

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID567/2019
File Title: J WISBEY & ASSOCIATES PTY LTD v UBS AG & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 25/03/2022 3:13:29 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Third Respondent's Defence to the Amended Statement of Claim

No VID 567 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

J WISBEY & ASSOCIATES PTY LTD (ACN 001 959 851)

Applicant

UBS AG (ABN 47 088 129 613) & Ors

Respondents

In response to the Amended Statement of Claim (**ASOC**) filed by the Applicant on 19 November 2021, the Third Respondent, Citibank, N.A., says as follows:

Except where otherwise noted, the Third Respondent has adopted the definitions used in the ASOC but does not, by doing so, admit any allegation implied by the defined terms so used.

A. THE APPLICANT AND THE GROUP MEMBERS

1. In answer to paragraph 1 of the ASOC, the Third Respondent:
 - (a) denies that the Applicant and/or the persons whom the Applicant represents has suffered loss or damage by reason of the matters alleged in the ASOC; and
 - (b) otherwise does not plead to the paragraph as no allegations are made against it.

2. In answer to paragraph 2 of the ASOC, the Third Respondent:
 - (a) admits sub-paragraph (a); and
 - (b) otherwise does not know and cannot admit the paragraph.

Filed on behalf of: The Third Respondent

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3. In answer to paragraph 3 of the ASOC, the Third Respondent:
 - (a) refers to and repeats paragraph 1 above; and
 - (b) otherwise denies the paragraph.

B. THE RESPONDENTS

4. In answer to paragraph 4 of the ASOC, the Third Respondent:
 - (a) admits sub-paragraphs (a), (b) and (c); and
 - (b) otherwise does not know and cannot admit the paragraph.
5. In answer to paragraph 5 of the ASOC, the Third Respondent:
 - (a) admits sub-paragraphs (a), (b) and (c); and
 - (b) otherwise does not know and cannot admit the paragraph.
6. In response to paragraph 6 of the ASOC, the Third Respondent:
 - (a) says its name is 'Citibank, N.A.' and not 'Citibank N.A.' as referred to in the ASOC and in the Schedule to the Amended Originating Application filed on 19 November 2021;
 - (b) says it is a national banking association organised and existing under the laws of the United States of America; and
 - (c) otherwise admits the paragraph.
7. In answer to paragraph 7 of the ASOC, the Third Respondent:
 - (a) admits sub-paragraphs (a), (b) and (c); and
 - (b) otherwise does not know and cannot admit the paragraph.
8. In answer to paragraph 8 of the ASOC, the Third Respondent:
 - (a) admits sub-paragraphs (a), (b) and (c); and
 - (b) otherwise does not know and cannot admit the paragraph.

C. THE GLOBAL FX MARKET

9. In answer to paragraph 9 of the ASOC, the Third Respondent:
 - (a) admits that, during the Relevant Period, there was demand for FX Instruments from persons and entities in various locations throughout the world (including in Europe, North America, South America, Asia, Africa, Australia and New Zealand);

- (b) says that it does not know and cannot admit the full nature or extent of that demand;
 - (c) says that it does not know and cannot admit the full extent to which that demand was for the entry into FX Instruments with Dealers located in the same place as the customer in contrast to Dealers located in different places from the customer;
 - (d) denies that there existed global trading centres in each of the places pleaded in paragraph 9 of the ASOC;
 - (e) refers to and repeats paragraph 11 below; and
 - (f) otherwise denies the paragraph.
10. In answer to paragraph 10 of the ASOC, the Third Respondent:
- (a) admits that, during the Relevant Period, there were Dealers who operated from one or more locations throughout the world (including in Europe, North America, South America, Asia, Africa, Australia and New Zealand) who from time to time entered into, and/or offered to enter into, FX Instruments with customers in the same or different locations, including in Australia, through:
 - (i) sales desks and/or trading desks; and/or
 - (ii) electronic platforms which enabled customers to electronically view prices being offered by a Dealer for FX Instruments and to place orders with a Dealer for those FX Instruments;
 - (b) says that it does not know and cannot admit the identity of all such Dealers, nor the nature or extent of each Dealer's activities during the Relevant Period, including:
 - (i) the means through which each Dealer entered into and/or offered to enter into FX Instruments with customers and the circumstances in which each particular means was employed; and
 - (ii) whether and/or the extent to which each Dealer entered into and/or offered to enter into FX Instruments with customers in the same and/or different locations (including Australia);
 - (c) refers to and repeats paragraph 11; and
 - (d) otherwise denies the paragraph.

