

Report on the Outcomes of the Manipulation of the Rand Hearings

Presentation to the Standing Committee of Finance

DATE: 24 November 2023

a growing, deconcentrated and inclusive economy



competition commission
south africa

Outline

- 1. *About the Commission***
- 2. *Strategic Focus of the Commission***
- 3. *Cartel Enforcement***
- 4. *Initiation***
- 5. *Investigation Findings***
- 6. *The Complaint Referral***
- 7. *Leniency and Settlements***
- 8. *Moving Forward***

About the Commission



- The Competition Commission South Africa is a statutory body constituted in terms of the Competition Act, No. 89 of 1998 (the “Act”). It is one of three, independent competition regulatory authorities established in terms of the Act, with the other two being the Competition Tribunal and the Competition Appeal Court.
- The Commission is the investigative and enforcement agency, a functionally-independent institution that is administratively accountable to the Department of Trade Industry and Competition. The Commission is empowered by the Competition Act to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy.

Strategic Focus of the Commission



Vision, Mission and Goals

Vision

A Growing, Deconcentrated and Inclusive Economy

Mission

To promote and maintain competition and advance public interest objectives to enhance economic participation for all South Africans

Goals

1. Enforcing and regulating towards economic growth and enhanced economic participation.
2. Advocating for improved compliance and pro competitive public policy.
3. A people centric high-performance Agency.

Priority Sectors of the Commission

1. Agriculture, Food & Agro-processing
2. ICT & Digital Markets
3. Energy
4. Transport & Automotive
5. Construction services, Property & Infrastructure
6. Banking & Financial Services
7. Manufacturing
8. Healthcare

Cartel enforcement



- Section 21(1)(c) and (g) of the Competition Act authorises the Commission to investigate and prosecute contraventions of the Act including cartel conduct.
- Cartel conduct is set out in section 4(1)(b) of the Competition Act and consists of
 - price fixing
 - market allocation; and
 - collusive tendering or bid rigging
- The forex cartel involving the banks concerns price fixing and market allocation.

About the Initiation



- **On 1 April 2015**, the Commission initiated a complaint against Barclays, Barclays Africa (a subsidiary of Barclays), BNP, BNP SA (a subsidiary of BNP), Citigroup, Citigroup Global (a subsidiary of Citigroup), JP Morgan, JP Morgan SA (a subsidiary of JP Morgan), Investec, Standard NY, Standard Chartered Bank (“the initial complaint”)
- **On 23 August 2016**, the Commissioner amended the initiation to include ABSA Bank Limited, Barclays Capital Inc, Standard Bank Limited, Credit Suisse Group; Commerzbank AG; Bank of America Merrill Lynch International Limited, HSBC Bank Plc; ANZ, Citibank N.A, JP Morgan, Nomura International Plc., Macquarie Group and JP Morgan Chase Bank N.A as additional respondents (“the amended complaint”).

The Commission Investigation findings



- The Commission found that the banks manipulated USD/ZAR currency pair by fixing bids; offers; bid-offer spreads; the spot exchange rate; and the exchange rate at the FIX.
- Further, the Commission found that the banks divided markets by allocating customers in terms of which one trader withholds or pulls his/her existing bid or offer from the market to allow the other trader to execute and complete his/her trade.
- This conduct contravenes section 4(1)(b)(i)& (ii) of the Competition Act, 89 of 1998, as amended.
- A number of the global banks had pleaded to such conduct in a case brought within the USA
- The effect of the conduct is exacerbated by the fact that the volume of forex trading daily is extremely high and the forex cartel lasted for at least 6 years. The extent of the ZAR value impacted by this cartel will be dealt with in the Tribunal.

Engagements with other Regulators



- Upon conclusion of the investigation, the Commission engaged the South African Reserve Bank, the Prudential Authority and the Financial Sector Conduct Authority (formerly the Financial Services Board)
- The regulators in the financial sector are fully briefed on the matter.
- It was however determined in these engagements that the Commission's investigation and prosecution should take its course and further collaborative steps will be taken upon a final determination by the Competition Tribunal.

The Complaint Referral



- On 15 February 2017, the Commission referred the matter against all the banks to the Competition Tribunal (Tribunal) for prosecution.
- Instead of answering to the complaint referral, the banks challenge the referral at the Tribunal. On 12 June 2019, Tribunal dismissed the banks challenges to the complaint referral.
- The banks appealed the Tribunal Order dismissing their challenges to the Competition Appeal Court (CAC).
- On 28 February 2020, the CAC delivered a judgment dismissing the appeals of the banks and ordering the Commission to file a new complaint referral.

The Complaint Referral (Cont.)

- In June 2020, the Commission filed a new complaint referral with the Tribunal. The banks, once again decided not to answer to the new complaint referral, instead challenged the new referral at the Tribunal.
- On 30 March 2023, the Tribunal issued an Order directing the banks to file their answers to the new complaint referral.
- The challenges by the banks of the new complaint referral were heard by the CAC from 13 to 16 November 2023.
- The Commission opposed these challenges. To date the banks have yet to provide answering affidavits

Leniency and settlements



- **28 banks that participated in the cartel:**
 - 3 out of the 28 banks, viz. Barclays Plc, Barclays Capital and ABSA Bank Limited were granted leniency from prosecution.
 - 2 banks, viz. Citibank N.A and Standard Chartered Bank settled their cases with admission of liability and payment of penalties.
 - Citibank N.A admitted liability and paid R R69 500 860 in April 2017.
 - Standard Chartered Bank admitted liability and paid R42 715 880, heard on 15 November 2023.
 - The total penalty amount in this matter to date is **R112 216 740**
 - All the 5 banks are cooperating with the CCSA in the prosecution of the remaining 23 banks

Administrative penalty determination



- The settlement penalty or administrative penalty is based on the firm's annual turnover in the Republic.
- It is governed by Section 59 (1)(a) of the Competition Act which provides that the Tribunal may impose an administrative penalty for prohibited practice in terms of section 4(1).....
- Section 59 (2) - provides that an administrative penalty imposed in terms of subsection 1 may not exceed 10% of the firm's annual turnover in the Republic of its export from the Republic.
- Section 59 (2A) increases the administrative penalty to 25% annual turnover for a repeat offence.
- Any settlement is subject to oversight and approval by the Competition Tribunal
- Standard Chartered Bank settlement penalty of **R42.7 million** is based on their South African annual turnover

Moving Forward

- The matter remains in litigation
- We await the CAC's decision on the requirement banks for parties to answer the referral affidavit and the next steps will be guided by that decision
- The Commission will continue to prosecute but invites settlement discussions from respondent banks

Thank You