

**Summary of Commission Decision****of 4 December 2013****relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement****(Case AT.39914 — Euro Interest Rate Derivatives)***(notified under document C(2013) 8512)***(Only the English text is authentic)**

(2017/C 206/07)

On 4 December 2013, 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<sup>(1)</sup>, 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 addressees of the Decision participated in a single and continuous 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 the sector of Euro Interest Rate Derivatives linked to the Euro Interbank Offered Rate ('Euribor') and/or the Euro Over-Night Index Average ('EONIA') (hereinafter 'EIRD' or 'EIRDs').
- (2) The Euribor is a benchmark interest rate intended to reflect the cost of interbank lending in Euros which is widely used in the international money markets. The Euribor is defined as an index of 'the rate at which Euro interbank term deposits are offered by one prime bank to another prime bank within the euro zone'<sup>(2)</sup> and it is based on the panel banks' individual quotes of the rates at which each of them believes that a hypothetical prime bank would lend funds to another prime bank<sup>(3)</sup>. Indeed, according to the European Banking Federation's Euribor Code of Conduct, 'panel banks provide daily quotes of the rate (...) that each panel bank believes one prime bank is quoting to another prime bank for interbank term deposits within the euro zone'<sup>(4)</sup>.
- (3) The Euribor is calculated<sup>(5)</sup> on the basis of submissions by participating 'panel banks'<sup>(6)</sup> sent on every trading day between 10.45 am and 11.00 am Brussels time to Thomson Reuters, which serves as the calculation agent to the European Banking Federation ('EBF'). Each panel bank has submitters which are responsible for proposing the quote submissions on behalf of the given panel bank. Submitters operate normally within the treasury department of the given panel bank. The Euribor is determined and published at 11.00 am each business day Brussels time (10.00 am London time). Each panel bank provides a contribution for each of the 15 different Euribor interest rates (one for each maturity ranging from one week to 12 months – referred to as 'tenors').
- (4) The Euribor does not have an overnight tenor. This role is taken by the EONIA which is an overnight interest rate computed with the help of the European Central Bank as a weighted average of all overnight unsecured lending transactions of certain banks in the interbank market. The banks contributing to EONIA are the same as the panel banks contributing to Euribor.
- (5) The different Euribor tenors (such as 1 month, 3, 6 or 12 months) serve as pricing components for Euribor-based EIRDs. For EIRDs, the respective Euribor tenor which is maturing or resetting on a specific date may affect either the cash flow a bank receives from the counterparty to the EIRD, or the cash flow a bank needs to pay to the counterparty on that date. Depending on the trading positions/exposures entered into on its behalf by its traders, a bank may either have an interest in a high Euribor fixing (when it receives an amount calculated on the basis of Euribor), a low fixing (when it needs to pay an amount calculated on the basis of Euribor) or to be 'flat' (when it does not have a significant position in either direction).

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

<sup>(2)</sup> <http://www.euribor-ebf.eu/euribor-org/about-euribor.html>

<sup>(3)</sup> The details of the panel composition and submission procedural rules are described in the European Banking Federation's Euribor Code of Conduct ([http://www.euribor-ebf.eu/assets/files/Euribor\\_code\\_conduct.pdf](http://www.euribor-ebf.eu/assets/files/Euribor_code_conduct.pdf)).

<sup>(4)</sup> The European Banking Federation's Euribor Code of Conduct, p. 17.

<sup>(5)</sup> The highest and lowest 15 % of all the panel bank submissions collected are eliminated. The remaining rates are averaged and rounded to three decimal places.

<sup>(6)</sup> At the time of the infringement, the number of panel banks was 44; currently there are 25.

- (6) Euribor rates are, inter alia, reflected in the pricing of EIRDs, which are globally traded financial products used by corporations, financial institutions, hedge funds, and other undertakings to manage their interest rate risk exposure (hedging, for both borrowers and investors) or for speculation purposes<sup>(1)</sup>. The most common basic EIRDs are: (i) forward rate agreements, (ii) interest rate swaps, (iii) interest rate options and (iv) interest rate futures. EIRDs may be traded over the counter ('OTC') or, in the case of interest rate futures, through exchanges.
- (7) The Decision is addressed to (hereinafter 'the addressees'):
- Barclays plc, Barclays Bank plc, Barclays Directors Limited, Barclays Group Holdings Limited, Barclays Capital Services Limited and Barclays Services Jersey Limited (together referred to as 'Barclays');
  - Deutsche Bank AG, Deutsche Bank Services (Jersey) Limited and DB Group Services (UK) Limited (together referred to as 'Deutsche Bank');
  - Société Générale; and
  - The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc (together referred to as 'RBS').
- (8) This Decision is based on matters of fact as accepted only by Barclays, Deutsche Bank, Société Générale and RBS in the settlement procedure. This Decision does not establish any liability of any non-settling party for any participation in an infringement of EU competition law in this case.
- (9) Barclays, Deutsche Bank and Société Générale have been Euribor panel banks during the whole period of their respective involvement in the infringement. The RBS group included a panel bank as from 17 October 2007 onwards following the implementation of the take-over of parts of ABN Amro.

## 2. CASE DESCRIPTION

### 2.1. Procedure

- (10) The case was opened on the basis of an immunity application by Barclays on 14 June 2011. Between 18 and 21 October 2011 the Commission carried out unannounced inspections at the premises of various banks in London and Paris. The Commission also sent out a series of requests for information. Following the inspections, the Commission received leniency applications from RBS, Deutsche Bank and Société Générale.
- (11) By decisions of 5 March 2013 and 29 October 2013, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of the Decision and three other banks, with a view to engaging in settlement discussions with them. Settlement meetings with the parties took place and the addressees of the Decision subsequently submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004.
- (12) On 29 October 2013, the Commission adopted a Statement of Objections addressed to Barclays, Deutsche Bank, Société Générale and RBS and all four 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 29 November 2013 and the Commission adopted the Decision on 4 December 2013.