11. In answer to paragraph 11 of the ASOC, the Third Respondent:
- (a) says that one unit of currency, as a medium of exchange, is generally fungible for any other unit of the same currency;
 - (b) says that entering into a Spot with respect to a currency pair of a specific volume with a particular value date was a technical substitute for entering into any other Spot with respect to the same currency pair of the same volume with the same value date, but not necessarily a close economic substitute (which would depend on the particular demand characteristics and preferences of each customer seeking a Spot for that currency pair with that specific volume and value date);
 - (c) says that entering into an Outright Forward with respect to a currency pair of a specific volume with a particular value date was a technical substitute for entering into any other Outright Forward with respect to the same currency pair of the same volume with the same value date, but not necessarily a close economic substitute (which would depend on the particular demand characteristics and preferences of each customer seeking an Outright Forward for that currency pair with that specific volume and value date);
 - (d) says there is a functional distinction between Dealers entering into FX Instruments with other Dealers (**interdealer transactions**), and Dealers entering into FX Instruments with customers who are not Dealers (**dealer/customer transactions**);
 - (e) says that one reason that Dealers participate in interdealer transactions in respect of FX Instruments is in order to manage risks from entering into FX Instruments in dealer/customer transactions;
 - (f) says that customers who enter into FX Instruments with Dealers are not homogenous and do not have homogenous customer preferences;
 - (g) says that Dealers during the Relevant Period sought to differentiate themselves from other Dealers offering to enter into FX Instruments in dealer/customer transactions based on factors including the nature and quality of the advice they offered to customers, the nature and quality of their service (both in relation to FX Instruments and across a portfolio of financial products and services a customer may require), their ease of transacting, credit-worthiness and the efficiency of their trading and settlements;
 - (h) says that price in relation to FX Instruments was typically one of a number of factors that customers in dealer/customer transactions considered when

selecting a Dealer with whom they would transact, which also included the factors described in sub-paragraph (g) above;

- (i) says that price in relation to FX Instruments was typically one of a number of factors on which Dealers competed when entering into and/or offering to enter into FX Instruments, which also included the factors described in sub-paragraph (g) above;
- (j) says that when a Dealer's FX sales desk quoted a price to a customer for a dealer/customer transaction, the sales desk typically added a mark-up to the price quoted by the Dealer's FX trading desk, which was set having regard to factors including the particular currency and the liquidity of that currency, the volume of the FX Instrument, the Dealer's relationship with the customer, the customer's size and credit-worthiness, any other risk factors that existed in relation to the customer and the level of competition from other Dealers for that customer and/or kind of customer;
- (k) says that prices offered for FX Instruments by Dealers on electronic platforms were typically set using programmed algorithms; and
- (l) otherwise denies the paragraph.

12. In answer to paragraph 12 of the ASOC, the Third Respondent:

- (a) refers to and repeats paragraphs 9 to 11; and
- (b) otherwise denies the paragraph.

13. In answer to paragraph 13 of the ASOC, the Third Respondent:

- (a) refers to and repeats paragraph 12;
- (b) says that, if the Global FX Market as pleaded is established, admits that it would constitute a market within the meaning of s4E of the TPA and s4E of the CCA; and
- (c) otherwise denies the paragraph.

