competition commission south africa

Presentation to the Portfolio Committee of Trade, Industry and Competition on the Constitutional Court judgment on the Forex matter

19 August 2026

Outline

1. The Investigation
2. Allegations
3. The Commission's Findings
4. Leniency and settlements
5. Litigation of the Complaint
6. New Complaint Referral
7. Constitutional Court Judgment
8. Way Forward on the Prosecution
9. Proposals on Legislative Reforms

The Investigation

On 1 April 2015, and 23 August 2016 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; and 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 respectively.

Allegations

- The Commission alleged that:
  - the banks have manipulated USD/ZAR currency pair by fixing bids; offers; bid-offer spreads; the spot exchange rate; and the exchange rate at the FIX.
  - the banks have 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.
- The alleged conduct is in contravention of section 4(1)(b)(i)& (ii) of the Competition Act, 89 of 1998, as amended (the Competition Act).

The Commission's Referral

- The Commission investigated the matter and found that the conduct by the banks contravened section 4(1)(b)(i)&(ii) of the Competition Act.
- The Commission found that 28 banks are forex traders, who buys and sells money. These banks are either buying or selling USD with ZAR or ZAR with USD.
- The Commission found that the cartel entailed:
  - the fixing of buying and selling price of these currencies, and
  - traders taking turns to buy or sell currencies or giving each other opportunity to buy or sell currencies without interference from competition.
- On 15 February 2017, the Commission referred the matter against all the banks to the Competition Tribunal (Tribunal) for prosecution.

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 in November 2023.
- The total penalty amount in this matter to date is **R112 216 740**.

Litigation of the Complaint

- Following referral of the complaint to the Tribunal, the banks challenged 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.

New Complaint Referral

- In June 2020, the Commission filed a new complaint referral with the Tribunal. The banks, once again challenged the new referral at the Tribunal.

- On 30 March 2023, the Tribunal issued an Order directing all the banks to file their answers to the new complaint referral.

- The banks challenged the Tribunal decision at the CAC, the Commission challenged the decision, and the CAC heard the matter from 13 to 16 November 2023.

CAC Judgment

- On 8 January 2024, the CAC ruled in favour of 16 of the banks upholding their appeals and dismissal applications.
- The Commission filed application for leave to appeal with the Constitutional Court against the CAC judgment.
- Credit Suisse Securities (USA) LLC, HSBC Bank plc and BNP Paribas cross-appealed.
- The appeal and cross-appeals were heard by the Constitutional Court between 19 and 21 August 2025.
- On 30 June 2026, the Constitutional Court delivered its judgment.

Constitutional Court Judgment

- The Constitutional Court pronounced on the following important legal and procedural principles:
  - The competition authorities have jurisdiction to prosecute international or cross-border cartels.
  - "at the level of pleading, the Single Overarching Conspiracy (SOC) case may go ahead in respect of BNP, JPM Chase, JPM Bank, HBEU, Standard Americas and the two Investec entities.
  - The pleaded SOC will also include the five banks which have settled with the Commission or been granted leniency, which are Barclays Plc, Barclays Capital and ABSA Bank Limited; and Citibank N.A and Standard Chartered Bank.
- Therefore, the Constitutional Court cleared the way for the Commission's referral to proceed in respect of twelve banks, seven of which the Commission may continue to prosecute. The Court released some of the banks mainly on the basis that the Commission did not provide adequate evidence to link them to the SOC.

Constitutional Court Judgment (Cont.)

- The Court further:
  - Confirmed that the Commission can join new respondents at any stage during prosecution proceedings before the Competition Tribunal.
  - Affirmed the principle that the complaints are initiated against prohibited practices (the conduct), not specific firms.
- On exceptions and objections, the Court held that all pleaded facts by the Commission must be assumed as proven to be true.
- On the interpretation of section 3(1) of the Competition Act, the Court did not decide this aspect of the Commission's case, it held that the Commission could approach the Court in another case raising the same issue.

Constitutional Court Judgment (Cont.)

- The Commission partly won the appeal.
- The Constitutional Court ruled in the Commission's favour in respect of the following banks:
  - Standard Americas, JP Morgan Chase, HSBC Bank plc and BNP Paribas.
- The Constitutional Court ruled the Commission can prosecute the following banks:
  - BNP Paribas; JP Morgan Chase; JP Morgan Bank; HSBC Bank plc; Standard Americas; Investec Bank and Investec Limited.

Constitutional Court Judgment (Cont.)

- The Constitutional Court ruled against the Commission in respect of the following banks:
    - Credit Suisse Securities (USA) LLC, Bank of America Merrill Lynch International Dac, New Zealand Banking Group Limited, Nomura International Plc, Commerzbank AG, Macquarie Bank Limited, HSBC Bank USA NA, Merrill Lynch Pierce Fenner and Smith Incorporated, Bank of America NA, Standard Bank of South Africa Limited, Nedbank Limited and FirstRand Bank Limited.

Way Forward on the Prosecution

- The Constitutional Court judgment clears the way for the Commission to proceed with the prosecution of the following banks at the Tribunal, -
  - BNP Paribas;
  - JP Morgan Chase;
  - JP Morgan Bank;
  - HSBC Bank plc;
  - Standard Americas;
  - Investec Bank and Investec Limited.
- The Commission will be assisted by Citibank N.A and Standard Chartered Bank, (who have settled the matter with the Commission), and Barclays Plc, Barclays Capital and ABSA Bank Limited (who are the leniency applicant).

competition commission south africa

Tel: +27 (0)12 394 3200

Fax: +27 (0)12 394 0166

Email: CCSA@compcom.co.za

Twitter: @CompComSA

Facebook: Competition Commission South Africa