Antitrust: Commission sends Statement of Objections in US Dollar supra-sovereign, sovereign and agency bond trading cartel

The Commission has concerns that at different periods between 2009 and 2015, the four banks exchanged commercially sensitive information and coordinated on prices concerning US dollar denominated supra-sovereign, sovereign and agency bonds, known as “SSA bonds”. These contacts would have taken place mainly through online chatrooms.

If the Commission’s preliminary view were confirmed, such behaviour would violate EU rules that prohibit anticompetitive business practices such as collusion on prices (Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement).

The Commission’s investigation relates to conduct by certain traders at the four banks and does not imply that the alleged anti-competitive conduct was a general practice amongst SSA bond traders.

The sending of a statement of objections does not prejudge the outcome of an investigation.

Background on bond markets

Bonds are debt securities paying a defined rate of interest, which enable entities to raise funds in international financial markets, and which are subsequently held as investments or traded like any other financial instrument.

Bonds are first issued on the “primary market” for sale to investors through auctions or syndicates. Subsequently, bonds are traded between banks, brokers and investors on the “secondary market”. Bonds can be distinguished by the identity of the issuer and the currency in which they are denominated. The trading desks of banks are organised accordingly. “SSA bonds” is an umbrella term for three types of bonds:

(i) Supra-sovereign bonds issued by supranational institutions or agencies, for example the European Investment Bank;

(ii) Sovereign bonds issued by central governments under another law than their domestic law and/or in other currencies than domestic currencies (e.g. bonds issued in US Dollars by European governments); and

(iii) Agency (sub-sovereign) bonds issued by government-related agencies and public authorities below the level of national government, for example regional development banks.

Background on procedure

A Statement of Objections is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission informs the parties concerned in writing of the objections raised against them. The parties can then examine the documents in the Commission's investigation file, reply in writing and request an oral hearing to present their comments on the case before representatives of the Commission and national competition authorities.

If, after the parties have exercised their rights of defence, the Commission concludes that there is sufficient evidence of an infringement, it can adopt a decision prohibiting the conduct and imposing a fine of up to 10% of a company's annual worldwide turnover.

There is no legal deadline for the Commission to complete antitrust inquiries into anticompetitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Commission and the exercise of the rights of defence.

More information on this case will be available under the case number AT.40346 in the public case register on the Commission's competition website.

EIOPA publishes second annual report on the use of capital add-ons under Solvency II

The European Insurance and Occupational Pensions Authority (EIOPA) published today its second annual report on the use of capital add-ons by national competent authorities (NCAs) under Solvency II. The objective is to contribute to a higher degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States and to highlight any concerns regarding the capital add-ons framework. The analysis is based on 2017 year-end Solvency II data.

Albeit a slight increase in the use of capital add-ons can be seen, the overall usage remains extremely limited. During 2017 six NCAs have set capital add-ons to 23 solo insurance and reinsurance undertakings. This limited usage might be due to the negative image that is attributed to capital add-ons or to the level of judgement that is associated to the decision and calculation of the capital add-ons which in turn inhibits

supervisors from using it.

Even if the capital add-ons are not used often, when used they have indeed a material impact on the Solvency Capital Requirement (SCR) of some of the entities. The weight of the capital add-on ranges from a low 1 % to a high 83 % respectively with an average of 30 % of the total SCR.

The capital add-on seems to be a good and positive measure to adjust the SCR to the risks of the undertaking, when the application of other measures is not adequate – such as the development of an internal model – as in 18 cases the capital add-on was already set in 2016.

EIOPA will continue to analyse the development on the use of capital add-ons in the years to come to monitor whether more experience will encourage NCAs to make more efficient use of this tool, which seems to have been hampered by various difficulties until today.

The report can be obtained via EIOPA's Website.

ESMA to renew restrictions on CFDs for a further three months from 1 February 2019

ESMA has carefully considered the need to extend the intervention measure currently in effect. ESMA considers that a significant investor protection concern related to the offer of CFDs to retail clients continues to exist. It has therefore agreed to renew the measure from 1 February 2019 on the same terms as the previous renewal decision that started to apply on 1 November 2018.

