



Press and Information

General Court of the European Union
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Judgment in Case T-105/17
HSBC Holdings plc, HSBC Bank plc, HSBC France v Commission

Fine imposed on HSBC group for anticompetitive practices in the interest rate derivatives sector is annulled

The General Court confirms in part the Commission's decision

The HSBC group is a banking group, and one of its activities is global banking and markets. HSBC Holdings is the parent company of HSBC France, which is the parent company of HSBC Bank. HSBC France and HSBC Bank are responsible for the negotiation of Euro Interest Rate Derivatives ('EIRDs'). HSBC France is responsible for submitting rates to the Euribor (Euro Interbank Offered Rate) panel.

Euribor is a set of benchmark interest rates intended to reflect the cost of interbank loans frequently used on the international capital markets. It 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 area.

In June 2011, the Barclays banking group made an application to the Commission to benefit from the Commission Notice on Immunity from fines and reduction of fines in cartel cases,¹ informing it of the existence of a cartel in the EIRD sector and expressing its wish to cooperate. On 14 October 2011, Barclays was granted conditional immunity.

Following inspections carried out at the premises of a number of financial institutions in London (United Kingdom) and Paris (France), including those of HSBC, the Commission initiated infringement proceedings against certain financial institutions, one of which was HSBC.

By decision of 7 December 2016,² the Commission found that Crédit Agricole, HSBC and JPMorgan Chase participated in a single and continuous infringement consisting of the restriction and/or distortion of competition in the EIRD sector.

On account of that infringement, the Commission imposed on HSBC a fine of €33 606 000.

By today's judgment, the Court largely upholds the Commission's finding that HSBC participated in an infringement of competition law. However, it annuls the fine imposed for insufficient reasoning.

In the first place, the Court examines HSBC's arguments contesting the Commission's finding of infringement by object. In that regard, the Court concludes that the Commission was right to find that the manipulation of 19 March 2007 in which HSBC participated fell within the definition of an infringement by object. By contrast, the Court holds that the Commission's finding concerning two discussions in which the HSBC traders had exchanged information on their trading positions with traders from other establishments was incorrect.

In the second place, the Court examines the pleas contesting the Commission's finding concerning HSBC's participation in a single and continuous infringement jointly with other establishments. In

¹ OJ 2006 C 298, p. 17.

² Decision C(2016) 8530 final of 7 December 2016 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (AT.39914 — Euro Interest Rate Derivatives).

the light of the circumstances in the present case, the Court concludes that HSBC's participation in such an infringement could be upheld only in respect, first, of its own conduct in that infringement and, second, of the conduct of other establishments forming part of the manipulation of 19 March 2007 and any potential repeat of that manipulation.

In the third place, with regard to the fine imposed, HSBC contests, *inter alia*, the reasoning for determining the value of the sales used as the basis for calculating the fine.

The Court points out that since the Commission decided to determine that value by using a figures-based model, taking as its starting point all the cash flows received under EIRDs, the reduction factor which it applied to it plays an essential role. It infers from this that it is necessary that the undertakings concerned be placed in a position to understand how it arrived at a reduction factor set precisely at 98.849% and that the Court be in a position to carry out an in-depth review, in law and in fact, of that factor of the contested decision.

The Court finds that the Commission did not provide in its decision a sufficient explanation of the reasons why the reduction factor was set at that precise level, and therefore it is unable to conduct its review on a factor of the decision which could have had a significant effect on the fine imposed on HSBC. It therefore annuls the fine for insufficient reasoning.

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 and ten days 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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355