

Second Substantive Meeting of the
2023 Working Group on Cross-border Cartels

25 April 2023

Presentation:

AT.40135

Forex 'Sterling Lads'

Ordinary and Settlement Decisions

European Commission, DG Competition - Brussels,

Belgium

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UNCTAD

Working Group on Cross-border Cartels

Brussels, 25 April 2023

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Forex '*Sterling Lads*'

Ordinary and Settlement Decisions

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Background (I)

South Africa

Questions of 28.02.2023

1. Can South African competition authorities act against foreign banks, that are not domiciled in South Africa or have a physical presence of some form but are found to have **contravened South African competition laws through their cross-border conduct?**
2. How will the **enforcement** by South African competition authorities work against foreign banks that have not committed to their jurisdiction?

INTRODUCTION (I)

Type of
case

Cartel investigation

Sector
concerned

Financial sector: Banking

Parties

5 International Banks

Internatio
nal reach

Foreign exchange spot trading activities are one of the **largest financial markets in the world**. The case focused on the trading of the G10 currencies, the **most liquid and traded currencies worldwide**.



European
Commission

Overview of the FOREX file

Foreign Exchange Spot Trading of G10 Currencies (Forex)



FOREX (Sterling Lads)

Sterling Lads

The *FOREX (Sterling Lads)* case involves two infringement procedures running in parallel:

- an ordinary Decision addressed to Credit Suisse
- a settlement Decision addressed to UBS, Barclays, RBS and HSBC

3WB & EE

The Forex file includes two other cartel infringements: (i) the *Three Way Banana Split* and (ii) the *Essex Express*.

The settlement decisions in these cases were adopted on 16 May 2019.

Summary of the alleged infringement

Sector • Foreign exchange spot trading activity in **G10 currencies**

• **Traders' mandates covered all G10 currencies**

**G10
currencies**

11 currencies



Scope • FX spot trading activities in **G10 currencies** were **at least EEA-wide** in scope

Membership of the Sterling Lads chatroom

Membership • **8 FX G10 spot traders**

- Barclays
- HSBC
- UBS
- RBS
- Credit Suisse

Procedure

- 27/09/13** Immunity application submitted by UBS
- 27/09/13** Leniency applications submitted by RBS, Barclays, HSBC
- 9/11/16 –
7/02/18** Settlement meetings
- 5-28/02/18** Settlement submissions filed by UBS, RBS, Barclays, HSBC
- 19/02/18** Credit Suisse discontinues settlement procedure
- 24/07/18** Statement of Objections addressed to all (5) parties
- 18/03/21** Supplementary Statement of Objections addressed to Credit Suisse

Summary of the alleged infringement

Conduct

- **Exchanges of current or forward-looking commercially sensitive information**
- **According to a set of tacit rules, i.e. the “underlying understanding”**
- **Occasionally resorting to “standing down” when the disclosures revealed a risk of mutual interference**

A. Information exchanges (I)

Types of exchanges

- Exchanges of current and forward-looking commercially sensitive information raising concerns:
 1. Details of outstanding customers' orders
 2. Open risk positions
 3. Existing or intended bid-ask spreads
 4. Combination of the above

A. Information exchanges (II)

Exchanges retained

- **The exchanges retained:**
 - **Did not concern market colour**
 - **Went beyond what was required for trading with each other**
 - **Reduced the uncertainty inherent in competition so that the traders did not determine their conduct independently**

B. Instances of Coordination

Standing down

- The instances of coordination were occasional during the overall period of infringement

1. Standing down on 26 May 2011

2. Standing down on 14 June 2011

3. Standing down on 31 October 2011

Credit Suisse

- *Credit Suisse is not held liable for the instances of coordination/‘standing down’*

C. Underlying understanding

Tacit rules

1. The participating traders would gather in the private STG Lads Chatroom to disclose and exchange information throughout the trading day
2. The information exchanged in the chatroom would not be disclosed by the recipient traders to other competing traders outside the private chatroom
3. The information exchanged could be used to the benefit of the participating traders including to identify occasions appropriate for coordination
4. This information would not be used against those who shared it

***Credit
Suisse***

- *Credit Suisse is not held liable for the underlying understanding*

Infringements by object

**Agreements
and/or
concerted
practices**

- **Exchanges of information**
- **Underlying understanding**
- **Occasional instances of coordination
(‘standing down’)**

**Restriction
by object**

**Capable of affecting the basic competition
parameters in the FX spot trading:**

- **Price**
- **Expert risk management**

Single and continuous infringement

SCI

Three conducts (i) the extensive and recurrent exchanges of information, (ii) the occasional instances of coordination and (iii) the underlying understanding

- Single overall plan
 - ✓ Common anti-competitive objective
 - ✓ Steady frequency and type of the exchanges
 - ✓ High degree of continuity of the participating individuals and undertakings
- Intention to contribute and awareness

Duration of the infringement

UBS 25 May 2011 - 12 July 2012

Barclays 25 May 2011 - 12 July 2012

HSBC 25 May 2011 – 26 June 2012

UBS 5 August 2011 - 12 July 2012

**Credit
Suisse** 7 February 2012 - 12 July 2012

Fines (I)

	UBS	Barclays	RBS	HSBC
Type of decision	<i>SETTLEMENT</i>			
Conduct(s)	1) Exchanges of information 2) Standing down 3) Underlying understanding			
Duration	25 May 2011 – 12 July 2012		5 August 2011 – 12 July 2012	25 May 2011 – 26 June 2012
Aggravating/mitigating circumstances	No	No	No	Deterrence multiplier
Deterrence multiplier				
Application of 2006 Leniency Notice	Yes (immunity)	Yes (reduction)	Yes (reduction)	Yes (reduction)
Application of the Settlement Notice	Yes (10% reduction)			

Fines (II)

	Credit Suisse
Type of decision	<i>ORDINARY</i>
Conduct(s)	1) Exchanges of information
Duration	7 February 2012 – 12 July 2012
Aggravating/mitigating circumstances Deterrence multiplier	Mitigating circumstances
Application of 2006 Leniency Notice	No
Application of the Settlement Notice	No

FOREX file: Additional information

Press releases

Sterling Lads, [Commission fines UBS, Barclays, RBS, HSBC and Credit Suisse € 344 million for participating in a Forex spot trading cartel](#), 2 Dec. 2021

Three Way Banana Split and Essex Express, [Commission fines Barclays, RBS, Citigroup, JPMorgan and MUFG €1.07 billion for participating in foreign exchange spot trading cartel](#), 16 May 2019

Summaries

Sterling Lads, [Summary of Commission Decision](#), 6 May 2022

Three Way Banana Split and Essex Express, [Summary of Commission Decision](#), 9 July 2020

Decisions

Sterling Lads, [Ordinary decision](#) and [Settlement decisions](#), 2 Dec. 2021

Three Way Banana Split, [Decision](#), 16 May 2019

Essex Express, [Decision](#), 16 May 2019

EU Directives, Notices & Guidelines

Information exchanges

- Guidelines for the assessment of horizontal cooperation agreements (the “[Horizontal Guidelines](#)”, 2011 – currently under review)

Leniency

- Notice on immunity from fines and reduction of fines in cartel cases (the “[Leniency Notice](#)”)

Settlement

- Notice on the conduct of settlement procedures (the “[Settlement Notice](#)”)

Fines

- Guidelines on the method of setting fines (the “[Guidelines on fines](#)”)

Damages

- The [Antitrust Damages Directive](#), makes it easier for victims of anti-competitive practices to obtain damages.



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THANK YOU FOR YOUR ATTENTION