



## COMPETITION APPEAL TRIBUNAL

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

**CASE NO. 1523/7/7/22**

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 29 July 2022 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by BSV Claims Limited (the “Applicant/Proposed Class Representative”) against (1) Bittylicious Limited; (2) Payward Limited; (3) ShapeShift Global Limited; (4) Payward, Inc; (5) ShapeShift AG; and (6) Binance Europe Services Limited (together, “the Respondents/Proposed Defendants”). The Applicant/Proposed Class Representative is represented by Velitor Law of Central Court, 25 Southampton Buildings, London E1 6RA (Reference: Seamus Andrew/Christopher Lillywhite/Liam Spender).

The Applicant/Proposed Class Representative is a special purpose vehicle incorporated specifically to act as the Proposed Class Representative.

The Applicant/Proposed Class Representative makes an application for a collective proceedings order permitting it to act as the class representative bringing opt-out collective proceedings on behalf of UK based holders of the cryptocurrency Bitcoin Satoshi Vision (“BSV”) against various cryptocurrency exchanges who it is contended colluded to de-list BSV in 2019. The proposed class is more fully described below (the “Application”).

According to the Application, cryptocurrencies are relatively new financial instruments. The world’s first widely known cryptocurrency is Bitcoin. Bitcoin was created by a pseudonymous inventor called Satoshi Nakamoto, who published a paper entitled Bitcoin: A Peer-to-Peer Electronic Cash System in October 2008. Bitcoin was released to the world in January 2009. Since then, there have been many other types of cryptocurrencies created, for example Ethereum and Litecoin.

This claim concerns one such cryptocurrency, BSV. In simplified overview, BSV works as follows:

1. The supply of BSV is fixed at 21 million;
2. All transactions in BSV are recorded on a immutable public ledger called the Blockchain. A new bloc of transactions is added to the Blockchain roughly once every 10 minutes;
3. Users enter into transactions in BSV, which before the De-listing Events were most often facilitated by use of the exchanges operated by the Respondents/Proposed Defendants;
4. Details of these transactions are gathered together by nodes (commonly referred to as “miners”). Miners compete with each other to gather together transactions to record into blocks added to the Blockchain (this process is known as “mining”);
5. Adding a block to the Blockchain requires solving a complex mathematical puzzle. The puzzle produces a value (the hash) which both summarises the connection of all transactions in the block and links the new block to the block immediately preceding it in the Blockchain. There is only one number that performs each function in respect of each block;

6. Miners maintain the Blockchain through the mining process. The miners are rewarded for their efforts with a set number of BSV released from the fixed supply of 21 million each time a new block is completed together with transaction fees paid to the miners by users for processing their transactions as quickly as possible;
7. User transactions are not final until they are recorded on the Blockchain via the mining process; and
8. Once a block is added to the Blockchain it cannot be altered without leaving a public trace. A change to the Blockchain will be effective only if the majority of miners signal acceptance of that change, by competing to add blocks to the Blockchain containing that transaction.

The Respondents/Proposed Defendants are each cryptocurrency exchanges. Cryptocurrency exchanges are essential to the operation of the market in BSV. Trading through exchanges establishes the price of BSV in fiat money terms. Trading volumes also determine the liquidity of BSV, which in turn affect its value. Some of the Respondents/Proposed Defendants also trade in derivatives contracts, such as futures, which also affect the value and liquidity of BSV. According to the Application, the Respondents/Proposed Defendants also act as quasi-regulators of cryptocurrencies. Their listing (or de-listing) of cryptocurrencies confers a mark of approval on a cryptocurrency. That mark of approval makes it easier to trade the cryptocurrency in question.

The Application states there is value in the Blockchain technology underpinning BSV and other cryptocurrencies. This technology permits the development of improved services and new services in many different spheres of economic and legal activity. Examples of this include smart contracts, which can update themselves as they are performed. Others may include the ability to keep better and more secure records of property ownership or identity documents. The value of that technology is partly determined by the value of the coin (e.g. BSV) associated with the Blockchain in question.

