IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1523/7/7/22

IN THE MATTER OF SECTIONS 2 AND 47B OF THE COMPETITION ACT 1998

BETWEEN:

BSV CLAIMS LIMITED

(a company limited by guarantee incorporated under the Companies Act 2006 with company number 14135245)

Applicant / Proposed Class Representative

- and -

1. BITTYLICIOUS LTD (trading as BITTYLICIOUS)
(a company limited by shares incorporated under the Companies Act 2006 with company number 08540541)

2. PAYWARD LTD (trading as KRAKEN)
(a company limited by shares incorporated under the Companies Act 2006 with company number 08593670)

3. SHAPESHIFT GLOBAL LIMITED (trading as SHAPESHIFT)
(in Members' Voluntary Liquidation)
(a company limited by shares incorporated under the Companies Act 2006 with company number 11724146)

4. PAYWARD, INC (trading as KRAKEN)
(a company incorporated under the laws of Delaware)

5. SHAPESHIFT AG (trading as SHAPESHIFT)
(a company incorporated under the laws of Switzerland with Business Identification Number CHE-367.039.468)

6. BINANCE EUROPE SERVICES LIMITED
(trading as BINANCE)
(a company incorporated under the laws of Malta)

Respondents / Proposed Defendants

AMENDED COLLECTIVE PROCEEDINGS CLAIM FORM

(amended pursuant to paragraph 6 of the President's Order sealed 26 September 2023)

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I. INTRODUCTION AND SUMMARY

1. These claims are brought under Article 101 of the Treaty on the Functioning of the European Union ("**TFEU**") and/or pursuant to the Chapter I prohibition in s. 2 Competition Act 1998 ("**the Chapter I prohibition**").

2. A Collective Proceedings Order (**"CPO"**) is sought pursuant to section 47B Competition Act 1998 (the **"Act"**) and Rule 75 of the Competition Appeal Tribunal Rules 2015 (SI 1648/2015, the **"CAT Rules"**).

3. BSV Claims Limited is a special purpose vehicle ("**SPV**") incorporated specifically to act as the Proposed Class Representative.

4. The claims which it is proposed are combined in these Proposed Collective Proceedings are claims 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.

5. Following heated debate in the cryptocurrency community concerning claims by Dr Craig Wright that he was the individual behind the pseudonym Satoshi Nakamoto, the inventor of the first decentralised cryptocurrency known as Bitcoin, 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 BSV (as addressed at paragraph 118 below) ("**the Collusive Tweets**").

6. This culminated in the Proposed Defendants (i) announcing they would de-list ("**the De-listing Announcements**"), and (ii) ultimately then de-listing BSV ("**the De-listings**") (the De-listing Announcements and the De-listings are collectively referred to herein as "**the De-listing Events**"). The De-listing Events took place between 15 April 2019 and 5 June 2019 (as addressed at paragraphs 118 to 129 below).

7. By participating in the Collusive Tweets and/or the De-listing Events the 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 TFEU and/or the United Kingdom contrary to the Chapter I prohibition in s. 2 of the Competition Act 1998 ("**the Infringement**").

8. The Infringement caused the price of BSV to fall in the immediate aftermath. For example, the Expert Report from Robin Noble of Oxera Economics dated 29 July 2022 estimates at paragraph 2.2 that "*the value of BSV in GBP was around £55 on 11 April, immediately prior to the de-listing events; it fell to around £39 one week later, a fall of around 28%.*" The Infringement which had both immediate and persistent long-term effects for BSV holders (including the 'forgone growth affect' 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, as explained in sections 6 and 7 of Mr. Noble's expert report.

9. Mr Noble has undertaken an initial qualification of losses. The table below at paragraph 2.16 of his report summarises the losses as follows:

Class		BTC		BCH	
	Number of Sub-Class members	Total value of damages	Average Damages per Sub-Class member	Total value of damages	Average Damages per Sub-Class member
Sub-Class A	155,146	£20.6m	£133	£19.4m	£125
Sub-Class B	75,407	£8,991.9m	£119,244	£25.9m	£343
Sub-Class C	12,892	£925.7m	£71,801	£5.9m	£457
of which: Binance	7,735	£924.7m	£119,537	£4.9m	£636
of which: Kraken	5,157	£1.0m	£196	£1.0m	£188
Total	**243,445**	**£9,938.1m**	**£40,823**	**£51.1m**	**£210**

10. Mr Noble estimates the total damages (including interest) for Sub-Class A as ranging between £19.4 million and £20.6 million; Sub-Class B of up to £9 billion; Sub-Class C of between £5.7 million to £925.7 million (of which £1 million is estimated to relate to Kraken users, with the rest relating to Binance users) per paragraph 7.58 of his report.

11. These Proposed 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 this CPCF), together with the

personal authorised representatives of the estate of any individual who met the aforementioned description but subsequently died ("the **Proposed Class**"). An aggregate award of damages is sought behalf of the Proposed Class. There are three sub-classes within the Proposed Class, depending on whether the BSV holders sold their coins, held onto their coins, or held their coins in accounts with Binance or Kraken and lost access to them, as described below:

(1) 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 A**")

(2) 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 B**").

(3) 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 ("**Sub-Class C**")."

The Proposed Collective Proceedings in outline

Overview of Cryptocurrency and BSV

12. Cryptocurrencies are recognised as a form of property in English law, following the High Court's decisions in *Vorotyntseva v Money-4 ltd (trading as nebeus.com)* [2018] EWHC 2596 (Ch); *Litecoin Foundation Limited v Inshallah Limited and others* [2021] EWHC 1998 (Ch) at [2]; *AA v Persons Unknown* [2020] 4 WLR 35 at [59] - [61]; *Ion Science Limited & Anor v Persons Unknown* (unreported), 21 December 2020 at [11]; *Fetch.AI Limited v Persons Unknown* [2021] EWHC 2254 (Comm) ("Fetch.AI") at [9] and most recently in *Tulip Trading Limited and others v Bitcoin Association for BSV* [2022] EWHC 667 (Ch) at [141].

13. Cryptocurrencies are relatively new financial instruments. As such, the terminology surrounding them continues to evolve, and indeed some individuals and financial institutions have differing views about which terms are the most suitable descriptors,

with some preferring 'cryptocurrency', and others 'cryptoasset', 'electronic cash' or 'digital money'.

14. 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.

15. This claim concerns one such cryptocurrency, Bitcoin Satoshi Vision ("**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 an immutable public ledger called the Blockchain. A new block 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.

16. At least until April 2019, it was possible to convert BSV easily into other cryptocurrencies and into fiat money, such as British Pounds Sterling or United States Dollars.

Cryptocurrency Exchanges and their role in the Cryptocurrency market

17. 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.

18. As explained in section 3B.1 of the expert report of Mr. Noble, 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.

19. 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.

The Claim

20. As further particularised in Part II below, the Proposed Class Representative will say, via its director Lord Currie of Marylebone, that the Proposed Defendant cryptocurrency exchanges colluded to de-list BSV between around April to June 2019 and 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 TFEU and/or the United Kingdom contrary to the Chapter I prohibition in s. 2 of the Competition Act 1998.

21. It is proposed that the Proposed Collective Proceedings be brought on an opt-out basis having regard to: (i) the large size of the class; (ii) the complexity of the issues that fall for determination; (iii) the likelihood that the *per capita* value of damages that might be recovered could be relatively modest for certain members of the Proposed Class; and (iv) the composition of the class as being largely comprised of individuals rather than corporate entities such as institutional investors who are likely to be *de minimis*, if included within the Proposed Class at all. As explained further in paragraphs 92 - 111 and 113 – 114 below, these factors mean that opt-out collective proceedings are the only practicable means by which to recover losses on behalf of members of the Proposed Class.

The Structure of the Amended Collective Proceedings Claim Form

22. In accordance with paragraph 6.11 of the Competition Appeal Tribunal's (the **"Tribunal"**) Guide to Proceedings 2015 (the **"Guide"**), the remainder of this Collective Proceedings Claim Form is divided into three parts, namely: Part II: The required information and statements under Rule 75(2) of the CAT Rules; Part III: The required information and statements to comply with Rule 75(3)(a) - (e) of the CAT Rules; and Part IV: The required information and statements to comply with Rule 75(3)(f) - (j) of the CAT Rules.

23. The following documents are relied upon in this application for a CPO:

(1) As annexes to this Collective Proceedings Claim Form:

(a) A copy of the Class Definition for the Proposed Collective Proceedings (Annex 1), as to which, see further paragraphs 59 – 61 below;

(b) A draft Collective Proceedings Order in accordance with Rule 75(5)(b) and Rule 80 (Annex 2);

(c) A draft notice of the Collective Proceedings Order in accordance with Rule 75(5)(c) (Annex **3**);

(2) The following evidence ~~is being~~ has been lodged in support of this application for a CPO, as envisaged by paragraph 6.13 of the Guide:

(a) An Expert Report from Robin Noble of Oxera Economics dated 29 July 2022 which addresses the damage sustained by the Proposed Class in direct consequence of the actions of the Proposed Defendants.