D. THE AUSTRALIAN FX MARKET

14. In answer to paragraph 14 of the ASOC, the Third Respondent:

- (a) admits that, during the Relevant Period, there was demand from customers located in Australia for entry into FX Instruments with Dealers located in Australia;

- (b) says that, from time to time during the Relevant Period, customers located in Australia interacted with a Dealer's FX sales desk located outside Australia, but does not know and cannot admit the extent or the circumstances of any demand from customers located in Australia for entry into FX Instruments with Dealers located outside Australia; and
 - (c) says that, from time to time during the Relevant Period, customers located outside Australia interacted with a Dealer's Australian FX sales desk, but does not know and cannot admit the extent or the circumstances of any demand from customers located outside Australia for entry into FX Instruments with Dealers located in Australia.
15. In answer to paragraph 15 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraph 14 above;
 - (b) admits that, during the Relevant Period, there were Dealers located in Australia that entered into, and/or offered to enter into, FX Instruments with customers in Australia through:
 - (i) sales desks and/or trading desks in Australia and/or outside Australia; and/or
 - (ii) single-bank and/or multi-bank electronic platforms accessible in Australia, which enabled customers to electronically view prices being offered by a Dealer for FX Instruments and to place orders with a Dealer for those FX Instruments;
 - (c) says that it does not know the identity of all such Dealers nor the nature or extent of each Dealer's activities during the Relevant Period, including:
 - (i) the means through which each Dealer entered into and/or offered to enter into FX instruments with customers and the circumstances in which each particular means was employed; and
 - (ii) whether and/or the extent to which and/or the circumstances in which each Dealer entered into and/or offered to enter into FX instruments with customers inside and/or outside of Australia; and
 - (d) otherwise denies the paragraph.
16. In answer to paragraph 16 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraph 11 above; and
 - (b) otherwise denies the paragraph.

17. In answer to paragraph 17 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 14 to 15; and
 - (b) otherwise denies the paragraph.
18. In answer to paragraph 18 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraph 17;
 - (b) says that, if the Australian FX Market as pleaded is established, admits that it would be a market within the meaning of s4E of the TPA and s4E of the CCA; and
 - (c) otherwise denies the paragraph.

E. COMPETITION IN RELATION TO FX INSTRUMENTS

19. In answer to paragraph 19 of the ASOC, the Third Respondent:
- (a) says that, during the Relevant Period, it typically entered into, offered to enter into and/or was willing and able to enter into FX Instruments with customers including other Dealers, corporate customers, asset managers and hedge funds in various locations throughout the world (including in Europe, North America, South America, Asia, Africa, Australia and New Zealand);
 - (b) says that, each of the other Respondents held themselves out as entering into, and/or offering to enter into, FX Instruments with customers in various locations throughout the world (including Australia) during some or all of the Relevant Period, but does not know and cannot admit:
 - (i) the extent to which and/or the circumstances in which each other Respondent entered into, offered to enter into, and/or was willing and able to enter into, FX Instruments with customers; or
 - (ii) the location of the customers with which each of the other Respondents entered into, offered to enter into, and/or was willing and able to enter into, FX Instruments; or
 - (iii) the customers or kinds of customers with whom each of the other Respondents entered into, offered to enter into, and/or was willing and able to enter into, FX Instruments in various locations throughout the Relevant Period; and
 - (c) otherwise denies the paragraph.

20. In answer to paragraph 20 of the ASOC, the Third Respondent:
- (a) admits that, during the Relevant Period, it had related bodies corporate that also entered into and offered to enter into FX Instruments with customers;
 - (b) does not know and cannot admit the paragraph insofar as it relates to other Respondents; and
 - (c) otherwise denies the paragraph.
21. In answer to paragraph 21 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraph 20 in relation to the related bodies corporate of the Respondents;
 - (b) admits that, during the Relevant Period:
 - (i) entities other than the Respondents and their related bodies corporate held themselves out as entering into, and/or offering to enter into, FX Instruments with customers in various locations throughout Europe, North America, South America, Asia, Africa, Australia and New Zealand; and
 - (ii) those other entities included entities associated with the groups trading under the names BNP Paribas, Deutsche Bank, Credit Suisse, Bank of America, Goldman Sachs, HSBC, Standard Chartered Bank, Morgan Stanley, Nomura, Société Générale, Toronto Dominion Bank, Westpac, ANZ, Commonwealth Bank of Australia, Macquarie Bank, The Royal Bank of Canada, National Australia Bank and Merrill Lynch;
 - (c) says that it does not know and cannot admit the extent to which and/or the circumstances in which those other entities entered into or offered to enter into FX Instruments with customers, nor where such customers were located, or who or of what kind those customers were; and
 - (d) otherwise denies the paragraph.
22. In answer to paragraph 22, the Third Respondent:
- (a) refers to and repeats paragraphs 4(b), 5(b), 6(b), 7(b), 8(b), 11, 12, 16, 17, 19, 20 and 21 above;
 - (b) says that the allegation in this paragraph is impermissibly rolled up and embarrassing, because it fails to articulate whether, the extent to which and/or the circumstances in which:

