

# Antitrust: Commission fines Barclays, RBS, Citigroup, JPMorgan and MUFG €1.07 billion for participating in foreign exchange spot trading cartel

In two settlement decisions, the European Commission has fined five banks for taking part in two cartels in the Spot Foreign Exchange market for 11 currencies – Euro, British Pound, Japanese Yen, Swiss Franc, US, Canadian, New Zealand and Australian Dollars, and Danish, Swedish and Norwegian crowns.

The first decision (so-called “Forex – Three Way Banana Split” cartel) imposes a total fine of €811 197 000 on Barclays, The Royal Bank of Scotland (RBS), Citigroup and JPMorgan.

The second decision (so-called “Forex- Essex Express” cartel) imposes a total fine of €257 682 000 on Barclays, RBS and MUFG Bank (formerly Bank of Tokyo-Mitsubishi).

UBS is an addressee of both decisions, but was not fined as it revealed the existence of the cartels to the Commission.

Commissioner Margrethe **Vestager**, in charge of competition policy said: *“Companies and people depend on banks to exchange money to carry out transactions in foreign countries. Foreign exchange spot trading activities are one of the largest markets in the world, worth billions of euros every day. Today we have fined Barclays, The Royal Bank of Scotland, Citigroup, JPMorgan and MUFG Bank and these cartel decisions send a clear message that the Commission will not tolerate collusive behaviour in any sector of the financial markets. The behaviour of these banks undermined the integrity of the sector at the expense of the European economy and consumers”.*

Foreign Exchange, or “Forex”, refers to the trading of currencies. When companies exchange large amounts of a certain currency against another, they usually do so through a Forex trader. The main customers of Forex traders include asset managers, pension funds, hedge funds, major companies and other banks.

Forex spot order transactions are meant to be executed on the same day at the prevailing exchange rate. The most liquid and traded currencies worldwide (five of which are used in the European Economic Area) are the Euro, British Pound, Japanese Yen, Swiss Franc, US, Canadian, New Zealand and Australian Dollars, and Danish, Swedish and Norwegian crowns.

The Commission’s investigation revealed that some individual traders in charge of Forex spot trading of these currencies on behalf of the relevant banks exchanged sensitive information and trading plans, and occasionally coordinated their trading strategies through various online professional

chatrooms.

The commercially sensitive information exchanged in these chatrooms related to:

- 1) outstanding customers' orders (i.e. the amount that a client wanted to exchange and the specific currencies involved, as well as indications on which client was involved in a transaction),
- 2) bid-ask spreads (i.e. prices) applicable to specific transactions,
- 3) their open risk positions (the currency they needed to sell or buy in order to convert their portfolios into their bank's currency), and
- 4) other details of current or planned trading activities.

The information exchanges, following the tacit understanding reached by the participating traders, enabled them to make informed market decisions on whether to sell or buy the currencies they had in their portfolios and when.

Occasionally, these information exchanges also allowed the traders to identify opportunities for coordination, for example through a practice called "standing down" (whereby some traders would temporarily refrain from trading activity to avoid interfering with another trader within the chatroom).

Most of the traders participating in the chatrooms knew each other on a personal basis – for example, one chatroom was called *Essex Express 'n the Jimmy* because all the traders but "James" lived in Essex and met on a train to London. Some of the traders created the chatrooms and then invited one another to join, based on their trading activities and personal affinities, creating closed circles of trust.

The traders, who were direct competitors, typically logged in to multilateral chatrooms on Bloomberg terminals for the whole working day, and had extensive conversations about a variety of subjects, including recurring updates on their trading activities.

The Commission's investigation revealed the existence of two separate infringements concerning foreign exchange spot trading:

- The *Three Way Banana Split* infringement encompasses communications in three different, consecutive chatrooms ("*Three way banana split / Two and a half men / Only Marge*") among traders from UBS, Barclays, RBS, Citigroup and JPMorgan. The infringement started on 18 December 2007 and ended on 31 January 2013.
- The *Essex Express* infringement encompasses communications in two chatrooms ("*Essex Express 'n the Jimmy*" and "*Semi Grumpy Old men*") among traders from UBS, Barclays, RBS and Bank of Tokyo-Mitsubishi (now MUFG Bank). The infringement started on 14 December 2009 and ended on 31 July 2012.

The following table details the participation and the duration of each company's involvement in each of the two infringements:

|                             | <b>Company</b>  | <b>Start</b> | <b>End</b> |
|-----------------------------|-----------------|--------------|------------|
|                             | UBS             | 10/10/2011   | 31/01/2013 |
| <i>Three Way Banana</i>     | Barclays        | 18/12/2007   | 01/08/2012 |
| <i>Split / Two and a</i>    | RBS             | 18/12/2007   | 19/04/2010 |
| <i>half men/ Only Marge</i> | Citigroup       | 18/12/2007   | 31/01/2013 |
|                             | JP Morgan       | 26/07/2010   | 31/01/2013 |
|                             | UBS             |              |            |
|                             | Barclays        | 14/12/2009   | 31/07/2012 |
| <i>Essex Express / Semi</i> | RBS             | 14/12/2009   | 31/07/2012 |
| <i>Grumpy Old men</i>       | Bank of Tokyo-  | 14/09/2010   | 08/11/2011 |
|                             | Mitsubishi (now | 08/09/2010   | 12/09/2011 |
|                             | MUFG Bank)      |              |            |

## **Fines**

The fines were set on the basis of the Commission's [2006 Guidelines on fines](#) (see also [MEMO](#)).

