SUMMARY OF COMMISSION DECISION
of 2 December 2021
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.40135 – FOREX – STERLING LADS)
(notified under document number C(2021) 8613 FINAL)
(Only the English text is authentic)

On 2 December 2021, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of 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 addressees of the Decision participated in a single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement. The object of the infringement was the restriction and/or distortion of competition in the sector of foreign exchange (Forex or FX) spot trading of G10 currencies (2).

(2) The G10 currencies concerned by this Decision comprise the US, Canadian, Australian and New Zealand Dollars (respectively USD CAD, AUD and NZD), the Japanese Yen (JPY), the Swiss Franc (CHF), the Sterling Pound (GBP), the Euro (EUR), and the Swedish, Norwegian and Danish Crowns (respectively SEK, NOK and DKK) (i.e. 11 currencies altogether, which correspond to the market convention for currencies covered by the G10 designation).

(3) The FX spot trading activity of G10 currencies encompasses both (i) market making (i.e. the execution of customer’s orders to exchange a currency amount by its equivalent in another currency); and (ii) trading on own account (i.e. the execution of other currency exchanges in order to manage the exposure resulting from the market making transactions or to modify a currency exposure independently of any customer order).

(4) The FX spot trading desks of G10 currencies of the relevant undertakings stood ready to trade any of those currencies depending on market demand. While the participating traders themselves were primarily responsible for market making in specific currencies or pairs, their mandate authorised them to further engage in trading activity on behalf of their own undertaking with respect to any G10 currency available in their books, which they also did to different extents during the relevant period, with a view to maximising the value of their respective holdings.

(5) The following three types of orders characterising the customer-driven trading activity (market making) of the participating traders are pertinent in the infringement:

(a) Customer immediate orders, to immediately enter trades for a certain amount of currency based on the prevailing market rate;

(b) Customer conditional orders (for example stop-loss or take-profit orders), which are triggered when a given price level is reached and opens the traders’ risk exposure. They only become executable when the market reaches a certain level;


(2) The case does not concern FX spot e-commerce trading activity within the meaning of FX spot trades that are automatically booked by, or executed by either the relevant bank’s proprietary electronic trading platforms or computer algorithms.
Customer orders to execute a trade at a specific Forex benchmark rate or ‘fixing’ for particular currency pairs, which in the current case only concerned the WM/Reuters Closing Spot Rates and the European Central Bank foreign exchange reference rates.

2. CASE DESCRIPTION

2.1 PROCEDURE

(6) The investigation was triggered by an immunity application from UBS on 27 September 2013. The Commission subsequently received initial leniency applications from Barclays on 11 October 2013, RBS on 14 October 2013 and HSBC on 17 July 2013. All the applications were followed by numerous submissions from each of the parties. […] did not apply for leniency. The Commission granted conditional immunity to UBS on 2 July 2014.

(7) Proceedings were initiated on 27 October 2016 against the parties with a view to engaging in settlement discussions. Between November 2016 and February 2018, the Commission held bilateral meetings and contacts with each of the parties, including […], in three settlement rounds, pursuant to the Settlement Notice (\(^{3}\)).

(8) On 22 January 2018, the College approved the ranges of the likely applicable fines. On 19 February 2018, […] informed the Commission that it would not continue its participation in the settlement procedure. The Commission therefore reverted to the ordinary procedure for […] in accordance with paragraph 19 of the Settlement Notice. Between […] and […], the other parties submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (\(^{4}\)).

(9) On 24 July 2018, the Commission adopted in parallel settlement Statement of Objections (SO) addressed to the four settling parties and a streamlined ordinary SO addressed to […]. All the addressees replied to the SO by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

(10) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 30 November 2021. On 1 December 2021, the Hearing Officer issued her final report. The Commission adopted the Decision on 2 December 2021.

2.2 SUMMARY OF THE INFRINGEMENT

(11) The Decision concerns the conduct that took place in a […] chatroom called Sterling Lads (or ‘STG Lads’), between UBS, Barclays, RBS, HSBC (the ‘four settling parties’) and […]. The behaviour took place from 25 May 2011 to 12 July 2012. […] participated in the infringement from […] to […]. The cartel affected at least the EEA.

