

PRESS RELEASE**CAT rules on certification and carriage in FX Claim UK**

London, 31 March 2022 – Today, the Competition Appeal Tribunal (CAT) has handed down its judgment in in [FX Claim UK](#), the opt-out collective action brought by Phillip Evans, deciding that the proposed FX collective proceedings can be certified, but on an opt-in basis only. Mr Evans intends to appeal.

Mr Evans' application was considered by the CAT during a hearing between 12-16 July 2021. There were two issues for consideration:

- (a) First, whether the proposed collective proceedings should be certified and, if so, whether they should be certified on an opt-in basis (in which class members must actively opt-in to the proceedings at the outset) or opt-out (in which class members are automatically included in the claims unless they choose to opt-out).
- (b) Second, the CAT considered Mr Evans' application alongside a similar application by Michael O'Higgins FX Class Representative Ltd. Due to the similarities between the two applications, the CAT had to decide which is more suitable to act as class representative. This was known as the 'carriage dispute'.

On the first issue, the Tribunal found that the proceedings should be certified as collective proceedings. However, it declined to certify them on an opt-out basis. It based its decision primarily on concerns about the strengths of the claims and its view that opt-in proceedings would be practicable. However, the Tribunal's decision was not unanimous: in a dissenting opinion from the third member of the Tribunal, Paul Lomas, he stated that he believed the claims should proceed on an opt-out basis.

On the second issue, the judgment is the first time the CAT has considered a carriage dispute in the UK's collective proceedings regime. Carriage disputes are a common feature of class action regimes in other jurisdictions such as the US and Canada. As carriage disputes only arise in opt-out proceedings, the Tribunal did not need to decide carriage. However, the panel unanimously agreed that, if the claims were to continue on an opt-out basis, they would decide carriage in favour of Mr Evans' application, FX Claim UK.

Mr Evans commented:

"I am pleased that the CAT recognised that these claims are suitable for collective proceedings and that it unanimously decided that of the two proceedings, the one I brought should proceed as a better claim.

I am disappointed however with its refusal to authorise the action as opt out proceedings, deciding instead that each class member should opt-in before the claims can continue. Based on my background in consumer welfare, I have first-hand knowledge of the practical difficulties of opt-in legal proceedings, which I presented to the Tribunal. In my view, the CAT has underestimated these challenges although, one of the three CAT members recognised this and stated that the proceedings should be certified on an opt-out basis.

If these claims are blocked from continuing on an opt-out basis, the result will be that tens of thousands of individuals and businesses will be excluded from the opportunity to recover compensation in relation to admitted anti-competitive behaviour by the banks. That would be contrary to the principle of access to justice that underpins the collective action regime. These points were recognised in Mr Lomas' dissenting opinion, which would have granted certification on an opt-out basis. I therefore intend to appeal.

The European Commission fined these banks more than €1 billion for their FX wrongdoing. We want to hold the banks accountable for their actions and secure compensation for affected customers."

Hausfeld partner and Global Co-chair, Anthony Maton stated:

"The CAT has refused to allow these claims to proceed other than on an opt-in basis which, as I testified to the CAT, is impracticable. It also means that thousands of UK businesses will be denied the chance to recover compensation in relation to illegal conduct which the banks have admitted and in relation to which they have paid billions of dollars in compensation to affected customers in the US and Canada.

The CAT has recognised that our client, Mr Evans, should have carriage of these claims and we therefore intend to take the case to the higher courts to reverse this decision, allowing ordinary businesses compensation for the illegal behaviour of the banks as Parliament intended."

Ends

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Notes to Editors:

The Claim:

- To learn more about Mr Evans' claim, please visit www.fxclaimuk.com.
- Phillip Evans has worked tirelessly on behalf of victims of anti-competitive conduct for the last 20 years. His previous positions include Inquiry Chair at the CMA and Senior Policy Advisor at Which?. He is currently Special Adviser for Competition, Consumer and Trade Policy at Fipra.
- Mr Evans' consultative panel is chaired by Lord Carlile of Berriew QC, a crossbench member of the House of Lords who was a part time judge for 28 years in the High Court and the Competition Appeal Tribunal.

About Hausfeld:

- Hausfeld is a leading global disputes only law firm with offices in London, Brussels, Paris, Berlin and Düsseldorf, Stockholm and throughout the US. It specialises in claimant litigation and collective redress. The firm filed the first standalone opt-out collective actions on behalf of rail passengers in 2019. Hausfeld leads on Trucks cartel claims in the UK, Germany and the Netherlands. It has acted on some of the most complex damages claims of the last decade: on the 'Interchange Fee' litigation against Visa and Mastercard and the Air Cargo litigation against British Airways and 13 other airlines. It is also presently instructed in 'Google Shopping' claims

on behalf of price comparison websites against Google and in collective claims against Google and Apple App Stores and Qualcomm. It is the only claimant firm to be ranked by the Legal 500 and Chambers & Partners as a top tier firm in private enforcement of antitrust/competition law in both the United States and the United Kingdom. Hausfeld is also recommended as a top law firm in investment and retail banking litigation by the Legal 500 in the United Kingdom. For more information, please visit: www.hausfeld.com.

- Hausfeld & Co LLP's US affiliate, Hausfeld LLP, is co-lead counsel in a class action against sixteen banks for manipulation of the FX market in the US. To date, settlements totalling over \$2.3 billion have been reached with fifteen of the sixteen banks.
- The Hausfeld team advising on FX Claim UK is led by Anthony Maton (Partner) and David Lawne (Partner) and supported by Stella Gartagani (Senior Associate), Rachael Baillie (Senior Associate) and Edward Nyman (Associate).

The Competition Appeal Tribunal:

- The Competition Appeal Tribunal is a specialist judicial body with cross-disciplinary expertise in law, economics, business and accountancy which hears and decides cases involving competition or economic regulatory issues.