(b) A first and second witness statement by ~~a~~ the director of the Proposed Class Representative, which address~~es~~ the requirements of Rule 78 of the CAT's Rules and include~~s~~ the following documents:

(a) Documents evidencing the Proposed Class Representative's incorporation and corporate governance;

(b) The director of the Proposed Class Representative's curriculum vitae (Exhibit **[DC1/1-3]**);

(c) A litigation plan for the Proposed Collective Proceedings, as per Rule 78(3)(c) (the **"Litigation Plan"**) including the "**Notice and Administration Plan**" (Exhibit **[DC1/134-237]**) (and updated versions following the first Case Management Conference at Exhibit [**DC2/110-206**];

(d) A Litigation Funding Agreement between Softwhale Holdings Limited and the Proposed Class Representative (the **"Litigation Funding Agreement"**) (Exhibit **[JJ1/1-42]**);

(e) A proposed Deed of Undertaking from Softwhale Holdings to the Proposed Defendants to cover up to £10 million of adverse costs (Exhibit **[JJ1/43-50]**); ~~and~~

(f) A Deed of Guarantee and Indemnity between the Proposed Class Representative and Mt Burgos Holdings Limited to guarantee the performance of Softwhale Holdings under the Litigation Funding Agreement (Exhibit **[JJ1/51-69]**);

(g) A Deed of Amendment and Restatement dated 5 October 2023 by and between Softhwhale Holdings Limited, Mt Burgos Holdings Limited and the Proposed Class Representative (Exhibit [**DC2/2-8**]);

(h) An Amended and Restated Litigation Funding Agreement between Softwhale Holdings Limited and the Proposed Class Representative (Exhibit [**DC2/9-51**]) (the "**Amended and Restated Litigation Funding Agreement**")

(i) An Amended and Restated Deed of Guarantee and Indemnity between the Proposed Class Representative and Mt Burgos Holdings Limited to guarantee the performance of Softwhale Holdings under the Amended and Restated Litigation Funding Agreement (Exhibit [**DC2/52-72**]) (the "**Amended and Restated Corporate Guarantee**");

(j) An After the Event Insurance Policy incepted 23 June 2023 (the "**ATE Policy**") together with two endorsements (Exhibit [**DC2/73-102**]); and

(k) A Deed of Priorities between the Proposed Class Representative, the insurers under the ATE Policy, Softwhale Holdings Limited and the

Proposed Class Representative's solicitors dated 27 June 2023 (Exhibit [DC2/103-109]).

II. INFORMATION AND STATEMENTS REQUIRED BY RULE 75(2)

The Proposed Class Representative (Rule 75(2)(a))

24. The Proposed Class Representative is BSV Claims Limited, a company limited by guarantee incorporated in England and Wales with registered number 14135245. The Proposed Class Representative's registered office address is at Second Floor 168 Shoreditch High Street, London, United Kingdom, E1 6RA.

The Proposed Class Representative's legal representative (Rule 75(2)(b))

25. The Proposed Class Representative's legal representatives are Velitor Law of Central Court, 25 Southampton Buildings, London, WC2A 1AL.

The address for service in the UK (Rule 75(2)(c))

26. Velitor Law are instructed by the Proposed Class Representative to accept service of documents relating to these proceedings (and only these proceedings) by e-mail to **bsvclaims@velitorlaw.com** (marked for the attention of **Seamus Andrew, Christopher Lillywhite and Liam Spender**).

The Proposed Defendants (Rule 75(2)(d))

27. The details of each of the Proposed Defendants are set out below.

28. It should be noted that each of the Proposed Defendants operating as a body corporate adopts a deliberate policy of not publishing the name and address of the parent company of its corporate group, or the location of its corporate headquarters. The details set out at paragraphs 29 - 50 below are the best details currently known to the Proposed Class Representative.

D1: Bittylicious

29. The First Proposed Defendant is Bittylicious Limited, trading as 'Bittylicious', a company limited by shares incorporated in England and Wales with registered number 08540541, having its registered office at Unit 132 Henry House, 275 New North Road, London, N1 7AA.

30. The First Proposed Defendant was founded in or around 2013 by Mr. Marc Warne. Mr. Warne is, and was at all material times, the majority shareholder and Managing Director of the First Proposed Defendant.

31. The First Proposed Defendant was by 2018 describing itself as "*the UK's premier platform for cryptocurrency trading, including Bitcoin and Ethereum trading*", and as the "*go to place*" for many cryptocurrency users.

32. As at the time of the Collusive Tweets and the De-listing Events Bittylicious Limited was the only corporate entity operating the cryptocurrency exchange known as Bittylicious. Accordingly, at all material times Bittylicious Limited was operating the Bittylicious platform / website and was the contractual counterparty for the Proposed Class Members as users of Bittylicious' cryptocurrency exchange services.

D2: Payward Limited

33. The Second Proposed Defendant is Payward Limited, trading as Kraken, a company limited by shares incorporated in England and Wales with registered number 08593670, having its registered office at 6th Floor, One London Wall, London, EC2Y 5EB.

34. The Second Proposed Defendant is a wholly owned subsidiary of Payward, Inc (the Proposed Fourth Defendant). Payward, Inc is the ultimate parent company of the group of corporate entities including Payward Limited which comprise a single economic undertaking for the purposes of competition law and which at the time of the Collusive Tweets and the De-listing Events were responsible for running the cryptocurrency exchange known as Kraken which provides cryptocurrency exchange services. The

Kraken exchange is, and was at all material times, one of the top 10 largest Bitcoin and cryptocurrency exchange service providers in the world.

35. Kraken was founded in or around 2011 by Mr. Jesse Powell. It began offering its trading services in or around 2013.

36. Further, and at all material times, Kraken's Terms of Service for its website, which customers of the Kraken exchange use to sign up to buy and/ or sell cryptocurrency and provide payment, required any user residing in any country within Europe to contract with Payward Limited when engaging Kraken's cryptocurrency exchange services. Payward Limited was accordingly the contractual counterparty for the Proposed Class Members.

D3: ShapeShift Global Limited

37. The Third Proposed Defendant is ShapeShift Global Limited, a company limited by shares incorporated in England and Wales with registered number 11724146, having its registered office at 21 Holborn Viaduct, London, United Kingdom, EC1A 2DY.

38. ShapeShift Global Limited was first incorporated as ShapeShift Exchange UK Limited on 12 December 2018. It then changed its name to ShapeShift Global Limited on 19 March 2019.

39. As at the time of the Collusive Tweets and the De-listing Events ShapeShift Global Limited was the wholly owned subsidiary of the Proposed Fifth Defendant Shapeshift AG.

40. ShapeShift Global Limited together with with ShapeShift AG comprise a single economic undertaking for the purposes of competition law which at the time of the Collusive Tweets and the De-listing Events was responsible for running the cryptocurrency exchange known as 'ShapeShift' which provides cryptocurrency exchange services. ShapeShift was established by Mr Erik Vorhees in 2014 who remains its CEO and sole director and officer of ShapeShift Global Limited.

41. Further, and at all material times, ShapeShift's Terms of Service for its website, which customers of the ShapeShift exchange use to sign up to buy and/ or sell cryptocurrency and provide payment, required any user residing in the United Kingdom to contract with ShapeShift Global Limited when engaging ShapeShift's cryptocurrency exchange services. ShapeShift Global Limited was, accordingly, the contractual counterparty for the Proposed Class Members.

D4: Payward, Inc

42. The Fourth Proposed Defendant is Payward, Inc, a company incorporated under the laws of the State of Delaware, United States of America, with file number 5017249. The Proposed Fifth Defendant's principal place of business is 237 Kearny Street Suite 102 San Francisco, CA 94108 United States. Mr Jesse Powell is both an executive officer and director of Payward, Inc. Paragraphs 33 - 36 above are repeated.

43. Further, Payward, Inc has operated Kraken's website, at https://www.kraken.com/, at all material times, in accordance with the contents of the website's footnote which provides *"© 2011 - 2022 Payward, Inc.",* in circumstances where users of the Kraken exchange use its website to sign up to buy and/ or sell cryptocurrency, as well as provide payment.

44. Payward, Inc has also operated Kraken's App. The website at https://www.kraken.com/ is also the developer contact for the Kraken App.

D5: ShapeShift AG

45. The Fifth Proposed Defendant, ShapeShift AG, is the founding company of a cryptocurrency trading platform known as ShapeShift. ShapeShift AG was incorporated in Switzerland on 2 April 2015. Mr Vorhees is a director of ShapeShift AG and was Chairman of the Board of Directors in around April 2019.

46. ShapeShift AG is the parent company of ShapeShift Global Limited. At all material times ShapeShift AG was the sole shareholder of the Proposed Third Defendant ShapeShift Global Limited. Paragraphs 37 to 41 above are repeated.

D6: Binance Europe Services Limited

47. The Sixth Proposed Defendant is Binance Europe Services Limited, a company limited by shares incorporated in Malta under registered number C 85624, having its registered office at 14 East, Level 6, Triq Tas-Sliema, Gzira GZR 1639, Malta.

48. At the time of the Collusive Tweets and the De-listing Events Binance Europe Services Limited was responsible for running the cryptocurrency exchange known as Binance which provides cryptocurrency exchange services. Binance is, and was at all material times, the biggest, or second biggest cryptocurrency exchange services provider in the world.

49. The Sixth Proposed Defendant was founded by Chengpeng Zhao in or around July 2017. Mr. Zhao is, and at all material times was, the Chief Executive Officer of Binance.

50. Further, Binance Europe Services Limited was the entity which the Proposed Class Members contracted with for their use of the Binance platform.

Collective proceedings order (Rule 75(2)(e))

51. The Proposed Class Representative is making an application for a collective proceedings order as per paragraph 2 of Lord Currie's witness statement.

Opt-out collective proceedings (Rule 75(2)(f))

52. The Proposed Class Representative's application for a collective proceedings order is on an opt-out basis.

Alternative dispute resolution procedure (Rule 75(2)(g))

53. No alternative dispute resolution steps have been explored, as explained at paragraph 39 of the witness statement of Mr Andrew because until the collective proceedings are on foot BSV Claims Limited does not have the authority, and it would not be practical, to negotiate on behalf of the Proposed Class. Further, the likelihood that any of the

Respondents would participate in any alternative dispute resolution process prior the proceedings being commenced is low.

The Proposed Class Representative believes that the claims sought to be combined in the collective proceedings have a real prospect of success (Rule 75(2)(h))

54. For the reasons set out in paragraphs 23 - 28 of Lord Currie's witness statement and paragraphs 88 to 109 of Mr Andrew's witness statement (on real issue to be tried between the Applicant and the Proposed First, Second and Third Defendants) and paragraphs 44 to 84 of Mr Andrew's witness statement (on the higher threshold of reasonable prospects of success in the claims between the Applicant and the Proposed Fourth, Fifth and Sixth Defendants), the Proposed Class Representative considers that the claims which are sought to becombined in the Proposed Collective Proceedings are strong and have a real prospect of success.