### 2.2. Description of the conduct

- (13) The parties, through the conduct of certain of their employees, have participated in arrangements in the EIRD sector which consisted of the following practices between different parties:
- (a) On occasions, certain traders employed by different parties communicated and/or received preferences for an unchanged, low or high fixing of certain Euribor tenors. These preferences depended on their trading positions/exposures.
  - (b) On occasions, certain traders of different parties communicated and/or received from each other detailed, not publicly known/available information on the trading positions or on the intentions for future Euribor submissions for certain tenors of at least one of their respective banks.

<sup>(1)</sup> According to the Bank of International Settlements, the gross market value of outstanding EIRDs (<http://www.bis.org/statistics/dt21a21b.pdf>) was USD 9 067 billion in December 2012 and represent the largest segment or 48 % of the OTC interest rate derivatives the market.

- (c) On occasions, certain traders also explored possibilities to align their EIRD trading positions on the basis of such information as described under (a) or (b).
  - (d) On occasions, certain traders also explored possibilities to align at least one of their banks' future Euribor submissions on the basis of such information as described under (a) or (b).
  - (e) On occasions, at least one of the traders involved in such discussions approached the respective bank's Euribor submitters, or stated that such an approach would be made, to request a submission to the EBF's calculation agent towards a certain direction or at a specific level.
  - (f) On occasions, at least one of the traders involved in such discussions stated that he would report back, or reported back on the submitter's reply before the point in time when the daily Euribor submissions had to be submitted to the calculation agent or, in those instances where that trader had already discussed this with the submitter, passed on such information received from the submitter to the trader of a different party.
  - (g) On occasions, at least one trader of a party disclosed to a trader of another party other detailed and sensitive information about his bank's trading or pricing strategy regarding EIRDs.
- (14) In addition, on occasions certain traders employed by different parties discussed the outcome of the Euribor rate setting, including specific banks' submissions, after the Euribor rates of a day had been set and published.
- (15) Each party has at least participated in some of these forms of conduct. This occurred throughout the period of the settling parties' respective involvement in the infringement, although not every settling party participated in all instances of the collusion and the intensity of the collusive contacts varied over the period of the infringement.
- (16) The collusive activity occurred through bilateral contacts, mainly through on-line chats, e-mails and on-line messages or over the telephone.

### 2.3. Individual involvement in the conduct

- (17) Between 29 September 2005 and 30 May 2008, Barclays engaged in bilateral practices falling under at least some of the practices enumerated in recital 13 with Deutsche Bank, Société Générale, RBS and three other banks, for the duration of each party's respective period of involvement.
- (18) Between 29 September 2005 and 30 May 2008, Deutsche Bank engaged in bilateral practices falling under at least some of the practices enumerated in recital 13 with Barclays, RBS and one other bank, for the duration of each party's respective period of involvement.
- (19) Between 31 March 2006 and 30 May 2008, Société Générale engaged in bilateral practices falling under at least some of the practices enumerated in recital 13 with Barclays and RBS, for the duration of each party's respective period of involvement.
- (20) Between 26 September 2007 and 30 May 2008, RBS engaged in bilateral practices falling under at least some of the practices enumerated in recital 13 with Barclays, Deutsche Bank and Société Générale.
- (21) As noted in point (8) above, this Decision does not establish any liability of any non-settling party for any participation in an infringement of EU competition law in this case.

### 2.4. Geographic scope

- (22) The geographic scope of the infringement covered at least the whole EEA.

### 2.5. Remedies

- (23) The Decision applies the 2006 Guidelines on Fines<sup>(1)</sup>. The Decision imposes fines on the entities of Deutsche Bank, Société Générale and RBS listed in point (7) above.

<sup>(1)</sup> OJ C 210, 1.9.2006, p. 2.

#### 2.5.1. Basic amount of the Fine

- (24) 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, the paramount importance the affected rates have for the financial services sector within the internal market and the Member States and an additional amount to deter undertakings from entering into such illegal practices.
- (25) The Commission normally takes into account the value of the sales made by the undertakings during the last full business year of their participation in the infringement <sup>(1)</sup>. It may however depart from this practice, should another reference period be more appropriate in view of the characteristics of the case <sup>(2)</sup>.
- (26) With respect to this infringement, the Commission calculated the annual value of sales for all the settling parties on the basis of the cash flows that each bank received from its respective portfolio of EIRDs entered into with EEA-located counterparties during the months corresponding to their respective participation in the infringement, discounted by a uniform factor to take account of the particularities of the EIRD 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, and the scale of price variations.

#### 2.5.2. Adjustment to the basic amount: aggravating or mitigating circumstances

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

#### 2.5.3. Application of the 10 % turnover limit

- (28) 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.
- (29) 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.

#### 2.5.4. Application of the 2006 Leniency Notice

- (30) The Commission granted full immunity from fines to Barclays. The Commission also granted a 50 % reduction of the fine to RBS, a 30 % reduction of the fine to Deutsche Bank and a 5 % reduction of the fine to Société Générale, for their respective cooperation in the investigation.

#### 2.5.5. Application of the Settlement Notice

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

### 3. CONCLUSION

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

Undertaking	Fines (in EUR)
Barclays	0
Deutsche Bank	465 861 000
Société Générale	445 884 000
RBS	131 004 000

<sup>(1)</sup> Point 13 of the Guidelines on fines.

<sup>(2)</sup> Case T-76/06, *Plásticos Españoles (ASPLA) v Commission*, not yet reported, paragraphs 111-113.