In setting the fines, the Commission took into account, in particular, the sales value in the European Economic Area (EEA) achieved by the cartel participants for the products in question, the serious nature of the infringement, its geographic scope and its duration.

Under the Commission's [2006 Leniency Notice](#):

- UBS received full immunity for revealing the existence of the cartels, thereby avoiding an aggregate fine of ca. €285 million.
- In the *Three Way Banana Split* infringement, all banks involved benefited from reductions of their fines for their cooperation with the Commission investigation. The reductions reflect the timing of their cooperation and the extent to which the evidence they provided helped the Commission to prove the existence of the cartel in which they were involved.
- In the *Essex Express* infringement, all banks except one benefited from reductions of their fines for their cooperation with the Commission investigation. The reductions reflect the timing of their cooperation and the extent to which the evidence they provided helped the Commission to prove the existence of the cartels in which they were involved. MUFG Bank (formerly Bank of Tokyo-Mitsubishi) did not apply for leniency.

In addition, under the Commission's [2008 Settlement Notice](#), the Commission applied a reduction of 10% to the fines imposed on the companies in view of their acknowledgment of participation in the cartels and of their liability in this respect.

The breakdown of the fines imposed on each company is as follows:

### THREE WAY BANANA SPLIT

| Company      | Reduction under Leniency Notice | Reduction under Settlement Notice | Fine (€)           |
|--------------|---------------------------------|-----------------------------------|--------------------|
| UBS          | 100%                            | 10%                               | 0                  |
| Barclays     | 50%                             | 10%                               | 116 107 000        |
| RBS          | 30%                             | 10%                               | 155 499 000        |
| Citigroup    | 20%                             | 10%                               | 310 776 000        |
| JPMorgan     | 10%                             | 10%                               | 228 815 000        |
| <b>TOTAL</b> |                                 |                                   | <b>811 197 000</b> |

### ESSEX EXPRESS

| Company      | Reduction under Leniency Notice | Reduction under Settlement Notice | Fine (€)           |
|--------------|---------------------------------|-----------------------------------|--------------------|
| UBS          | 100%                            | 10%                               | 0                  |
| Barclays     | 50%                             | 10%                               | 94 217 000         |
| RBS          | 25%                             | 10%                               | 93 715 000         |
| BOTM         |                                 | 10%                               | 69 750 000         |
| <b>TOTAL</b> |                                 |                                   | <b>257 682 000</b> |

### Procedural Background

[Article 101](#) of the Treaty on the Functioning of the European Union (TFEU) and [Article 53](#) of the EEA Agreement prohibit cartels and other restrictive business practices.

The Commission's investigation in this case started in September 2013, with an immunity application under the Commission Leniency Notice submitted by UBS, which was followed by applications for reduction of fines by other parties.

The Commission will continue pursuing other ongoing procedures concerning past conduct in the Forex spot trading market.

Fines imposed on companies found in breach of EU antitrust rules are paid into the general EU budget. This money is not earmarked for particular expenses, but Member States' contributions to the EU budget for the following year are reduced accordingly. The fines therefore help to finance the EU and reduce taxpayers' contributions.

More information on this case will be available under the case number AT.40135 in the [public case register](#) on the Commission's [competition website](#), once confidentiality issues have been dealt with. For more information on the Commission's action against cartels, see its [cartels website](#).

### The settlement procedure

Today's decisions are the 30<sup>th</sup> and 31st settlement decisions since the introduction of the settlement procedure for cartels in June 2008 (see [press release](#) and [MEMO](#)). In a settlement, companies acknowledge their participation in a cartel and their liability for it. Settlements are foreseen in [Antitrust Regulation 1/2003](#) and allow the Commission to apply a simplified and shortened procedure. This benefits consumers and taxpayers as it reduces costs. It also benefits antitrust enforcement as it frees up resources to tackle other suspected cartels. Finally, the companies themselves benefit in terms of quicker decisions and a 10% reduction in fines.

## **Action for damages**

Any person or company affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council [Regulation 1/2003](#) both confirm that in cases before national courts, a Commission decision constitutes binding proof that the behaviour took place and was illegal. Even though the Commission has fined the cartel participants concerned, damages may be awarded without being reduced on account of the Commission fine.

The [Antitrust Damages Directive](#), which Member States had to implement by 27 December 2016, makes it [easier for victims of anti-competitive practices to obtain damages](#). More information on antitrust damages actions, including a practical guide on how to quantify antitrust harm, is available [here](#).

## **Whistleblower tool**

The Commission has set up a tool to make it easier for individuals to alert it about anti-competitive behaviour while maintaining their anonymity. The tool protects whistleblowers' anonymity through a specifically-designed encrypted messaging system that allows two way communication. The tool is accessible via this [link](#).