III. INFORMATION AND STATEMENTS REQUIRED BY RULE 75(3)(a)-(e)

Description of the Proposed Class and sub-classes (Rule 75(3)(a)-(b))

Overview of the Proposed Class

55. The Proposed Class Representative seeks the permission of the Tribunal to continue the Proposed Collective Proceedings on an opt-out basis on behalf of:

"All those that held BSV coins on 11 April 2019, who were resident in the UK on between 11 April 2019 and 29 July 2022 (being the date of issue of this CPCF), together with the personal authorised representatives of the estate of any individual who met the aforementioned description but subsequently died" ("the **Proposed Class**").

56. An aggregate award of damages is sought behalf of the Proposed Class.

57. There are three sub-classes within the Proposed Class, depending on whether the individuals sold their coins, held onto their coins, or held their coins in accounts with Binance or Kraken and lost access to them, as described below:

(1) 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 A**")

(2) 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 B**").

(3) 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 ("**Sub-Class C**")."

58. A full version of the Class Definition is attached to this Collective Proceedings Claim Form at Annex 1. It also sets out the persons excluded from the Proposed Class.

59. The following paragraphs explain the parameters of the Proposed Class. In defining the scope of the Proposed Class, the Proposed Class Representative and its legal representatives have considered the guidance on class definition contained in paragraph 6.37 of the Guide, as follows:

(1) "*[T]he class should be defined as narrowly as possible without arbitrarily excluding some people entitled to claim*". The Proposed Class, as outlined above, have been defined as narrowly as possible, while ensuring that they appropriately reflect the harm caused by the agreement and/or concerted practice.

(2) "*If the class is too broad, the proposed collective proceedings may raise too few common issues and accordingly not be worthwhile.*" As explained further in paragraphs 86 - 91 below, the Proposed Class has been defined in such a way that it is anticipated that all issues arising for determination will be common issues across the Proposed Class, save that the methodology for quantification of the damages suffered by the Proposed Class differs across the sub-classes.

Explanation of the Proposed Class and Sub-Classes

Reasons for including three Sub-Classes in the Proposed Collective Proceedings

60. Although the claims made on behalf of the Proposed Class raise a number of issues which are common to the Proposed Class as a whole, the Proposed Class Representative considers that it is necessary to define three Sub-Classes.[1] The Sub-Classes reflect the three ways in which members of the Proposed Class have suffered loss by reason of the conduct which forms the subject matter of the Proposed Claims; by selling their BSV at a value lower than they would otherwise have obtained; by reason of their BSV holdings having a lower value than they would have had but for the De-listing Events; and by reason of the expropriation of their BSV holdings by certain exchanges shortly after the De-listing Events.

61. The Proposed Class Representative is aware that some of the Proposed Class Members may fall into one or more Sub-Classes. For the avoidance of doubt, there is no conflict of interest between these sub-classes.

Requirement of holding BSV on 11 April 2019

62. Whilst a key allegation in the Proposed Collective Proceedings is that the harm caused by the Proposed Respondents/Defendants is ongoing, the time frames described above for the Proposed Class have been chosen deliberately to avoid any trading or arbitrage opportunity being created by this claim. Only Proposed Class Members who held BSV coins on 11 April 2019, being the day before the Collusive Tweets, will be able to participate in the Proposed Collective Proceedings.

Domicile Date

63. All persons who fall within the definition of the Proposed Class and who are domiciled in the United Kingdom on the "**Domicile Date",** to be determined by the Tribunal, are proposed to be included in the Proposed Collective Proceedings.

Ascertaining whether a person is a member of the Proposed Class

[1] For the avoidance of doubt, as noted in paragraph 59 above, the Proposed Class Representative will say that all issues arising for determination in respect of each of the Proposed Class are common issues.

64. As is clear from the foregoing, the Proposed Class have been defined in order to ensure that a given person would be able to easily identify whether they are a member of the Proposed Class. Many of the factors that determine whether a person falls within the Proposed Class are matters that would be known by that individual, namely:

(1) Date of holding BSV;

(2) Date of any transactions in BSV;

(3) Whether or not they held BSV on the Binance or Kraken platforms and were therefore subject to expropriation; and

(4) Whether they were resident in the UK at the relevant time.

Estimate of the number of class members (Rule 75(3)(c))

65. This section provides a preliminary estimate of the size of the Proposed Sub-Classes (and in turn the estimated size of the Proposed Class).

66. It is estimated that Sub-Class A comprises approximately 155,000 members;

67. It is estimated that Sub-Class B comprises approximately 75,000 members; and

68. It is estimated that Sub-Class C comprises approximately 13,000 members.

69. The basis of these estimates is explained in Section 7I of Mr. Noble's report. The estimates have been derived from publicly available sources of information produced by, amongst others, the U.K. Financial Conduct Authority.

70. Accordingly, the estimated size of the Proposed Class is comprised of roughly 243,000 members.

71. It is to be noted that these estimates are necessarily preliminary given the early stage of proceedings. Nevertheless, pending disclosure, Mr. Noble states that they consider these estimates as a reasonably broad overview of the number of members of each Sub-Class.

Summary of the basis upon which the Proposed Class Representative seeks to be authorised to act in that capacity in accordance with Rule 78 of the CAT Rules (Rule 75(3)(d))

72. The Proposed Class Representative applies to be authorised to act as the class representative on the basis that such authorisation is just and reasonable in accordance with Rule 78(1)(b).

73. In accordance with paragraph 6.13 of the Guide, this Collective Proceedings Claim Form is accompanied by a witness statement from the Proposed Class Representative addressing in detail the considerations raised by Rule 78 of the CAT Rules.

74. As explained in detail in paragraphs 49 – 53 of Lord Currie's witness statement, the Proposed Class Representative has been incorporated as an SPV because although Lord Currie believes in the merits of the Proposed Collective Proceedings, he lacks the financial means to pursue the claim and to satisfy any adverse costs order. The use of an SPV allows Lord Currie to pursue the claim in the interests of all members of the Proposed Class without placing his personal financial resources at risk.

75. The use of an SPV also reduces the risk of the proceedings being brought to an unexpected halt if anything were to prevent Lord Currie from acting, or if Lord Currie chose to cease acting for any unforeseen personal or professional reason.

<u>First consideration: the Proposed Class Representative would act fairly and adequately in the interests of the class members</u>

76. In assessing whether the Proposed Class Representative would act fairly and adequately in the interests of all members of the Proposed Class, the Tribunal will have regard to "*all the circumstances*" including those set out in Rule 78(3). As to the matters set out in Rule 78(3):

    (1) The Proposed Class Representative and its director are not members of 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.

(2) The Proposed Class Representative is well-suited to manage the Proposed Collective Proceedings. Lord Currie's Witness Statement at paragraphs 12 - 19 sets out his motivation to act as director of the Proposed Class Representative and Chair of the Advisory Board. Lord Currie 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). The Advisory Board includes four other highly regarded 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.

(3) The director of the Proposed Class Representative has prepared, along with his legal and expert team, a Litigation Plan for the Proposed Collective Proceedings whichcomprehensively provides, in accordance with Rule 78(3)(c):

(a) A method of bringing proceedings on behalf of the represented persons and for notifying represented persons of the progress of proceedings;

(b) A procedure for governance and consultation which takes into account the size and nature of the Proposed Class;

(c) An estimate of the size of the Proposed Class;

(d) Details of, and arrangements as to costs and disbursements which the Tribunal orders that the Proposed Class Representative shall provide.[2]

Second consideration: the Proposed Class Representative does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of the classes

[2] These details are set out in paragraphs 51 to 55 of the Litigation Plan exhibited to the witness statement of Lord Currie.

77. The Proposed Class Representative and its director do not have any material interest that is in conflict with the interests of the Proposed Class as is explained in Lord Currie's witness statement at paragraph 22.

Third consideration: the Proposed Class Representative would be able to pay the Proposed Defendants' recoverable costs if ordered to do so

78. As explained in paragraphs 61 – 73 of the first witness statement of Lord Currie and in paragraphs 51 - 55 of the Litigation Plan and paragraphs 5 – 19 of the second witness statement of Lord Currie and paragraphs 51 – 55 of the Amended Litigation Plan, the Proposed Class Representative has sufficient funding arrangements in place to ensure that they will be able to pay the Proposed Defendants' recoverable costs if ordered to do so. Specifically:

(1) The Proposed Class Representative has entered into an Amended and Restated Litigation Funding Agreement with Softwhale (the **"Funder"**)[3] to enable them to pay the costs of pursuing the Proposed Collective Proceedings. The Funder has agreed to provide funding of up to £~~14.5~~18.7 million in respect of the Proposed Collective Proceedings;

~~(2) The Funder has agreed, under the Litigation Funding Agreement, to enter into a Deed of Undertaking that gives the Proposed Defendants a direct claim on the Funder for up to £10 million in adverse costs;~~

(3) The Proposed Class Representative has incepted the ATE Policy to cover adverse costs, with a limit of indemnity of £2 million up to the point the Proposed Collective Proceedings are certified and £14 million from the date the Proposed Collective Proceedings are certified;

(4) The Funder has agreed to fund the premia due under the ATE Policy and has therefore withdrawn the proposed Deed of Undertaking included in the

[3] Further details on Softwhale are set out in the witness statement of Johnny Jaswal.

documents submitted on 29 July 2022, the proposed deed having never been signed;

(5) The Funder has put £~~7~~ 5 million of cash on deposit~~, including £2 million~~ in a segregated ~~the~~ client account of the Proposed Class Representative's solicitor; and

(6) As a further layer of security for the Amended and Restated Funding Agreement, a company in the same group as the Funder has ~~agreed to~~ guaranteed and continues to guarantee the performance of the Funder's obligations under the Amended and Restated Litigation Funding Agreement ~~and the Deed of Undertaking;~~, *viz.* the Amended and Restated Corporate Guarantee.

79. Considering the nature of this claim, the identities of the Proposed Defendants and previous case law regarding costs orders issued by the Tribunal, adverse costs cover of £~~10~~14 million is considered adequate.

Fourth consideration: the Proposed Class Representative does not seek an interim injunction in respect of the Proposed Collective Proceedings

80. The Proposed Class Representative will not be seeking an interim injunction in the Proposed Collective Proceedings, and accordingly the consideration in Rule 78(2)(e) is not applicable.