- (i) the Respondents and other market participants were in competition with each other in relation to the entry into FX Instruments to which the provision alleged in paragraph 23 of the ASOC is said to relate;
 - (ii) each of the Respondents and other market participants who were participants in a particular chatroom in the Overt Acts Spreadsheet were in competition with each other in relation to the entry into FX Instruments to which the provision alleged in paragraph 25 of the ASOC is said to relate;
- (c) says that by reason of sub-paragraph (b) above, it does not know and cannot admit whether, during the Relevant Period, it was in competition with one or more of the Respondents and other market participants in relation to the entry into FX Instruments to which the provision alleged in paragraph 23 of the ASOC, or further or alternatively paragraph 25 of the ASOC, is said to relate;
- (d) says that, during the Relevant Period, from time to time, it was in competition with one or more of the other Respondents and other market participants, and/or one or more of the Other Banks in relation to the entry into some FX Instruments with some customers in some locations, but does not know and cannot admit the full extent to which and/or the circumstances in which it was in competition with one or more of those entities;
- (e) says that, during the Relevant Period, from time to time, it was not in competition with one or more of the other Respondents and other market participants for the entry into FX Instruments in some interdealer transactions; and
- (f) otherwise denies the paragraph.

F. RELEVANT ARRANGEMENTS OR UNDERSTANDINGS

F.1 The FX Understanding

23. The Third Respondent denies paragraph 23 of the ASOC.
24. In answer to paragraph 24 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraph 23; and
 - (b) denies the paragraph.

F.2 The FX Chatroom Understandings

25. The Third Respondent denies paragraph 25 of the ASOC.

26. In answer to paragraph 26 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraph 25; and
 - (b) denies the paragraph.

G. RELEVANT CONTRAVENTIONS BY THE RESPONDENTS

G.1 FX Understanding: price fixing

G.1.1 Price fixing conduct prior to 24 July 2009: TPA Contraventions

27. In answer to paragraph 27 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23 and 24; and
 - (b) denies that, if the FX Understanding Provision is established in respect of the period prior to 24 July 2009 (which is denied), it had the purpose or effect, or was likely to have the effect, alleged in the paragraph.
28. In answer to paragraph 28 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23, 24 and 27; and
 - (b) denies the paragraph.
29. In answer to paragraph 29 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23, 24, 27 and 28; and
 - (b) denies the paragraph.
30. In answer to paragraph 30 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23, 24, 27, and 28; and
 - (b) denies the paragraph.

G.1.2 Price fixing conduct on or after 24 July 2009: TPA and CCA Contraventions

31. In answer to paragraph 31 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23 and 24; and
 - (b) denies that, if the FX Understanding Provision is established in respect of the period on or after 24 July 2009 (which is denied), it had the purpose or effect, or was likely to have the effect, alleged in the paragraph.
32. In answer to paragraph 32 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23, 24 and 31; and
 - (b) denies the paragraph.

33. In answer to paragraph 33 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23, 24, and 31; and
 - (b) denies the paragraph.

G.2 FX Understanding: restricting supply

34. In answer to paragraph 34 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23 and 24;
 - (b) denies that, if the FX Understanding Provision is established (which is denied), it had the purposes alleged in the paragraph; and
 - (c) further says that the alleged class of persons described in the paragraph are not particular persons or classes of persons within the meaning of s4D of the TPA and CCA.
35. In answer to paragraph 35 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23, 24, and 34; and
 - (b) denies the paragraph.
36. In answer to paragraph 36 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23, 24, 34 and 35; and
 - (b) denies the paragraph.
37. In answer to paragraph 37 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 23, 24, 34 and 35; and
 - (b) denies the paragraph.

G.3 FX Understanding: substantially lessening competition

38. In answer to paragraph 38 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 23 and 24; and
 - (b) denies that, if the FX Understanding Provision is established (which is denied), it had the purpose, or would have had or been likely to have had the effect, alleged in the paragraph.
39. In answer to paragraph 39 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 23, 24 and 38; and
 - (b) denies the paragraph.