(12) The cartel is documented in communications that took place within the STG Lads chatroom between certain individual traders authorised to trade G10 currencies in FX spot transactions in the name and on behalf of their respective employing undertakings at the corresponding dedicated FX spot trading desk of G10 currencies.

(13) The cartel comprised a single and continuous infringement characterised by the exchange among the traders – in a private and multilateral chatroom and on an extensive and recurrent basis – of certain current or forward looking commercially sensitive information about their trading activities. The exchanges of information were meant to affect two basic parameters of competition in FX spot trading activity of G10 currencies: price and expert risk management.

(14) Instead of competing autonomously on those parameters, the participating traders’ market decisions were informed by their competitors’ positions, intentions and constraints. The exchanges of information subject to this Decision concerned:


(a) Exchanges revealing details of outstanding customers’ orders, whereby the participating traders would freely discuss confidential details of their pending customers’ orders (such as the triggering level of customers’ conditional orders, the size of customers’ orders for the fix and the type or name of customers of immediate orders). This information increased the level of transparency for the chatroom’s members about their trading activities, assisted the participating traders in their subsequent market decisions and enabled them to identify occasions to coordinate their trading.

(b) Exchanges revealing the traders’ open risk positions, which could provide them with an insight into one another’s potential hedging conduct. They provided the traders with information which could be relevant to their subsequent trading decisions for a window of minutes or until the next information exchange superseded it. In addition, they would enable the participating traders to identify occasions to coordinate their behaviour, in particular by standing down.

(c) Exchanges revealing their existing or intended bid-ask spreads, which disclosed the spread quoted by the traders for specific currency pairs and trade sizes. They enabled the participating traders to obtain greater certainty on the prices they were quoting and informed their subsequent pricing behaviour. They could also enable alignment of the spreads for particular transactions and affect the overall price paid by customers for trading currencies.

(d) Exchanges revealing other details of current or planned trading activities whereby the participating traders shared a combination of several of the previously mentioned commercially sensitive information, assisted the participating traders in their subsequent decisions and enabled them to identify occasions to coordinate their trading.

(15) In addition, the four settling parties acknowledged that these extensive and recurrent exchanges of sensitive current or forward looking information took place pursuant to a set of tacit rules that: (i) such information could be used to the traders’ respective benefit and in order to identify occasions to coordinate their trading; (ii) such information would be shared within the private chatroom; (iii) the traders would not disclose such shared information received from other chatroom participants to parties outside of the private chatroom; and (iv) such shared information would not be used against the traders who shared it (hereinafter together referred to as the ‘underlying understanding’).

(16) According to the four settling parties, pursuant to the underlying understanding and seeking to gain an advantage over competitors who were not participants in the chatroom, the participating traders occasionally coordinated their trading activities with respect to FX spot trading of G10 currencies by refraining from trading as they otherwise had planned to undertake during a particular time window on account of another trader’s announced position or trading activity. This practice is known as ‘standing down’.

2.3 ADDRESSEES

(17) The Decision is addressed to the following legal entities (together ‘the addressees’):

— UBS AG (‘UBS’),
— NatWest Group plc and NatWest Markets Plc (collectively ‘RBS’),
— Barclays PLC, Barclays Execution Services Limited and Barclays Bank PLC (collectively ‘Barclays’), and
— HSBC Holdings plc (‘HSBC’).