Summary of the basis upon which it is contended that the criteria for certification and approval in Rule 79 are satisfied (Rule 75(3)(e))

81. Rule 79(1) of the CAT Rules details three requirements which must be satisfied in order for claims to be certified as eligible for inclusion in collective proceedings:

(1) They must be brought on behalf of an identifiable class of persons;

(2) The claims must raise common issues; and

(3) The claims must be suitable to be brought in collective proceedings.

82. Each of these criteria are met in relation to the Proposed Collective Proceedings.

First criterion: the claims are brought on behalf of an identifiable class of persons

83. As detailed in paragraph 11 above, the Proposed Class is defined in a clear, objective manner such that a given person will be able to identify whether or not they fall within the Proposed Class, and indeed the Proposed Sub-Classes. This ensures that potential members of the Proposed Class (and Proposed Sub-Classes) will be able to readily ascertain whether they are (otherwise) within the Proposed Class (and Proposed Sub-Classes).

84. Accordingly, as per paragraph 6.37 of the Guide, the parameters of the Proposed Class are clearly delineated, thus determining who will be bound by any resulting judgment.

85. Furthermore, and in accordance with the Tribunal's guidance at paragraph 6.37 of the Guide, the Proposed Class has been defined as narrowly as possible without arbitrarily excluding persons entitled to claim.

Second criterion: the Proposed Collective Proceedings raise common issues

86. Common issues are defined in section 47B(6) of the Act, and Rule 73(2), as the same, similar, or related issues of fact and law.

87. Each of the claimants in the Proposed Class has the same or very similar legal claims against the Respondents/Proposed Defendants. The claims are, in essence, that they have suffered loss or damage as a result of the De-listing Events, which was carried out pursuant to an unlawful agreement and/or concerted practice.

88. The Proposed Class Representative anticipates that all issues arising for determination in respect of the Proposed Class will be common issues. Furthermore, a number of issues will be common to all Proposed Sub-Classes.

89. Accordingly, as per paragraph 6.37 of the Guide, the common issues which can suitably be determined on a collective basis in the Proposed Collective Proceedings are as follows:

    (1) Does the Tribunal have jurisdiction to hear the claims made in the Proposed Collective Proceedings?

(2) What is/are the relevant substantive law(s) applicable to the claims?

(3) Was there an agreement and/or concerted practice by the Proposed Defendants or any of them to de-list BSV contrary to Article 101 TFEU and/or the Chapter I prohibition?

(4) Did the agreement and/or concerted practice cause or materially contribute to loss and damage suffered by members of the Proposed Class?

(5) What are the total amounts of any aggregate awards of damages for Sub-Class A, Sub-Class B and Sub-Class C?

(6) What is the level of interest to be awarded on any damages awarded to the Proposed Class?

(7) Should that interest be awarded on a simple basis?

90. This Collective Proceedings Claim Form is accompanied by reports from an expert instructed by the Proposed Class Representative which explain how the common issues in the Proposed Collective Proceedings can be suitably determined on a common basis. In particular, the expert report of Mr. Noble advances a credible and plausible methodology which offers a realistic prospect of establishing loss on a class-wide basis.

91. As explained further in paragraphs 100 - 111, in the interests of proportionality, practicability and efficiency, it is not proposed that there be an individualised assessment of damages for each member of the Proposed Class.

Third criterion: the claims are suitable to be brought in collective proceedings

92. The third criterion is elaborated upon in Rule 79(2) of the CAT Rules, which explains that the Tribunal will take into account all matters it thinks fit, including seven specific considerations. Each of those is met in the case of the Proposed Collective Proceedings, and is addressed in turn below.

The collective proceedings are an appropriate means for the fair and efficient resolution of the common issues

93. The Proposed Collective Proceedings present the most appropriate means for the fair and efficient resolution of the common issues. The most efficient and economically viable way for members of the Proposed Class to obtain compensation for the losses suffered as a result of the agreement and/or concerted practices is through collective proceedings that determine the common issues arising for each member of the Proposed Class. As to this:

(1) The number of potential members of the Proposed Class is large and estimated as: (i) 155,000 members of Sub-Class A; (ii) 75,000 members of Sub-Class B and (iii) 13,000 members of Sub-Class C; see paragraphs 66-68 above. It would, accordingly, be inefficient to require each prospective claimant to bring proceedings before the Tribunal on an individual basis (even assuming that such individual claims are economically worthwhile). This would impose a heavy burden on both the courts (particularly in terms of case management), the claimants and the Proposed Defendants. Itwould not be an appropriate use of the Tribunal's resources, especially when a number of individual claims may need to be dealt with together in any event. This reality strongly militates in favour of collective proceedings, which would realise substantial economies in terms of time, effort and expense.

(2) The composition of the class is anticipated to be largely comprised of individuals rather than corporate entities such as institutional investors who are likely to be *de minimis*, if included within the Proposed Class at all. Again, this weighs in favour of collective proceedings, as such private individuals would likely be unable to bring and fund this claim on an individual basis.

(3) 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. As explained in the Litigation Plan, this will require the Tribunal to hear expert evidence in the fields of, *inter alia*, cryptocurrency technology and how that technology is valued and competition economics and

how damages for breach of competition law are calculated. It is plainly a more efficient use of the Tribunal's resources for this evidence to be heard as part of collective proceedings, thus avoiding the substantial expense and duplication associated with a multiplicity of individual actions.

(4) It would be difficult to organise and coordinate the Proposed Class if the litigation were run along conventional lines, even with a Group Litigation Order in place. Significant time and expense would be required to communicate the existence of the Proposed Class and to take instructions from each of them. Even then, not all members of the Proposed Class would necessarily become aware of the existence of the claim and be able to participate. The Proposed Collective Proceedings offer a more efficient and cost-effective means of achieving redress for the Proposed Class.

(5) Relatedly, the common issues to be resolved are issues of mixed fact, law and expert evidence, particularly in relation to the determination of the impact of the agreement/or concerted practice when compared with the appropriate counterfactual. These are likely to be substantial and costly exercises that members of the Proposed Class could not reasonably be expected to undertake individually.

(6) The Proposed Class Representative anticipates that the aggregate claim value will be substantial, in the range of £51 million to £9.9 billion including interest with an average of £5 billion, as explained further in paragraphs 171 to 172 below, which makes collective proceedings economically viable relative to the costs of bringing a claim.

(7) Certain members of the Proposed Class may have held comparatively small amounts of BSV over the period covered by the Agreement and/or concerted practice. Individual claims by these persons would be uneconomic when the costs of those proceedings (including those outlined above) are compared with the potential limited *per capita* recovery. As such, collective proceedings are an appropriate means to ensure these persons are able to recover damages for

losses suffered as a result of the agreement and/or concerted practices.

(8) As explained in Mr Noble's Expert Report, the impact of the agreement and/or concerted practices can be estimated based upon well-established methodologies which can be applied across all members of Sub-Class A, Sub-Class B and Sub-Class C respectively.

The costs and benefits of continuing the collective proceedings

94. For the reasons set out in the preceding paragraph, collective proceedings represent the most appropriate approach in terms of costs/benefits to determining the claims from the perspective of all parties (that is to say, the members of the Proposed Class, the Proposed Defendants and the Tribunal).

95. 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, as is set out in the costs budget (see Litigation Plan, Annexure 2), such costs are proportionate in view of the aggregate value of the claims advanced in the Proposed Collective Proceedings. Further, they are outweighed by the benefits to the members of the Proposed Class from being able to pursue compensation for losses suffered due to the agreement and/or concerted practices. This is especially the case in respect of those persons, identified in paragraph 93 above, for whom proceedings might otherwise be uneconomic.

Whether any separate proceedings making claims of the same or a similar nature have already been commenced by members of the class

96. Neither the Proposed Class Representative nor its legal representative is aware of any proceedings making claims of the same or similar nature, as per paragraph 55 of Lord Currie's witness statement and paragraph 17 Mr Andrew's witness statements respectively.

The size and nature of the classes

97. As set out at paragraphs 65 - 71 above, 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) 13,000 members of Sub-Class C. Given the size of the Classes, it would plainly be more appropriate to bring their individual claims by way of the Proposed Collective Proceedings, having regard to the matters detailed in paragraph 93 above.

98. The composition of the class is anticipated to be largely comprised of individuals rather than corporate entities such as institutional investors who are likely to be *de minimis*, if included within the Proposed Class at all.

Whether it is possible to determine in respect of any person whether that person is or is not a member of the Proposed Class

99. For the reasons set out in paragraphs 83- 84 above, the definition of the Proposed Class has been formulated in a manner so as to ensure that any person can clearly determine whether they are a member of either or both of those Classes.

Whether the claims are suitable for an aggregate award of damages

100. The claims arising in the Proposed Collective Proceedings 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, as summarised in paragraphs 105 - 111 below and explained further in Sections 7B, 7C and 7D of Mr Noble's Expert Report.

101. It follows that it is more appropriate for the harm suffered by the Proposed Class to be calculated on a class-wide basis.

102. Mr Noble's Expert Report at 6.1 onwards explains how it is proposed to calculate the loss suffered by the Proposed Class on a class-wide basis. The discussion below provides a brief summary of the: (i) proposed methodology; and (ii) available data, that will be used to calculate an aggregate award of damages for each Proposed Class separately.

103. The Litigation Plan at paragraph 75 onwards sets out the principles that will be used to allocate any award of damages to the Proposed Class. The Proposed Class Representative has retained an experienced administrator to oversee the process of distributing any aggregate award of damages to the Proposed Class (Angeion Group).

104. Angeion Group is a well-regarded company with an established track record of performing similar claims administration services in class actions and bankruptcy proceedings in the United States.[4]

Proposed methodology

105. Mr. Noble proposes to use well established principles of economic analysis to quantify the harm caused by the Agreement and/or concerted practice. Full details of the approach proposed by Mr. Noble are set out in sections 8B, 8C and 8D of Mr. Noble's expert report.