According to the Application, following debate in the cryptocurrency community regarding claims by Dr Craig Wright that he was the individual behind the pseudonym Satoshi Nakamoto, there were a series of tweets between 12 April 2019 to 19 April 2019 in which various cryptocurrency exchanges disclosed their intention to de-list BSV and called on other cryptocurrency exchanges to also de-list (the “Collusive Tweets”). This culminated in the Respondents/Proposed Defendants (i) announcing they would de-list; and (ii) ultimately then de-listing BSV (together, the “De-listing Events”). The De-listing events took place between 15 April 2019 and 5 June 2019.

It is alleged that by participating in the Collusive Tweets and/or the De-listing Events the Respondents/Proposed Defendants thereby engaged in an anticompetitive agreement and/or concerted practice which had as its object or effect the prevention, restriction or distortion of competition within the internal market contrary to Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) and/or section 2 of the Competition Act 1998 (the “Chapter I prohibition”) (together, the “Infringement”). The Infringement caused the price of BSV to fall in the immediate aftermath. The Infringement which had both immediate and persistent long-term effects for BSV holders (including the ‘forgone growth effect’ meaning the lost opportunity of BSV developing into a ‘top tier’ cryptocurrency and the expropriation of coins from users of the Binance or Kraken cryptocurrency exchange) thereby caused loss and damage.

The collective proceedings are brought on an opt-out basis on behalf of all those that held BSV coins on 11 April 2019, who were resident in the UK between 11 April 2019 and 29 July 2022 (being the date of issue of the collective proceedings claim form), together with the personal authorised representatives of the estate of any individual who met the aforementioned description but subsequently died (the “Proposed Class”). There are three sub-classes within the Proposed Class which are:

**Sub-Class A:** Proposed Class members who held BSV coins on 11 April 2019 and sold at least some of their BSV coins thereafter, but before midnight (BST) on 29 July 2022.

**Sub-Class B:** Proposed Class members who held BSV coins on 11 April 2019 and continued to hold their BSV coins as at midnight (BST) on 29 July 2022.

**Sub-Class C:** Users of Binance or Kraken who held BSV coins in their accounts on 11 April 2019 and lost access to their BSV coins as a result of the de-listing by Binance or Kraken.

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

1. The Applicant/Proposed Class Representative would act fairly and adequately in the interest of all members of the Proposed Class for the following reasons:
  - (a) The Applicant/Proposed Class Representative and its director are not members of the Sub-Class A, Sub-Class B or Sub-Class C and are able to act impartially in the interests of all members of the Proposed Class;
  - (b) The Applicant/Proposed Class Representative is well-suited to manage the proposed collective proceedings. Lord Currie, the director of the Applicant/Proposed Class Representative and Chair of the Advisory Board, has spent much of his professional life as an economist and a regulator protecting consumers, including as a Chairman of the Office of Communications, Chairman of the Competition and Markets Authority and Chairman on the Advertising Standards Authority and Advertising Standards Authority (Broadcasting). In addition, the Advisory board includes four other highly regard individuals: a former senior director of the Office of Fair Trading/Financial Ombudsman Service; another former Chairman of the Competition and Markets Authority; a barrister at Fountain Court who specialises in competition law; as well as a well-known commentator on BSV and cryptocurrency matters.
  - (c) The director of the Applicant/Proposed Class Representative has prepared, along with his legal and expert team, a comprehensive Litigation Plan for the proceedings.
2. The Applicant/Proposed Class Representative does not have, in relation to the common issues for the members of the Proposed Class, a material interest that is in conflict with the interests of the classes.
3. The Applicant/Proposed Class Representative would be able to pay the Respondents'/Proposed Defendants' recoverable costs if ordered to do so.
4. The Applicant/Proposed Class Representative does not seek an interim injunction in respect of the proceedings.