40. In answer to paragraph 40 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 23, 24 and 38; and
 - (b) denies the paragraph.

G.4 FX Chatroom Understandings: price-fixing

G.4.1 Price fixing conduct prior to 24 July 2009: TPA Contraventions

41. In answer to paragraph 41 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25 and 26; and
 - (b) denies that, if any FX Chatroom Understanding Provision is established in respect of the period prior to 24 July 2009 (which is denied), it had the purpose or effect, or was likely to have the effect, alleged in the paragraph.
42. In answer to paragraph 42 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25, 26 and 41; and
 - (b) denies the paragraph.
43. In answer to paragraph 43 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25, 26, 41 and 42; and
 - (b) denies the paragraph.
44. In answer to paragraph 44 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25, 26, 41 and 42; and
 - (b) denies the paragraph.

G.4.2 Price fixing conduct on or after 24 July 2009: TPA and CCA contraventions

45. In answer to paragraph 45 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25 and 26; and
 - (b) denies that, if any FX Chatroom Understanding Provision is established in respect of the period on or after 24 July 2009 (which is denied), it had the purpose or effect, or was likely to have the effect, alleged in the paragraph.
46. In answer to paragraph 46 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25, 26 and 45; and
 - (b) denies the paragraph.

47. In answer to paragraph 47 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25, 26 and 45; and
 - (b) denies the paragraph.

G.5 FX Chatroom Understandings: restricting supply

48. In answer to paragraph 48 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25 and 26;
 - (b) denies that, if any FX Chatroom Understanding Provision is established (which is denied), it had the purposes alleged in the paragraph; and
 - (c) further says that the alleged class of persons described in the paragraph are not particular persons or classes of persons within the meaning of s4D of the TPA and CCA.
49. In answer to paragraph 49 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25, 26 and 48; and
 - (b) denies the paragraph.
50. In answer to paragraph 50 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25, 26, 48 and 49; and
 - (b) denies the paragraph.
51. In answer to paragraph 51 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 22, 25, 26, 48 and 49; and
 - (b) denies the paragraph.

G.6 FX Chatroom Understandings: substantially lessening competition

52. In answer to paragraph 52 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 25 and 26; and
 - (b) denies that, if any FX Chatroom Understanding Provision is established (which is denied), it would have had or been likely to have had the effect alleged in the paragraph.
53. In answer to paragraph 53 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 25, 26 and 52; and
 - (b) denies the paragraph.

54. In answer to paragraph 54 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 25, 26 and 52; and
 - (b) denies the paragraph.

H. LOSS OR DAMAGE

55. In answer to paragraph 55 of the ASOC, the Third Respondent:
- (a) says that it does not have access to verifiable data in relation to the matter alleged; and
 - (b) therefore does not know and cannot admit the paragraph.
56. In answer to paragraph 56 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 23 to 26; and
 - (b) denies the paragraph.

H1. FX Understanding

57. In answer to paragraph 57 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 23 and 24; and
 - (b) denies that, if the FX Understanding and/or FX Understanding Provision is established (which is denied), it had the effect alleged in the paragraph.
58. In answer to paragraph 58 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 23, 24, 55, 56 and 57; and
 - (b) denies the paragraph.
59. In answer to paragraph 59 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 23, 24, 55 to 58; and
 - (b) denies the paragraph.
60. In answer to paragraph 60 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 23, 24, 55 to 59; and
 - (b) denies the paragraph.
61. In answer to paragraph 61 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 23, 24, 55 to 60; and
 - (b) denies the paragraph.

H2. FX Chatroom Understandings

62. In answer to paragraph 62 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 25 and 26; and
 - (b) denies that, if any FX Chatroom Understanding and/or FX Chatroom Understanding Provision is established (which is denied), it had the effect alleged in the paragraph.
63. In answer to paragraph 63 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 25, 26, 55, 56 and 62; and
 - (b) denies the paragraph.
64. In answer to paragraph 64 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 12, 17, 25, 26, 55, 56, 62 and 63; and
 - (b) denies the paragraph.
65. In answer to paragraph 65 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 25, 26, 55, 56, 62 to 64; and
 - (b) denies the paragraph.
66. In answer to paragraph 66 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 25, 26, 55, 56, 62 to 65; and
 - (b) denies the paragraph.