106. In simple overview, Mr. Noble proposes that damages are assessed based on the following principles:

    (1) In relation to Sub-Class A, damages are assessed using a difference-in-differences analysis of the immediate and persistent effect of the agreement and/or concerted practices on BSV prices in the period after 11 April 2019. Sections 6 and 7B of Mr. Noble's expert report how this analysis produces estimated damages (excluding interest) of between £147.2 million and £18.2 million for Sub-Class A. As pointed out at paragraph 5.9 - 5.10 of Mr Noble's expert report, this estimate does not take into account the forgone growth effects suffered by Sub-Class A members who held on to some or all of their BSV for a considerable period after the Delisting Events. For that reason, Mr Noble considers that the current figure of Sub-Class A losses is likely to be an underestimate.

[4] Angeion Group is a well-regarded company with an established track record of performing similar claims administration services in class actions and bankruptcy proceedings in the United States. Angeion's Notice and Administration Plan sets out details of its experience, in particular at paragraphs 9 to 12 and Appendix 1 to its Plan.

(2) In relation to Sub-Class B, damages are assessed using a loss of chance analysis on the hypothetical price of BSV. Mr. Noble bases his hypothetical analysis on other cryptocurrencies, which are reasonably assumed to be valid comparators (particularly given BSV's origins as the result of a hard fork from Bitcoin Cash). The loss of a chance analysis proceeds on the assumption that BSV would have obtained a higher price but for the agreement and/or concerted practices because of the inherent quality of BSV technology. Mr. Noble estimates these damages at a 100% probability of the chance occurring as reaching up to £9 billion (excluding interest). It will be for the Tribunal to determine on the facts what probability it would ascribe to the chance of BSV achieving a higher value and thereby the amount of damages awarded to Sub-Class B. The analysis underpinning these damages is contained in Section 7C of Mr. Noble's expert report.

(3) In relation to Sub-Class C members, the approach to estimate their damages varies depending on the exchange used—in particular, whether the expropriated coins were sold or not.

(a) For users of Binance in Sub-Class C, Mr Noble considers that they have suffered a first harm similar to that of members of Sub-Class B. Further, users of Binance in Sub-Class C lost the complete access to their coins. As such, they have suffered an additional harm equivalent to the value of the expropriated coins.

(b) For users of Kraken in Sub-Class C. Mr Noble estimates a first harm based on the immediate and persistent effect (similar to Sub-Class A). In addition, Mr Noble accounts for the fee charged to the members of Sub-Class C who held their BSV with Kraken as a result of the forced conversion or expropriation of their BSV coins.

Mr. Noble estimates damages for Sub-Class C at between £5.8 million and £925.5 billion (excluding interest). Full details are set out in Section 7D of Mr. Noble's expert report, including the split between Binance and Kraken.

Available data

107. Mr. Noble also confirms the availability of data to which he will apply the methodology for estimating harm to the Proposed Class, for example:

(1) A survey conducted by the U.K. Financial Conduct Authority regarding the number of UK cryptocurrency users;

(2) Publicly available datasets from CoinGecko, CoinMarketCap and Coin Metrics regarding trading volumes and prices of BSV and other comparable cryptocurrencies Mr. Noble uses in his analysis;

(3) Various news articles (as cited in his report) evidencing the facts on which Mr. Noble relies;

(4) Various academic papers (as cited in his report) evidencing the economic theory or valuation techniques on which Mr. Noble relies;

(5) Disclosure from the Proposed Defendants regarding:

(a) listing and de-listing events of BSV and other cryptocurrencies—this will assist in understanding the De-Listing Events, the market dynamics around that period, potentially identifying additional events upon which Mr Noble can perform variants of his 'event study' analysis to further enhance the quantification;

(b) UK-based BSV holders that held coins on their platforms and/or traded coins on their platforms during various time periods, including, but not limited to, the period from 11 April 2019 to the relevant de-listing dates; including, for example, the number of coins held and/or traded; the coins pairs traded by these users—this will assist in refining the number of Class members, their BSV holdings, and the balance between membership of the various Sub-Classes;

(c) the expropriation events; including, for example, the number of UK-based BSV holders that were affected, and the numbers of coins involved—this will assist with the quantification of Sub-Class C losses;

(d) market dynamics around the time of what Mr Noble terms the 'catalytic events'—this will assist in better understanding market dynamics at those times, and assist Mr Noble in his choice of the most suitable benchmarks;

(e) intra-day prices of BSV and other relevant cryptocurrencies—Mr Noble's analysis is currently based on end-of-day reference prices, and having intra-day data will assist him in refining his calculations;

(f) how the Proposed Defendants treat wallets; for example, do they pool investments from individual investors into a single wallet—this will assist Mr Noble in refining his estimate of the number of Class members; and

(g) factors which affect the attractiveness of their platforms to their users, including their decision-making processes regarding which cryptocurrencies to list—this will assist in the analysis of the dynamics between different cryptocurrency trading platforms.

108. As noted above, Mr. Noble's analysis is premised on a reasonable assumption as to the quality of the technology underpinning BSV.

109. It follows from the foregoing that the Proposed Class Representative is confident that the aggregate loss across members of the Proposed Class can be calculated with some precision.

110. The Proposed Class Representative is aware that a determination will need to be made as to how to distribute the aggregate award of damages to members of the Proposed Class. The present proposal in this regard is set out in the Litigation Plan at paragraphs 79 - 81.

The availability of alternative dispute resolution and any other means of resolving the dispute, including the availability of redress through voluntary schemes whether approved by the CMA under section 49C of the Act or otherwise

111. The Proposed Class Representative is open to engaging in any appropriate form of ADR with a view to reaching a settlement that is in the best interests of members of the Proposed Class, as noted in Lord Currie's witness statement at 74. There has not been pre-action correspondence with Proposed Defendants to date in relation to ADR, given that until the CPO the Proposed Class Representative could not purport to represent and negotiate on behalf of the class in ADR proceedings.

The Proposed Collective Proceedings should be opt-out proceedings (Rule 79(3))

112. In determining whether the Proposed Collective Proceedings should be brought on an opt-in or opt-out basis, the Tribunal may, pursuant to Rule 79(3) of the CAT Rules, take into account all matters it thinks fit, including two matters additional to those detailed in Rule 79(2):

    (1) The strength of the claims; and

    (2) Whether it is practicable for the proceedings to be brought as opt-in collective proceedings, having regard to all the circumstances, including the estimated amount of damages that individual class members may recover.

113. The Proposed Class Representative submits that the application of these two considerations to the Proposed Collective Proceedings, along with the factors considered under Rule 79(2) (which are pleaded to in paragraphs 92 - 111 above), support the Proposed Collective Proceedings being certified to proceed on an opt-out basis. In particular:

    (1) For the reasons set out in paragraph 54 above, the Proposed Class Representative considers that the claims which are sought to be combined in the Proposed Collective Proceedings are strong and have a real prospect of success.

(2) Paragraphs 93 - 98 above explain that it is impracticable for proceedings to be brought on an individual basis. Those same reasons explain why it is impracticable for proceedings to be maintained on an opt-in basis. The Proposed Class Representative notes that possible factors identified in paragraph 6.39 of the Guide as indicating that an opt-in approach could be workable and in the interests of justice were "*the fact that the class is small but the loss suffered by each class member is high*" or that "*it is straightforward to identify and contact the class members*." Neither factor applies to the Proposed Collective Proceedings:

(a) As explained in paragraph 93 above, the size of the Proposed Class is substantial and, for certain class members, their *per capita* loss may be relatively small;

(b) It would not be practicable to identify and contact the class members. Indeed, as explained further in Mr. Noble's expert report at paragraph 2.5 and 5.2 there are a wide range of individuals and entities that might form part of the Proposed Class, making it unrealistic to identify and contact each member of the Proposed Class on an individual basis;

(c) Cryptocurrency transactions are recorded as addresses on the Blockchain. It would not be possible in most cases to link every single such address to the user or users behind every single address on the BSV Blockchain, particularly where such addresses hold fractions of BSV. Even where it could be done, it would not be economic to link every address to the user or users behind it.

114. Accordingly, the Proposed Class Representative considers that the only practicable, efficient and effective approach to the Proposed Collective Proceedings is for them to be brought on an opt-out basis.

IV. INFORMATION AND STATEMENTS REQUIRED BY RULE 75(3)(f)-(j)

Infringement decision or not (Rule 75(3)(f))

115. These claims do not relate to an infringement decision. Accordingly, Rule 75(3)(f) of the CAT Rules does not apply.

Summary of relevant facts (Rule 75(3)(g))

116. In terms of the relevant facts relied upon, as also required by Rule 75(3)(g) of the CAT Rules, a concise summary is provided in the following paragraphs from 118 - 133.

117. On 1 August 2017 Bitcoin Cash forked from Bitcoin. On 15 November 2018 BSV was created following a hard fork from Bitcoin Cash.

The Collusive Tweets

118. Between 12 April 2019 to 19 April 2019, there were a series of tweets by the Proposed Defendants by which they disclosed their intention to de-list BSV (being proposed conduct on the market) and called on other cryptocurrency exchanges to also de-list BSV ("**the Collusive Tweets**"), as follows:

119. On 12 April 2019 Changpeng Zhao ("**CZ**"), CEO of Binance tweeted:

"*Craig Wright is not Satoshi. Anymore of this sh#t, we delist!*" [SA1/470]

120. CZ later tweeted:

"*I normally don't like get involved in debates, pick sides, etc. But this is going too far. I also didn't like the fact that the fork caused BTC to drop below $6k, which caused pain to many in the industry*". [SA1/470]

121. On the same day, Anthony Pompliano, co-founder of hedge fund Morgan Creek Digital Assets, tweeted:

"*Every exchange should delist BSV simultaneously on May 1st in a sign of solidarity behind the only Bitcoin that ever mattered*." [SA1/474]

122. On 15 April 2019 Binance made a statement on its website that it would de-list BSV on 22 April 2019. CZ retweeted Binance's Twitter announcement that it would de-list BSV, commenting:

"*Do the right thing*." [SA1/475]

123. The same day Erik Vorhees, CEO of ShapeShift, announced on his twitter account:

"*We stand with @binance and CZ's sentiments. We've decided to delist Bitcoin SV #BSV from @ShapeShift_io within 48 hrs*". [SA1/479-480]

124. Also on the same day Kraken initiated a poll on twitter as to whether it should de-list BSV. CZ responded by tweeting:

"*Oh. @jespow will do it. I have a feeling... #crypto industry is tighter and stronger you think*". [SA1/473]

125. CZ tweeted on 15 April 2019;

"I don't choose sides on technology. We let market do that. I am against fraud, such as lying to be someone. As such, it is my strong opinion that: Craig Wright is fraud"; [SA1/472]

126. On 16 April Kraken confirmed that it would de-list BSV [SA1/108]. The same day Bittylicious tweeted:

"*Bittylicious is delisting Bitcoin SV (BSV). This will be available until 22nd April (pending brokers keeping their listings alive). Low volumes aside, we are doing this to show solidarity against the toxic litigious environment in the BSV space @PeterMcCormack @cz_binance*" [SA1/260-261].