(18) UBS, Barclays, RBS, HSBC and the other participant undertaking, […], engaged in the aforementioned conduct in the periods indicated in the following table:
Table 1: involvement of the Parties in the chatroom

<table>
<thead>
<tr>
<th>BANK</th>
<th>ENTRY</th>
<th>EXIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>UBS</td>
<td>25.5.2011</td>
<td>4.11.2011</td>
</tr>
<tr>
<td></td>
<td>30.5.2011</td>
<td>12.7.2012</td>
</tr>
<tr>
<td>BARCLAYS</td>
<td>25.5.2011</td>
<td>12.7.2012</td>
</tr>
<tr>
<td></td>
<td>25.5.2011</td>
<td>4.11.2011</td>
</tr>
<tr>
<td>HSBC</td>
<td>25.5.2011</td>
<td>12.7.2012</td>
</tr>
<tr>
<td>[...]</td>
<td>[...]</td>
<td>[...]</td>
</tr>
</tbody>
</table>

2.4 REMEDIES

(19) The Decision applied the 2006 Commission Guidelines on Fines. The fining methodology and parameters were decided by the College of Commissioners on 22 January 2018 in the context of the settlement procedure. According to the case law, the principle of equal treatment applies to fine parameters for all parties to the same infringement irrespective of whether they follow the settlement or the ordinary procedure. Therefore, the same method for fines calculation was applied to calculate the addressees’ fines and [...]’s fine.

2.4.1 Basic amount of the fine

(20) As for other financial cases, G10 FX spot transactions do not generate sales in the usual sense of the term. The Commission therefore considers it appropriate to apply a specific proxy for the value of sales as a starting point for its determination of the fines. In view of the differences in the duration of the involvement of different parties and of the varying market size of the G10 FX spot business over the infringement period, the Commission considers it appropriate to base the proxy for value of sales directly on the value of sales actually made by the undertakings during the months corresponding to their respective participation in the infringement, which is subsequently annualised.

(21) The Commission determines the proxy for the relevant values of sales as follows:

(a) Firstly, the Commission takes as reference amount the annualised notional amounts traded by the concerned addressee in the FX spot transactions of G10 currencies entered into with a counterparty located in the EEA. To this end, the Commission considers it more appropriate to base the proxy for the value of sales directly on the revenues made by the addressees during the months corresponding to their respective participation in the infringement, which are subsequently annualised.

(b) Secondly, those amounts are multiplied by an appropriate factor, uniform for all the Addressees, reflecting the applicable bid-ask spreads in the relevant FX spot transactions of G10 currencies.

(22) The proxy for value of sales was based directly on the value of sales actually made by the undertakings during the months corresponding to their respective participation in the infringement, which was subsequently annualised. Given that the infringement covered the entire EEA, the proxy for the value of sales was determined on FX spot transactions of G10 currencies entered into with counterparties located in the EEA.
2.4.2 **Adjustments to the basic amount**

(23) The Commission applied to the notional amounts an appropriate, uniform factor based on the bid-ask spread levels observed in the evidence.

2.4.3 **Aggravating or mitigating circumstances**

(24) No aggravating or mitigating circumstances were applied in this case.

2.4.4 **Specific increase for deterrence**

(25) In order to ensure that fines have a sufficiently deterrent effect, the Commission may increase fines to be imposed on undertakings which have a particular large turnover beyond the sales of goods or services to which the infringement relates (†).

(26) In this case, it is appropriate to apply a deterrence multiplier factor to the fines to be imposed on HSBC.

2.4.5 **Application of the 10 % turnover limit**

(27) The amount of the fine was below the 10 % worldwide turnover maximum set out in Article 23(2) of Regulation (EC) No 1/2003.

2.4.6 **Application of the 2006 Leniency Notice: reduction of fines**

(28) UBS was granted immunity from fines and Barclays benefitted from periods of partial immunity. In addition, Barclays, RBS and HSBC were granted a reduction of fines within the bands already attributed to them.

2.4.7 **Application of the Settlement Notice**

(29) All the settling parties received a 10 % settlement reduction.

2.5 **CONCLUSION**

(30) The following fines were imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003.

(31) **Table 2: Fines amounts for the infringement**

<table>
<thead>
<tr>
<th>Undertaking</th>
<th>Fines (in EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>UBS</td>
<td>0</td>
</tr>
<tr>
<td>Barclays</td>
<td>54 348 000</td>
</tr>
<tr>
<td>RBS</td>
<td>32 472 000</td>
</tr>
<tr>
<td>HSBC</td>
<td>174 281 000</td>
</tr>
</tbody>
</table>

(†) Point 30 of the 2006 Guidelines on fines.