EU ENFORCEMENT IN FINANCIAL CASES

Some prominent examples

Konstantina Strouvali*

European Commission

DG Competition, Unit A1 - Antitrust case support and policy

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*The views expressed are those of the speaker and do not necessarily reflect those of DG Competition or the European Commission

Financial derivatives

- Derivatives are contracts traded on financial markets that are used to **transfer risk**.
- Derivatives have in recent years developed into a main pillar of the international financial system and are an indispensable tool for risk management and investment purposes.
- Derivatives contribute to improving the operational, information, and allocation efficiency, thereby increasing the efficiency of financial markets.

Interest rate derivatives

- Of all financial derivatives, interest rate derivatives represent the largest asset class.
- Interest rate derivatives (e.g. forward rate agreements, swaps, futures, options) are used for managing the risk of interest rate fluctuations.
- They may be traded over the counter ("OTC") or, in the case of interest rate futures, exchanged traded.
- Interest rate derivatives are **linked to benchmark rates** (e.g. LIBOR) in the currency in which they are traded.

Benchmark rates

EURIBOR

- Reflects the cost of interbank lending in Euro (index).
- Set by the **European Banking Federation**: 44 panel banks submitted each day their estimates at which interest they could borrow in Euro during the period examined (trimmed average).

JPY LIBOR/Euroyen TIBOR/Swiss Franc LIBOR

- Reflect the cost for lending in Yen and Swiss Franc respectively.
- JPY LIBOR and Swiss Franc LIBOR set by the **British Bankers Association**: 16 panel banks for Yen, 12 for Swiss Franc at the time.
- Euroyen TIBOR for YEN set by the **Japanese Bankers Association**.

EURO interest rate derivatives (1)

Decisions of 4 December 2013/ 7 December 2016

- Settling parties — €820m in fines — Barclays, Deutsche Bank, RBS, Société Générale
- Non-settling parties — €484m in fines — Crédit Agricole, HSBC, JP Morgan

EURO interest rate derivatives (2)

- Barclays, Deutsche Bank, RBS, Société Générale, Crédit Agricole, HSBC, JP Morgan were **panel banks**.
- Collusion between September 2005-May 2008**:**
  - **manipulation of the benchmark interest rate**: coordination between traders of these banks on their upcoming EURIBOR submissions;
  - **exchange of commercially sensitive information** on trading positions/strategy.
- Impact on financial derivative products linked to EURIBOR and/or EONIA → huge impact on a bank's cash flow.

EURO interest rate derivatives (3)

FUNCTIONING

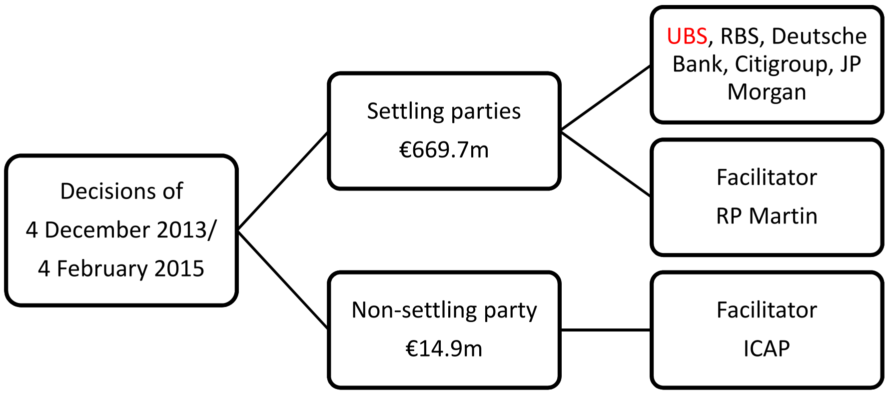
- Stable group of traders involved: collusive activity through **bilateral** contacts, in particular **online chats, emails, online messages and telephone calls**
- Conduct mainly focussed on:
  - **communicating on preferences** for an unchanged, low or high fixing of certain EURIBOR tenors/alignment of future EURIBOR submissions;
  - **exploring possibilities to align the EIRD trading positions** on the basis of the EURIBOR preferences/other commercially sensitive information exchanged
- + Evidence of (intending to) approach submitters/reporting outcome

EURO interest rate derivatives (4)

LEGAL ASSESSMENT

- **Agreement/concerted practice**: complex infringement not necessary to characterise as exclusively one or the other.
- **Distortion of normal course of pricing components** for EURO interest rate derivatives.
- **Reduction of uncertainty** about the future conduct of competitors, distorting rivalry ⟶ collusion.
- Restriction **by object** (conduct by nature harmful).
- **Single and continuous infringement**: the bilateral collusive contacts were linked and complementary in nature (single objective).