127. Jesse Powell, Co-Founder of Kraken tweeted on 19 April 2019:

"*We didn't delist on technical merits. BSV never met our listing requirements but we supported it because everyone wanted their 'free money' from the fork. What pushed us to delist was the frivolous lawsuits from leaders in the BSV community against us, our partners and clients*". [SA1/476]

128. The Proposed Defendants participated in the Collusive Tweets by announcing their intention to de-list BSV and encouraging others to do the same, as follows:

(1) Bittylicious Limited participated in the Collusive Tweets via the Twitter account for Bittylicous. Bittylicious Limited was the only corporate entity operating the cryptocurrency exchange known as Bittylicious at the time of the Collusive Tweets and the De-listing Events.

(2) Payward Limited and/or Payward, Inc participated in the Collusive Tweets via the verified account of Kraken Exchange (@krakenfx) and the twitter account of Mr Powell, who was at that time acting in his capacity as co-founder and CEO of Kraken and/or an executive officer and director of Payward, Inc, and/or as director of Payward Limited.

(3) ShapeShift AG and/or ShapeShift Global Limited participated in the Collusive Tweets via the verified account of Mr Vorhees, who was at that time acting as ShapeShift's founder and CEO and a director of ShapeShift AG. ShapeShift AG was, in turn, the sole shareholder of ShapeShift Global Limited. The account was verified in that it has been made subject to Twitter's process of verification for high profile accounts, which requires the user to prove that they are both authentic and notable, such as by emailing from an address with the same domain name as the website, and a link to the Twitter account on the organisation's official website ("**verified accounts**"). Verified accounts show a blue tick logo next to the account name.

(4) Binance Europe Services Limited participated in the Collusive Tweets via the verified account of Mr Zhao, who was at that time acting as Binance's founder and

CEO, as well as one of the shareholders of Binance Europe Services Limited (and indeed Binance Europe Services Limited's Ultimate Beneficial Owner).

129. Following and pursuant to the Collusive Tweets, the Proposed Defendants proceeded to decide to de-list BSV from their respective exchanges, announce their intention to do the same and then put into effect that decision to de-list, as follows:

(1) Binance announced its intention to de-list BSV on 15 April 2019. The de-listing from Binance's exchange actually took effect on 22 April 2019 [SA1/223].

(2) Bittylicious de-listed BSV from its exchange effective from 22 April 2019 [SA1/261].

(3) ShapeShift de-listed BSV from its exchange with effect from around 17 April 2019 [SA1/164 and SA1/479].

(4) Kraken announced its intention to de-list BSV on 16 April 2019. The de-listing from Kraken's exchange actually took effect on 5 June 2019 [SA1/108].

130. In addition to the de-listing, Binance cut off access to users' BSV with effect from 22 July 2019. Any remaining BSV then appear to have been retained by Binance without accounting any value for it to its users.

131. In addition to the de-listing, Payward Limited and/or Payward, Inc also cut off access to BSV held by users on the Kraken exchange with effect from 5 June 2019. These holdings were forcibly converted to BTC on 7 December 2019 with a further 10% reduction due to a handling charge retained by Kraken.

132. The price of BSV fell in the immediate aftermath of the De-listing Announcements. The effect on prices is explained in Section 5 of Mr. Noble's expert report.

Summary of contentions of law (Rule 75(3)(h))

133. In terms of any contentions of law which are relied upon, as required by Rule 75(3)(h) of the CAT Rules a concise summary is provided in the following paragraphs.

134. By participating in the Collusive Tweets and/or the De-listing Events the 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 TFEU and/or the United Kingdom contrary to the Chapter I prohibition in s. 2 of the Competition Act 1998**,** as explained in the following paragraphs.

Relevant statutory provisions

135. Article 101 TFEU prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States, and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.[5]

136. The Chapter I prohibition in s. 2 Competition Act 1998 similarly prohibits such conduct insofar as it may affect trade within the United Kingdom.

Agreements and concerted practices

137. An 'agreement' arises within the meaning of these provisions where undertakings express their joint intention to conduct themselves on the market in a specific way.[6]

138. The concept of a 'concerted practice' refers to a form of coordination between undertakings which, without having been taken to the stage where an agreement properly so-called has been concluded, knowingly substitutes for the risks of competition, practical cooperation between them which leads to conditions of competition which do not correspond to the normal conditions of the market.[7]

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5 Post-Brexit, paragraph 14(2)(b) of Schedule 4 to the Competition (Amendment etc.) (EU Exit) Regulations 2019/03 provides that where an EU competition infringement occurs before IP completion day (being 31 December 2020), on or after IP completion day a person may make any claim in relation to that infringement in proceedings in a court or tribunal in the United Kingdom which the person could have made before IP completion day.

6 Case 41/69 ***ACF Chemiefarma N.V. v Commission*** [ECLI:EU:C:1970:71] at [112].

7 Joined Cases 40/73 etc. ***Suiker Unie v Commission*** ECLI:EU:C:1975:174 at [26].

139. The definitions of 'agreement' and 'concerted practice' are intended to catch forms of collusion having the same nature which are distinguishable from each other only by their intensity and the forms in which they manifest themselves.[8]

140. Article 101 TFEU precludes any direct or indirect contact between undertakings, the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question.[9]

141. A concerted practice exists where one competitor discloses its future intentions or conduct on the market to another (i) when the latter requests it, or (ii) where the latter accepts it. [10]

142. A concerted practice implies, besides undertakings concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two.[11] However, there is a presumption that undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market.[12]

Public statements

143. In particular as to the effect of public statements, in its Guidelines on horizontal cooperation agreements ("**the Guidelines**"),[13] the European Commission stated that when a company makes a unilateral announcement that is also genuinely public, for example through a newspaper, this generally does not constitute a concerted practice

8 Case C-49/92 P ***Commission v Anic Partecipazioni*** ECLI:EU:C:1999:356 at [131].
9 ***Anic***, at [117].
10 Cases T-25/95 ***Cimenteries CBR SA v Commission*** EU:T:2000:77.
11 ***Anic***, at [118].
12 ***Anic***, at [121].
13 Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ [2011] C 11/1 at [63] and footnote 10.

within the meaning of Article 101(1). However, the Commission added that "*This would not cover situations where such announcements involve invitations to collude.*"

144. The Commission further observes that:

> *"…depending on the facts underlying the case at hand, the possibility of finding a concerted practice cannot be excluded, for example in a situation where such an announcement was followed by public announcements by other competitors, not least because strategic responses of competitors to each other's public announcements (which, to take one instance, might involve readjustments of their own earlier announcements to announcements made by competitors) could prove to be a strategy for reaching a common understanding about the terms of coordination."*

145. Public statements which involve invitations to collude are capable of forming the basis of such an agreement and/or concerted practice,[14] if by that (public) statement of intention, a competitor eliminated or substantially reduced uncertainty as to the conduct to expect of another on the market.

Object and/or effect

146. In order for an agreement or concerted practice to have an anticompetitive object, it is sufficient that it has the potential to have a negative impact on competition.[15] An exchange of information which is capable of removing uncertainties between participants as regards the time, extent or details of the modifications to be adopted by the undertaking concerned must be regarded as pursuing an anti-competitive object.[16]

147. Alternatively, an agreement or concerted practice will have restrictive effects on competition within the meaning of Article 101 if it has an appreciable adverse impact on

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14 Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ [2011] C 11/1 at [63] and footnote 10.

15 Case C-8/08 *T-Mobile Netherlands BV* ECLI:EU:C:2009:343 at [31].See also Guidelines at [72]-[74].

16 Ibid. at [41].

at least one of the parameters of competition on the market, such as price, output, product quality, product variety or innovation.[17]

Cryptocurrency and BSV as property

148. As noted above at paragraph 12 above cryptocurrencies such as BSV are recognised as a form of property in English law.

Lex situs of BSV

149. The BSV is located in the UK as the Proposed Class Members are all BSV holders residing in the UK throughout the period from 11 April 2019 to date and the *lex situs* of BSV is the place where the owner of that property resides, following Falk J in *Tulip Trading Limited and others v Bitcoin Association for BSV* [2022] EWHC 667 (Ch).[18] BSV is accordingly property located within the UK.

150. Further or alternatively, to the extent that the UK was where the Proposed Class Members exercised control over BSV as a digital asset, the UK was also the location of the loss and damage suffered by the Proposed Class Members and the harmful act(s) giving rise to the same as a result of the following:

    (1) by the Proposed Class Members storing their 'private key' in the UK (being a string of letters and numbers that is used to prove ownership of a blockchain address and allows its owner access to its cryptocurrency, similar to a password); and/or

    (2) by the Proposed Class Members' accessing their accounts held at the Defendant cryptocurrency exchanges from computers or devices based in the UK; and/or

[17] Guidelines [75]-[76].

[18] Also supported by *Dicey, Morris & Collins on the Conflict of Laws, 15th ed.* Rule 173(2) which provides that the place of residence of the claimant is the key determining factor about whether property is to be regarded within the jurisdiction, being the place where management and control of the property is exercised. It is also endorsed by Andrew Dickinson's book *Cryptocurrencies in Public and Private Law*, 2019 at paragraphs 5.108 – 5.109. See also *Ion Science Limited & Anor v Persons Unknown* (unreported), 21 December 2020 at [13] and [21].