H3. Damage suffered

67. In answer to paragraph 67 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 55 to 66;
 - (b) denies the paragraph; and
 - (c) says that, even if the matters pleaded in paragraphs 55 to 66 were established (which is denied), it is equally likely that the matters alleged would have caused the transactions the subject of FX Instruments entered into by the Applicant and the Group Members to be:
 - (i) at lower prices than they otherwise would have been, in the cases where the Applicant and Group Members were buyers; and
 - (ii) at higher prices than they otherwise would have been, in the cases where the Applicant and Group Members were sellers;

which would be necessary to take into account in order to ascertain whether damage was in fact sustained by any individual including the Applicant or any Group Member.

68. In answer to paragraph 68 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 55 to 67;
 - (b) denies the paragraph;
 - (c) further says that, for the reasons pleaded in paragraph 67(c), even if the matters pleaded in paragraphs 55 to 66 were established (which is denied), it is equally likely that the Applicant and the Group Members would have enjoyed a benefit or gain in relation the FX Instruments they entered into during the Relevant Period;
 - (d) further says that, even if the matters pleaded in paragraphs 55 to 67 were established (which is denied), the Applicant and Group Members suffered no loss (or, alternatively, reduced their loss) to the extent they entered into FX Instruments in order then to enter into further FX Instruments with their customers, or entered into FX Instruments referable to, or for managing foreign currency risk in the course of, acquiring or producing goods or services for supply to their customers, because they rationally would have passed on the cost of entering into those FX Instruments to their customers (or, alternatively, would have passed on part of that cost); and
 - (e) further says that if and to the extent that a Group Member, either through the Applicant or individually, seeks to bring a claim against the Third Respondent in this proceeding that they have compromised or released pursuant to a settlement of a claim made or proceeding brought in a foreign jurisdiction reached either before or after the date of this Defence, then that claim is not maintainable against the Third Respondent in this proceeding and is barred by reason of that release (with particulars of such releases to be given if and when any Group Member advances a released claim either through the Applicant or individually).
69. In answer to paragraph 69 of the ASOC, the Third Respondent:
- (a) refers to and repeats paragraphs 55 to 68; and
 - (b) denies the paragraph.

COMMON QUESTIONS OF LAW OR FACT

70. The Third Respondent does not plead to paragraph 70 of the ASOC as no allegations are made against it.

RELIEF CLAIMED

71. The Third Respondent denies that the Applicant and/or the Group Members are entitled to the relief set out in the Amended Originating Application.

LIMITATIONS DEFENCE

72. In further response to paragraphs 67 to 69 of the ASOC, the Third Respondent says that:

- (a) any cause of action the Applicant and/or any Group Member may have accrued on the date on which they entered into the relevant FX Instrument;
- (b) to the extent that any cause of action under s82 of the TPA and/or s82 of the CCA accrued on or before 27 May 2013, the claim is not actionable and is time-barred by operation of s82(2) of the TPA and/or s82(2) of the CCA; and
- (c) to the extent that any cause of action under ss80 and 87 of the TPA and/or ss80 and 87 of the CCA accrued on or before 27 May 2013, the Applicant has engaged in unreasonable delay in commencing proceedings on those causes of action and a grant of injunctive relief the Applicant seeks would lack utility, and therefore no compensation should be awarded in respect of those causes of action under s87 of the TPA and CCA.

Date: 25 March 2022



Signed by Ross Drinnan
Lawyer for the Third Respondent

This pleading was prepared by Ross Drinnan and Jennifer Campbell of Allens, and settled by Matthew Darke SC, James Arnott SC and Peter Strickland.

Certificate of lawyer

I Ross Drinnan certify to the Court that, in relation to the defence filed on behalf of the Third Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 25 March 2022

A handwritten signature in black ink that reads "Ross Drinnan". The signature is written in a cursive style with a large, prominent 'R' and 'D'.

Signed by Ross Drinnan
Lawyer for the Third Respondent