



Press and Information

General Court of the European Union  
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Judgment in Case T-180/15  
Icap and Others v Commission

## **The EU General Court annuls in part the Commission's decision against the Icap Group in the cartels relating to Yen interest rate derivatives**

*The Court takes the view that the Commission has not succeeded in proving that Icap participated in one of the cartels, that the duration found by the Commission of Icap's participation in three cartels was excessive and that it failed to provide sufficient reasons as regards the methodology for calculating the fine*

In 2013, the Commission imposed fines totalling €669 719 000 on the banks UBS, RBS, Deutsche Bank, Citigroup, JPMorgan and on the broker RP Martin for participating in in one or more cartels in the Yen interest rate derivatives sector.<sup>1</sup> The Commission uncovered seven distinct bilateral infringements lasting between 1 and 10 months in the period 2007 to 2010. The cartel concerned discussions between traders of the participating banks on certain JPY LIBOR submissions. The traders involved also exchanged, on occasions, commercially sensitive information relating either to trading positions or to future JPY LIBOR submissions. The aforementioned companies had admitted their involvement in the cartels, which allowed the Commission to settle the case with them.

The Icap Group, which, according to the Commission, facilitated six of the seven cartels discovered,<sup>2</sup> chose not to settle the case. Proceedings against it therefore continued under the normal procedure. By decision of 4 February 2015,<sup>3</sup> the Commission imposed on the Icap Group a fine of €14 960 000. Icap brought an action before the General Court to have the Commission's decision annulled.

By today's judgment, **the General Court annuls in part the Commission's decision.**

The General Court concludes first of all that the Commission did not commit an error of law or assessment in finding that the infringements alleged against Icap were restrictive of competition by their object.

The General Court then observes that, in the context of the bilateral cartel between UBS and RBS in 2008, the Commission did not succeed in proving that Icap was aware of RBS's role in that cartel. In the light of the available evidence, nor could the Commission reasonably conclude that Icap should have suspected that UBS's requests in 2008 were part of the implementation of collusion with another bank (RBS). **The General Court therefore annuls the part of the Commission's decision finding that Icap participated in the bilateral cartel between UBS and RBS in 2008.**

**The General Court takes the view moreover that the evidence adduced by the Commission does not warrant the duration of three of the cartels in which Icap is deemed to have participated.** Thus, the Commission has not succeeded in proving that Icap participated in the

<sup>1</sup> Decision C(2013) 8602 final of 4 December 2013 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39861 – Yen Interest Rate Derivatives).

<sup>2</sup> Namely the UBS/RBS 2007, UBS/RBS 2008, UBS/DB 2009, Citi/RBS 2010, Citi/DB 2010 and Citi/UBS 2010 bilateral cartels.

<sup>3</sup> Decision C(2015) 432 final of 4 February 2015 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39861 – Yen Interest Rate Derivatives).

UBS/RBS 2007 cartel after 22 August 2007,<sup>4</sup> in the Citi/RBS cartel between 5 March and 27 April 2010<sup>5</sup> and in the Citi/UBS cartel between 28 April and 18 May 2010.<sup>6</sup>

Furthermore, the General Court **emphasises that, in cases of ‘hybrid’ settlement procedures which do not concern all the participants in an infringement, the Commission must respect the presumption of innocence of the undertaking which has decided not to enter into a settlement.** By taking up a position as of its 2013 decision, adopted following the settlement procedure in which Icap did not participate, on Icap’s liability in respect of the ‘facilitation’ of the infringements concerned, the Commission infringed the presumption of Icap’s innocence. However, the General Court considers that that breach, which relates to the 2013 decision, cannot have a direct impact on the legality of the contested decision and that any lack of impartiality on the part of the Commission which might have stemmed from that breach did not, in the circumstances of the present case, have any effect on the content of the contested decision.

Lastly, the General Court finds that the Commission did not explain in its decision the methodology applied in order to determine the amounts of the fines imposed. **The General Court therefore annuls the part of the decision setting the fines because it is insufficiently reasoned.**

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery*

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<sup>4</sup> The Commission had found that this cartel lasted from 14 August until 1 November 2007.

<sup>5</sup> The Commission had found that this cartel lasted from 3 March until 22 June 2010.

<sup>6</sup> The Commission had found that this cartel lasted from 28 April until 2 June 2010.