(3) by the Proposed Class Members' funding their accounts held at the Defendant cryptocurrency exchanges from UK bank accounts; and/or

(4) by the Proposed First, Second or Third Defendants (being companies domiciled and resident in England, that the class members contracted with for the services offered on the Bittylicious, Kraken or ShapeShift exchanges) participating in, or acceding to, the Collusive Tweets and/or the Delisting Events.

Infringement/ Breach

151. The particulars of the events giving rise to the agreement and/or concerted practice are provided below.

152. By its public announcement on 15 April 2019 Binance indicated its intention to de-list BSV, thereby informing other exchanges of its own future conduct on the market. Further, by announcing its proposed course of conduct and in particular by its invitation to others to "[d]o the right thing", Binance sought to influence the conduct on the market of its competitor exchanges and/or to invite collusion between the exchanges in respect of the de-listing of BSV.

153. Mr Zhao's tweeted response to Kraken's twitter poll further constituted encouragement to de-list and/or an acceptance by it of Kraken's future intentions or conduct on the market.

154. Other exchanges' public announcements of their intention to de-list equally informed competing exchanges of their future conduct on the market and/or sought to influence the conduct of competitor exchanges and/or constituted acceptances of Binance's/ other exchanges' disclosures about their future intentions or conduct on the market.

155. Moreover, these decisions were clearly influenced by their knowledge of Binance's intentions rather than by any purely independent assessment of the merits of de-listing. Thus Eric Vorhees announced ShapeShift's intention to de-list BSV by stating "*We stand with @binance and CZ's sentiments.*" Bittylicious explained its decision to de-list BSV as

showing "*solidarity against the toxic litigious environment in the BSV space @PeterMcCormack @cz_binance*".

156. The public announcements were therefore used as a means of achieving a common understanding that each of the participants would de-list BSV and/or reducing the uncertainty between the respective exchanges as to their likely future conduct in respect of BSV.

157. In furtherance of that agreement and/or concerted practice, the Respondents/Proposed Defendants (i) decided to delist BSV from their exchanges; (ii) announced their respective decisions to do so and (iii) ultimately effected that decision to de-list BSV from their exchanges one after another ("the De-listing Events").

158. Such conduct by the Proposed Defendants in participating in the Collusive Tweets and/or the De-listing Events as described above at paragraphs 118 - 132, amounted to an Infringement (under Article 101 of the TFEU and the Chapter I prohibition in s. 2 of the Competition Act 1998), as it constituted an anticompetitive agreement and/or concerted practice that:

    (1) amounted to a prevention, restriction or distortion of competition by object in that it had the clear potential to have a negative impact on competition, in the sense that it removed uncertainties between the exchanges as to their respective conduct on the market, reducing competition between exchanges as to the range of cryptocurrencies traded and in negatively impacting BSV's price and competitive position vis-à-vis competing cryptocurrencies; and/or

    (2) was anticompetitive by its consequences within the market of providing services to cryptocurrency users (as noted in Oxera report at paragraphs 3.38-40) and/or on competition between cryptocurrency exchanges (as noted in Oxera report at paragraphs 3.41-3.45).

159. As explained in sections 6 and 7 of Mr. Noble's expert report, the Infringement resulted in damage with both immediate and persistent long-term effects. This damage is estimated to range between £51 million and £9.9 billion.

Effect on trade between Member States and between the EEA contracting parties

160. Given that the relevant exchanges trade both within the EEA and the UK and BSV is held and traded both within the EEA and the UK, the conduct in question was capable of having an appreciable effect upon trade between Member States and/or within the UK.

Applicable law/ jurisdiction

161. The applicable law is English law, pursuant to Article 6(1) of the Rome II Regulation and Article 6(3)(a), "*being the law applicable to a non-contractual obligation arising out of a restriction of competition*" which "*shall be the law of the country where the market is, or is likely to be, affected*". England is the country where the market is or is likely to be affected as the place where the anti-competitive damage occurred or *lex loci damni*, per *Westover Group Limited and others v Mastercard and others* [2021] CAT 12 at [50].

162. Alternatively, "*the market is or is likely to be affected in more than one country"* as either the relevant geographic market covers more than the UK or as a single restriction affects two or more distinct national geographic markets, including the UK, as noted in at *Westover Group Limited and others v Mastercard and others* [2021] CAT 12 at [27]. Accordingly, pursuant to Article 6(3)(b) of the Rome II Regulation, BSV Claims Limited as the Proposed Class Representative on behalf of "*those seeking compensation for damage*" who sues the First, Second and Third Proposed defendants in the court of their domicile, elects to base its claim English law as the law of the court seized and as the UK market is amongst those "*directly and substantially affected by the restriction of competition"* with which this claim is concerned, as noted in *Westover Group Limited and others v Mastercard and others* [2021] CAT 12 at [59] – [60].

163. The BSV held by the Proposed Class Members is to be regarded as property located within the UK and the loss/ damage they have suffered (as well as the harmful acts giving rise to the same) are also all located within the UK, based on the application of the *lex*

situs rule, noted above at paragraph 150, given all Proposed Class Members resided in the UK at all material times.

Joint and several liability

164. The Proposed Defendants are jointly and/or severally liable for the aforesaid breaches of statutory duty and for all loss and damage suffered by members of the Proposed Class which was caused and/or materially contributed to by the agreement and/or concerted practice.

Pursuant to the matters set out above, the Proposed Defendants have each and all acted in breach of statutory duty, namely those arising under Article 101 TFEU and/or the Chapter I prohibition in s. 2 Competition Act 1998.

Causation, Loss and Damage

165. The Proposed Defendants' breach(es) of statutory duty have caused or materially contributed to the continuing loss and damage suffered by members of the Proposed Class. The damages, excluding interest, sustained are estimated to range between £48 million and £9.9 billion and continuing, as explained in sections 6 and 7 of Mr. Noble's expert report.

166. In particular:

(1) The Members of Sub-Class A have suffered loss and damage in that the price at which they sold BSV was lower than it would have been absent the agreement and/or concerted practice.

(2) The Members of Sub-Class B have suffered loss and damage in that the value of the BSV that they hold is less than it would have been absent the agreement and/or concerted practice.

(3) The Members of Sub-Class C have suffered loss and damage in that by reason of the de-listing their holdings in BSV were expropriated, such loss and damage

being in the amount of what would have been the value of the BSV in question absent the agreement and/or concerted practice.

167. In relation to the Members of Sub-Class B and Sub-Class C Binance users, loss and damage arises because: (1) absent the agreement and/or concerted practice, BSV would have become a major cryptocurrency and the value of the BSV that they hold would have been higher by virtue of that (this is referred to by Mr Noble in his report at 4.38 as the **"forgone growth effect"**); in addition to (2) the "**immediate and persistent effect**" of de-listing (Mr Noble Report at 4.37).

168. Alternatively, in relation to the Members of Sub-Class B and Sub-Class C Binance users, those class members have suffered the loss of a chance that BSV would become a major cryptocurrency, consistent with the principles identified by *inter alia* the Court of Appeal in *Allied Maples Group Ltd v Simmons & Simmons* [1995] 1WLR 602, which was recently approved by the Supreme Court in *Perry v Raleys Solicitors* [2019] UKSC 5 at [20]. In the premises, it will be for the Tribunal to determine the probability it would ascribe to BSV becoming a major cryptocurrency because of *inter alia* the overall quality of the coin/ intrinsic value of its Blockchain technology.

169. For the avoidance of doubt, the Proposed Class Representative will say that: (i) the losses claimed are of a reasonably foreseeable type; and (ii) the relevant domestic law principles for recovery of damages must be read consistently with the EU law principles of equivalence and effectiveness, in particular as they apply to claims for compensation for breach(es) of Article 101 TFEU.

Particulars of loss and damage

170. Without prejudice to the foregoing and to the Proposed Class Representative's right to provide further particulars of loss and damage following disclosure, expert reports and factual evidence, the following indicative figures have been prepared at this current early stage of proceedings.

171. The amount claimed in damages, excluding any interest, is presently estimated at between £48 million and £9.9 billion with an average of £5 billion, comprising: between £17.2 million and £18.2 million in respect of Sub-Class A; up to £9 billion in respect of Sub-Class B and between £5.8 million and £925.5 million in respect of Sub-Class C. The sources and methodology supporting these calculations are set out in Sections 6 and 7 of Mr. Noble's expert report.

172. Damages are calculated as at 21 July 2022, being the last practicable date before the issue of the claim. As Mr. Noble confirms in his report, the damages calculation can be repeated at any given date.

Observations on the question as to in which part of the United Kingdom the proceedings are to be treated as taking place under Rule 18 (Rule 75(3)(j))

173. The Tribunal has jurisdiction over the Proposed Defendants as follows:

(1) The First, Second and Third Proposed Defendants are all companies incorporated in England and Wales doing business in England and Wales. The Tribunal has jurisdiction over them.

(2) The other Proposed Defendants are all necessary and proper parties to the proceedings because they are inextricably linked to the actions taken by the First, Second and Third Proposed Defendants.

(3) Each of the Proposed Defendants, regardless of its place of domicile/residence, has offered services and received payments from BSV holders resident within the United Kingdom at the time of the Collusive Tweets and the De-listing Events in exchange for those services.

(4) Each of the Proposed Defendants has caused damage to BSV holders resident within the United Kingdom at the time of the Collusive Tweets and the De-listing Events as a result of the Agreement and/or concerted practice.

174. Under Rule 18, the Tribunal may at any time determine whether any proceedings, or part of any proceedings before it are to be treated, for all or any purpose, as proceedings in England and Wales, in Scotland or in Northern Ireland. In the circumstances of the Proposed Collective Proceedings, England and Wales is the part of the United Kingdom that is most closely connected with the subject matter and the parties to the Proposed Collective Proceedings, and the proceedings should accordingly be treated as proceedings taking place in England and Wales. This is for the following reasons:

(1) The majority of the parties are habitually resident or have their head offices or principal places of business in England and Wales specifically:

(a) The Proposed Class Representative is a company incorporated in England and Wales whose only business is to conduct these proceedings in England and Wales [cross refer to witness statement]; and

(b) Three of the Proposed Defendants are either incorporated in the UK or have a UK registered establishment within the jurisdiction.

