

Summary of Commission Decision
of 21 October 2014
(Case AT.39924 — Swiss Franc Interest Rate Derivatives)
(CHF LIBOR)
(notified under document C(2014) 7605)
(Only the English text is authentic)
(2015/C 72/07)

On 21 October 2014, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (the 'Treaty') and Article 53 of the Agreement creating the European Economic Area (the 'EEA Agreement'). In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

- (1) The Decision relates to a single and continuous infringement. The addressees of the Decision participated in an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The object of the infringement was the restriction and/or distortion of competition in relation to Swiss Franc Interest Rate Derivatives (hereinafter referred to as 'CHIRDs'), referenced to the Swiss Franc LIBOR ('CHF Libor').
- (2) During the period of the infringement, CHF Libor was the reference interest rate for many financial instruments denominated in Swiss Francs. CHF Libor was set by the British Bankers Association (BBA)⁽²⁾. The rate was set daily for different tenors (loan maturities) on the basis of submissions from banks that were members of the CHF Libor panel. These banks were asked to submit each business day, before a certain time, estimates of interest rates at which they believe they could borrow unsecured funds in a reasonable market size on the London interbank money market, at various tenors. The BBA's calculation agent Thomson Reuters then calculated, on the basis of an average of these submissions, while excluding the three highest and three lowest submissions, the daily CHF Libor rate for each tenor. The resulting rates were immediately published and available to the public each business day. At the time of the infringement there were twelve banks on the CHF Libor panel, including the two participants to this infringement.
- (3) CHF Libor rates are, inter alia, reflected in the pricing of CHIRDs, which are financial products that are used by corporations, financial institutions, hedge funds, and other global undertakings to manage their interest rate risk exposure (hedging, for both borrowers and investors), to generate fees as an intermediary or for speculation purposes⁽³⁾.
- (4) The most common CHIRDs are: (i) forward rate agreements; (ii) interest rate swaps; (iii) interest rate options; and (iv) interest rate futures. CHIRDs are traded across the EEA and may be traded over the counter (OTC) or, in the case of interest rate futures, exchange traded.
- (5) The Decision is addressed to (hereinafter 'the addressees'):
 - The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc (hereinafter 'RBS'), and
 - JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association (hereinafter 'JPMorgan').

2. CASE DESCRIPTION

2.1. Procedure

- (6) The case was opened on the basis of an immunity application by RBS on 9 August 2011. On [...], JPMorgan applied for a reduction of fines under the Leniency Notice.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ Following the Wheatley Review of 2012, the UK Government recommended a new set of institutions to administer and oversee Libor.

⁽³⁾ The different CHF Libor tenors are reflected in the pricing of CHIRDs. The respective CHF LIBOR tenor which is resetting on a specific date may affect either the cash flow a bank receives from the counterparty to the CHIRD, or the cash flow a bank needs to pay to the counterparty to the CHIRD.

- (7) On 24 July 2013, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of the Decision with a view to engaging in settlement discussions with them. Settlement meetings with the parties took place and the parties subsequently submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004⁽¹⁾, solely for the purpose of reaching a settlement with the Commission in the present proceeding and without prejudice to any other proceedings (the 'settlement submissions').
- (8) On 23 September 2014, the Commission adopted a Statement of Objections and both parties confirmed that it reflected the contents of their settlement submissions and that they remained committed to following the settlement procedure. The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 17 October 2014 and the Commission adopted the Decision on 21 October 2014.

2.2. Addressees and duration

- (9) The four addressees of the Decision have participated in a cartel, infringing therefore Article 101 of the Treaty and Article 53 of the EEA Agreement in the period from 6 March 2008 to 13 July 2009.

2.3. Summary of the infringement

- (10) The parties to the infringement engaged in the following anti-competitive conduct: in the period from 6 March 2008 to 13 July 2009, a trader at JPMorgan discussed on certain occasions with a trader at RBS mainly 3 month and 6 month forthcoming CHF Libor submissions of RBS in the understanding that this might be beneficial to the CHIRD trading position of at least one of the traders involved in the communications. To this end, the trader at RBS approached, or indicated willingness to approach, the CHF Libor submitter at RBS to request a submission to the BBA towards a certain direction or on a few occasions at a specific level. These discussions of a trader at RBS and a trader at JPMorgan were occasionally complemented by an exchange of information concerning current and future trading positions and intended prices.
- (11) The geographic scope of the infringement covered the entire EEA.

2.4. Remedies

- (12) The Decision applies the 2006 Guidelines on Fines⁽²⁾. The Decision imposes fines on the two JPMorgan entities listed in point (5) above.

2.4.1. Basic amount of the fine

- (13) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales, the fact that the infringement is by its very nature amongst the most harmful restrictions of competition, the duration and geographic scope of the cartel, the fact that the collusive activities related to financial benchmarks and an additional amount to deter undertakings from entering into such illegal practices.
- (14) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement⁽³⁾. It may however depart from this practice, should another reference period be more appropriate in view of the characteristics of the case⁽⁴⁾.
- (15) With respect to this infringement, the Commission calculated the annual value of sales for JPMorgan and RBS on the basis of the cash flows that each bank received, from its respective portfolio of CHIRDS referenced to CHF Libor and entered into with EEA-located counterparties, during the months corresponding to their participation in the infringement, which are subsequently annualised. These values of sales were discounted by a uniform factor to take account of the particularities of the CHIRDS industry, such as the netting inherent in this industry, meaning that banks both sell and buy derivatives so that the incoming payments are netted against outgoing payments.

2.4.2. Adjustment to the basic amount: aggravating or mitigating circumstances

- (16) The Commission did not apply any aggravating or mitigating circumstances.

⁽¹⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty establishing the European Community (OJ L 123, 27.4.2004, p. 18).

⁽²⁾ OJ C 210, 1.9.2006, p. 2.

⁽³⁾ Point 13 of the Guidelines on fines.

⁽⁴⁾ Case T-76/06, *Plásticos Españoles (ASPLA) v Commission*, not yet reported, paragraphs 111-113.

2.4.3. Application of the 10 % turnover limit

- (17) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking for each infringement shall not exceed 10 % of its total turnover relating to the business year preceding the date of the Commission decision.
- (18) In this case, none of the fines exceed 10 % of an undertaking's total turnover relating to the business year preceding the date of this Decision.

2.4.4. Application of the 2006 Leniency Notice

- (19) The Commission granted full immunity from fines to RBS. The Commission also granted a 40 % reduction of the fine to JPMorgan for its cooperation in the investigation.

2.4.5. Application of the Settlement Notice

- (20) As a result of the application of the Settlement Notice, the amount of the fines to be imposed on both parties was reduced by 10 % and this reduction was added to any leniency reward.

3. CONCLUSION

- (21) The following fines were imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003:

Undertaking	Fines (in EUR)
RBS	0
JPMorgan	61 676 000