The Application states that the claims are eligible to be brought in collective proceedings because:

1. The claims are brought on behalf of an identifiable class of persons. The Proposed Class is defined in a clear, objective manner such that a given person will be able to clearly determine whether or not they fall within the Proposed Class, and indeed the proposed sub-classes.
2. The proposed collective proceeding raise common issues, which are defined in section 47B(6) of the Act and Rule 73 of the Rules to mean the same, similar or related issues of fact and law. The common issues which can suitably be determined on a collective basis in the proposed collective proceedings are as follows:

- (a) Does the Tribunal have jurisdiction to hear the claims made in the proposed collective proceedings?
  - (b) What is/are the relevant substantive law(s) applicable to the claims?
  - (c) Was there an agreement and/or concerted practice by the Respondents/Proposed Defendants or any of them to de-list BSV contrary to Article 101 TFEU and/or the Chapter I prohibition?
  - (d) Did the agreement and/or concerted practice cause or materially contribute to loss and damage suffered by the members of the Proposed Class?
  - (e) What are the total amounts of any aggregate awards of damages for Sub-Class A, Sub-Class B and Sub-Class C?
  - (f) What is the level of interest to be awarded on any damages awarded to the Proposed Class?
  - (g) Should interest be awarded on a simple basis?
3. The claims are suitable to be brought in the proposed collective proceedings which are an appropriate means for the fair and efficient resolution of the common issues. Considering the number of potential members of the Proposed Class, it would be inefficient to require each prospective claimant to bring proceedings before the Tribunal on an individual basis and the reality strongly militates in favour of collective proceedings which would realise substantial economies in terms of time, effort and expense. The composition of the Proposed Class is anticipated to be largely comprised of individuals, rather than corporate entities, who would likely be unable to bring and fund such a claim on an individual basis. The issues raised by the proposed collective proceedings include a number of highly technical matters relating to the structure and operation of cryptocurrency transactions and markets and it would be a more efficient use of the Tribunal's resources for the evidence to be heard as part of collective proceedings, thus avoiding the substantial expense and duplication associated with a multiplicity of individual actions.
  4. The proposed collective proceedings represent the most appropriate approach in terms of costs/benefits to determining the claims from the perspective of all parties. While there are clearly meaningful costs associated with bringing the proposed collective proceedings and administering the claims on behalf of classes of a substantial size, such costs are proportionate in view of the aggregate value of the claims advanced. Further, they are outweighed by the benefits to the Proposed Class from being able to pursue compensation for losses suffered due to the agreement and/or concerted practices.
  5. Neither the Applicant/Proposed Class Representative nor its legal representative is aware of any proceedings making claims of the same or a similar nature.
  6. The estimated size of the Proposed Class is approximately: (i) 155,000 members of Sub-Class A; (ii) 75,000 members of Sub-Class B; and (iii) 12,000 members of Sub-Class C. Given the size of the Proposed Class, it would plainly be more appropriate to bring their claims by way of the proposed collective proceedings.
  7. The claims are suitable for an aggregate award of damages, as there is a credible and plausible methodology, and available data, for calculating the losses suffered by the Proposed Class on a class-wide basis. The Applicant/Proposed Class Representative proposes to use well established principles of economic analysis to quantify the harm caused by the agreement and/or concerted practice. The Applicant/Proposed Class Representative anticipates that the aggregate claim value will be in the range of £51 million and £9.9 billion with an average of £5

billion inclusive of simple interest, comprising: between £19.4 million and £20.6 million in respect of Sub-Class A, up to £9 billion in respect of Sub-Class B, and between £5.9 million and £925.7 million in respect of Sub-Class C.

Finally, the Applicant/Proposed Class Representative considers that the only practicable, efficient and effective approach to the proposed proceedings is for them to be brought on an opt-out basis. It considers the claims which are sought to be combined are strong and have a real prospect of success. In addition, it is impracticable for the proceedings to be maintained on an opt-in basis for the same reasons that it is impracticable for proceedings to be brought on an individual basis.

The relief sought in these proceedings is:

- (1) An aggregate award of damages on behalf of the Proposed Class;
- (2) Interest on a simple basis;
- (3) Costs; and
- (4) Such further and other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*

Registrar

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