(2) The Proposed Class Members were residing in the UK at all material times. As set out in Section 7A.2 of Mr. Noble's expert report, the estimated class membership has been derived from a UK Financial Conduct Authority survey that was conducted in England and Wales only.

175. At least some of the conduct covered by the Proposed Collective Proceedings took place in England and Wales as:

(1) By application of the *lex situs* rule and as all Proposed Class Members resided in the UK from 11 April 2019 to date, as noted above, BSV is property located in the UK, loss and damage was suffered by all Proposed Class Members in the UK, the harmful act(s) giving rise to the same were committed in the UK and accordingly, there has been anti-competitive behaviour in the UK market. For those residing in

England and Wales from 11 April 2019 to date, the lex situs will be England and Wales specifically.

(2) To the extent that the UK was where the Proposed Class Members exercised control over BSV as a digital asset was, whether by the Proposed Class Members storing their 'private key' in the UK (being a string of letters and numbers that is used to prove ownership of a blockchain address and allows its owner access to its cryptocurrency, similar to a password) and/or by the Proposed Class Members accessing their accounts held at the Defendant cryptocurrency exchanges from computers or devices based in the UK. It is likely that as UK residents, the Proposed Class Members will have stored their private keys for the BSV in the UK and will have accessed their accounts from computers or devices based in the UK.

(3) To the extent that the Proposed Class Members funded their accounts with the cryptocurrency exchanges from UK bank accounts. It is likely that as UK residents, the Proposed Class Members will have transferred the funds to purchase BSV from UK bank accounts.

(4) The Proposed Defendants English language Twitter feeds were publicly available to Twitter users around the world, including in England. The Collusive Tweets affected users of the Proposed Defendants' websites in England from the moment they were made.

(5) The Proposed Defendants operate global websites. The De-listing Events affected users of the Proposed Defendants' websites in England from the moment they were made known.

(6) In relation to the First Proposed Defendant, Bittylicous Limited, being an English incorporated company, as it was the only corporate entity operating the cryptocurrency exchange known as Bittylicious as at the time of the Collusive Tweets and the Delisting Events, it is to be inferred that Bittylicious Limited was operating the Bittylicious platform / website, was the contractual counterparty for the Proposed Class Members as users of Bittylicious cryptocurrency exchange

services, and also participated in the Collusive Tweets, as well as taking the decision to de-list BSV and implementing that decision. All relevant conduct therefore took place in this jurisdiction in relation to the First Proposed Defendant.

(7) In relation to the Second and Third Proposed Defendants, Payward Limited and ShapeShift Global Limited respectively, they are both are the English subsidiaries of larger corporate groups through which users based in England were obliged to contract in order to access those Proposed Defendants' services. They either participated in, or acceded to the Collusive Tweets, the decision to de-list BSV and the implementation of that decision, and in any event comprise one undertaking (in conjunction with Payward, Inc. and ShapeShift AG respectively) for the purposes of anti-competition law given they pursue the same commercial policies and have other financial and organisation links between them.

V. RELIEF SOUGHT

176. In accordance with Rule 75(3)(i), the relief sought is summarised below.

177. First, the Proposed Class Representative seeks an aggregate award of damages for each of the Proposed Class pursuant to section 47C(2) of the Act, for the reasons set out in paragraphs 100 - 111 above.

178. Secondly, it is not possible, at this early stage of proceedings, to provide full particulars of the quantum of loss and damage claimed on behalf of the Proposed Class. This can only be provided and fully quantified following disclosure, expert reports and factual evidence. Nevertheless, an indicative estimate of the size of the claim, and an explanation of how that estimate is calculated, is set out in in summary form in paragraphs 165 – 175 above.

179. Sections 7B to 7G of Mr. Noble's expert report sets out his methodology for calculating damages to the Proposed Class.

180. To summarise:

(1) The amount claimed in damages, excluding any interest, is presently estimated at between £48 million and £9.9 billion with an average of £5 billion, comprising: between £17.2 million and £18.2 million in respect of Sub-Class A; up to £9 billion in respect of Sub-Class B and between £5.8 million and £925.5 million in respect of Sub-Class C.

(2) Second, there is a further claim for damages in the form of interest, on a simple, basis, as pleaded in paragraphs 171 - 172 above. That further claim is presently estimated as follows:

(3) Between £2.2 million and £2.4 million in respect of Sub-Class A; and

(4) £0.2 million in respect of Sub-Class C;

(5) There is no claim for interest on damages awarded to Sub-Class B.

181. Third, and accordingly, the overall claim for damages is presently estimated as: between £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.

182. Fourth, the Proposed Class Representative seeks its costs, and such further or other relief as the Tribunal may think fit.

183. Accordingly, and by way of summary, the relief sought is:

(1) An aggregate award of damages for each of the Classes, pursuant to section 47C(2) of the Act;

(2) Interest;

(3) Costs; and

(4) Such further and other relief as the Tribunal may think fit.

SARAH FORD Q.C.
SARAH BOUSFIELD

SARAH FORD K.C.
WILLIAM HOOPER

Brick Court Chambers

VI. STATEMENT OF TRUTH

STATEMENT OF TRUTH

I believe that the facts stated in this Amended Collective Proceedings Claim Form are true. I am duly authorised on behalf of the Proposed Class Representative to sign this statement of truth on its behalf. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

LORD CURRIE OF MARYLEBONE

Director, BSV Claims Limited

Dated: 6 October 2023

IN THE COMPETITION APPEAL TRIBUNAL

Case No: [•]

IN THE MATTER OF SECTIONS 2 AND 47B OF THE COMPETITION ACT 1998

BETWEEN:

BSV CLAIMS LIMITED

(a company limited by guarantee incorporated under the Companies Act 2006 with company number 14135245)

Applicant / Proposed Class Representative

- and -

1. BITTYLICIOUS LTD (trading as BITTYLICIOUS)
(a company limited by shares incorporated under the Companies Act 2006 with company number 08540541)

2. PAYWARD LTD (trading as KRAKEN)
(a company limited by shares incorporated under the Companies Act 2006 with company number 08593670)

3. SHAPESHIFT GLOBAL LIMITED (trading as SHAPESHIFT)
(a company limited by shares incorporated under the Companies Act 2006 with company number 11724146)

4. PAYWARD, INC (trading as KRAKEN)
(a company incorporated under the laws of Delaware)

5. SHAPESHIFT AG (trading as SHAPESHIFT)
(a company incorporated under the laws of Switzerland with Business Identification Number CHE-367.039.468)

6. BINANCE EUROPE SERVICES LIMITED
(trading as BINANCE)
(a company incorporated under the laws of Malta)

Respondents / Proposed Defendants

ANNEX 1 TO THE COLLECTIVE PROCEEDINGS CLAIM FORM:

CLASS DEFINITION FOR THE PROPOSED COLLECTIVE PROCEEDINGS

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1. The Proposed Class Representative proposes to bring collective proceedings on behalf of members of the Class (defined below) on an opt-out basis. The Class is sub-divided into three sub-classes, depending on whether the individuals sold their coins, held onto their coins, or held their coins in accounts with Binance or Kraken and lost access to them.

The Class

2. All those that held Bitcoin Satoshi Vision ("**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 this CPCF), together with the personal authorised representatives of the estate of any individual who met the aforementioned description, but subsequently died.

The Sub-Classes

3. the class consists of three sub-classes:

   (1) 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 A**").

   (2) 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 B**").

   (3) 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 ("**Sub-Class C**").

Excluded Persons

4. The following persons are excluded from the class:

   (a) the Defendants, including:

      i. their subsidiaries, holding companies and any subsidiaries of those holding companies; and

ii. any other entities which have (x) a controlling interest in a Defendant or (y) in which a Defendant has a controlling interest; and

iii. the officers, directors and employees of the Defendant and / or any entity referred to at (i) and (ii) above.

(b) Members and staff of the Competition Appeal Tribunal hearing these proceedings.

(c) Judges (whether permanent or fee paid) and staff of any other court that may at any time hear proceedings (including, but not limited to, appellate proceedings).

(d) the Class Representative's and Defendants' legal representatives, as well as any experts or other professional advisers instructed by them in these proceedings, including the professional staff assisting them (or who have at any time assisted them).

IN THE COMPETITION APPEAL TRIBUNAL

Case No: [•]

IN THE MATTER OF SECTIONS 2 AND 47B OF THE COMPETITION ACT 1998

BETWEEN:

BSV CLAIMS LIMITED

(a company limited by guarantee incorporated under the Companies Act 2006 with company number 14135245)

Applicant / Proposed Class Representative

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4. PAYWARD, INC (trading as KRAKEN)
(a company incorporated under the laws of Delaware)

5. SHAPESHIFT AG (trading as SHAPESHIFT)
(a company incorporated under the laws of Switzerland with Business Identification Number CHE-367.039.468)

6. BINANCE EUROPE SERVICES LIMITED
(trading as BINANCE)
(a company incorporated under the laws of Malta)

Respondents / Proposed Defendants

ANNEX 2 TO THE COLLECTIVE PROCEEDINGS CLAIM FORM:

DRAFT COLLECTIVE PROCEEDINGS ORDER

IN THE COMPETITION APPEAL TRIBUNAL

Case No: [•]

IN THE MATTER OF SECTIONS 2 AND 47B OF THE COMPETITION ACT 1998

BETWEEN:

BSV CLAIMS LIMITED

(a company limited by guarantee incorporated under the Companies Act 2006 with company number 14135245)

Applicant / Proposed Class Representative

- and -

1. BITTYLICIOUS LTD (trading as BITTYLICIOUS)
(a company limited by shares incorporated under the Companies Act 2006 with company number 08540541)

2. PAYWARD LTD (trading as KRAKEN)
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(trading as BINANCE)
(a company incorporated under the laws of Malta)

Respondents / Proposed Defendants

ANNEX 3 TO THE COLLECTIVE PROCEEDINGS CLAIM FORM:

DRAFT COLLECTIVE PROCEEDINGS ORDER NOTICE
