal representatives that, in these circumstances, the Tribunal will consider which person would be the most appropriate class representative. Further guidance on this is provided in paragraph 6.32 of the Guide, which explains that the Tribunal will seek to arrive at a decision which is in the best interests of all class members and is fair to the Proposed Defendants. The factors which are said to be likely to be relevant to this assessment include the proposed class definition and scope of the claims, the quality of the litigation plan and the experience of the lawyers of the competing proposed class representatives.

85. I understand from my discussions with my legal representatives that this issue will likely be the subject of detailed submissions and further evidence at an appropriate stage in the proceedings, as we currently do not have access to the O'Higgins Application. As such, I will make the following short, and preliminary, observations on the points raised in paragraph 6.32 of the Guide:

    a. The definition of the Proposed Classes has been very carefully considered with the aim of encompassing the harm caused by the infringements established in the Decisions, as is explained further in paragraphs 71 – 104 of the Collective Proceedings Claim Form;

    b. I have commented on the quality of the Litigation Plan in paragraphs 64 - 65 above; and

    c. The experience of the lawyers I have instructed to conduct the Proposed Collective Proceedings on my behalf is addressed in the witness statement of Anthony Maton of Hausfeld & Co. LLP dated 10 December 2019.

Conclusion

86. For the foregoing reasons, I consider that I meet the requirements to be authorised to act as class representative pursuant to the requirements in Section 47B of the Act and Rule 78 of the CAT Rules, and I therefore respectfully request that the Tribunal authorise me to perform this role.

STATEMENT OF TRUTH

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

Signed: 

Date: 10 December 2019