YEN interest rate derivatives (1)



YEN interest rate derivatives (2)

- UBS, Citigroup, Deutsche Bank, RBS and JP Morgan were **panel banks**
- **Seven (separate) bilateral infringements** in the period 2007-2010:
  - *UBS/JPM 2007*
  - *UBS/RBS 2007*, facilitated by ICAP
  - *UBS/RBS 2008*, facilitated by ICAP
  - *UBS/DB 2008-09*, facilitated by RP Martin and ICAP
  - *Citi/RBS 2010*, facilitated by ICAP
  - *Citi/DB 2010,* facilitated by ICAP
  - *Citi/UBS 2010*, facilitated by ICAP
- Type of conduct similar to the EURIBOR case + in UBS/DB 2008-09 evidence of exploring the possibility of executing trades designed to align trading interests for YEN interest rate derivatives

YEN interest rate derivatives (3)

FACILITATORS' ROLE

- **Disseminating misleading information** ("predictions" (ICAP) /"spoof bids" (RP Martin))
- **Using contacts** to influence the submissions of certain panel banks that did not participate in the infringements.
- Serving as **communication channel** enabling collusion between traders (ICAP in Citi/RBS 2010).

LEGAL ASSESSMENT

- Awareness of the banks' schemes, intention to contribute to the common anticompetitive objectives pursued (*AC Treuhand* case law)

Swiss Franc derivatives

COM Decisions of 21 October 2014: €94m in fines

Swiss Franc LIBOR:
RBS and JP Morgan

Swiss Franc bid-ask spread:
RBS, UBS, JP Morgan and Credit Suisse

Swiss Franc LIBOR decision

- JPMorgan and RBS were **panel banks** for the Swiss Franc LIBOR rate.
- The Swiss Franc LIBOR influences the pricing of all interest rate derivatives denominated in Swiss Franc and referenced to Swiss Franc LIBOR.
- Collusion of RBS and JP Morgan between March 2008 – July 2009:
  - ➢ **manipulation of the benchmark interest rate**: discussion between traders of these banks on their upcoming Swiss Franc Libor submissions;
  - ➢ **exchange of commercially sensitive information** on customers and prices.

Competition

Swiss Franc "bid-ask spread" decision

- Cartel between RBS, UBS, JP Morgan and Credit Suisse from May-September 2007.
- **<u>Fixing of a pricing element</u>**: traders at these banks agreed by email to quote wider fixed bid-ask-spreads for Swiss Franc derivatives trading with third parties.
- The "bid-ask spread" refers to the difference between the bid price and the ask quoted by a market maker (= a transaction fee).
- Twofold aim: to keep own transaction costs lower and prevent other players from competing on the same terms in this market.

Competition

Fines – EURIBOR/YEN and Swiss LIBOR (1)

- Calculation of value of sales on the basis of the cash received on the products covered in the months covered, which are thereafter annualised, i.e. **not last full business year, but actual sales**.
- **Downward adjustment factor** to take into account the specificities of the industry, e.g. netting (banks both sell and buy derivatives).
- In certain cases had to take account of partial **temporal overlaps** of the infringements which related to the same product and geographic scope.
- Lump sum for facilitators (point 37 of Guidelines on Fines)

Fines – EURIBOR/YEN and Swiss LIBOR (2)

- Gravity: EIRD 18%, YIRD 17%, CHIRD 17%
- Entry fee: EIRD 18%, YIRD 17%, CHIRD 17%
- Duration: standard method
- No aggravating circumstances
- No mitigating circumstances in EIRD, CHIRD; mitigating circumstances in YIRD: lack of awareness of facilitation by a broker
- No deterrence multiplier (using our discretion)

Fines – Swiss Franc bid-ask spread

- Calculation of value of sales on the basis of the notional amounts of the CHIRD contracts entered into with EEA-located counterparties during the months corresponding to the undertakings' participation in the infringement (annualised).
- **Notional amounts traded * bid ask spread** to take account of the particularities of these type of contracts.
- Gravity: 16%
- Entry fee: 16%
- Duration: standard method
- No aggravating/mitigating circumstances
- No deterrence multiplier (using our discretion)