Renewal of restriction on CFDs

The renewal was agreed by ESMA's Board of Supervisors on 18 December 2018 and includes renewing the following:

1. Leverage limits on the opening of a position by a retail client from 30:1 to 2:1, which vary according to the volatility of the underlying:

- 30:1 for major currency pairs;
- 20:1 for non-major currency pairs, gold and major indices;

- 10:1 for commodities other than gold and non-major equity indices;
- 5:1 for individual equities and other reference values;
- 2:1 for cryptocurrencies;

2. A margin close out rule on a per account basis. This will standardise the percentage of margin (at 50% of minimum required margin) at which providers are required to close out one or more retail client's open CFDs;

3. Negative balance protection on a per account basis. This will provide an overall guaranteed limit on retail client losses;

4. A restriction on the incentives offered to trade CFDs; and

5. A standardised risk warning, including the percentage of losses on a CFD provider's retail investor accounts. The standardised risk warning will continue to allow use of the additional abbreviated risk warning introduced in the previous renewal decision for cases where the standard terms of a third party marketing provider have a character limit which is lower than the number of characters comprising the full or the abbreviated risk warning, provided that the advertisement also links to a webpage of the provider on which the full risk warning is disclosed.

Next steps

ESMA intends to adopt the renewal measure in the official languages of the EU in the coming weeks, following which ESMA will publish an official notice on its website. The measure will then be published in the Official Journal of the EU and will start to apply from 1 February 2019 for a period of three months.

More accessible products and services for EU citizens: Council approves the provisional agreement with the European Parliament

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Today the Council’s Permanent Representatives Committee approved the provisional agreement reached with the European Parliament on 8 November 2018 on the proposal for a European Accessibility Act (EAA). The proposal aims at making various products and services in the European Union more accessible for persons with disabilities. It is thought that more than 80 million people in the EU are affected by some degree of disability.

> The new rules will bring benefits not only to tens of millions of Europeans, but also to many elderly people in the Union. Businesses will be able to provide services or to manufacture, sell or import products across the EU benefiting from uniform requirements at EU level.
>
> *Beate Hartinger-Klein, Federal Minister of Labour, Social Affairs, Health and Consumer Protection of Austria*

The European Accessibility Act includes accessibility requirements for key products and services such as:

- phones, computers, payment terminals or self-service terminals for buying passenger transport tickets;
- consumer banking services;
- electronic communications services, including for example phone and Internet services;
- the 112 emergency number calls;
- access to audio-visual media services;
- e-books;
- e-commerce.

The directive also includes common accessibility requirements on the user interface and functionality design of products, as well as more specific accessibility requirements for some electronic consumer equipment. For consumer products covered by the directive, packaging, installation instructions and other product information are to be accessible.

In the case of services, there are some common requirements (e.g. on webpages) and, in addition, service-specific requirements. The directive requires that support services should also be accessible.

Some examples of more specific accessibility requirements included in the directive are: self-service terminals, such as, for instance, ticketing machines or ATMs, will have to provide the possibility to use personal headsets so that visually impaired persons be able to follow audio instructions. Where a self-service terminal provides for visual modes of operation, it shall provide at least one mode of operation that does not require user perception of colour.

Micro-enterprises /fewer than 10 employees and an annual turnover below €2 million/ that provide services are exempted from the directive and those providing products will be exempted from some obligations. As a whole, the directive avoids imposing a “disproportionate burden” on the economic

operators.

Background and next steps

The Commission presented its proposal in December 2015. The negotiations between the Council and the European Parliament started in March 2018 and ended with a provisional agreement on 8 November 2018. Following today's approval of the agreement by the Permanent Representatives Committee, the directive will be sent to the European Parliament for adoption in the plenary. The final adoption in the Council is planned to take place in a Council meeting next year.

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