
General Court overturns the Commission's fine in EURIBOR cartel

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In 2016, the European Commission fined three global banks for their participation in an interest rate derivatives cartel. The General Court has now annulled the fine imposed on one of the banks, HSBC, on the ground that the Commission's reasoning when calculating the amount of the fine was insufficient.

General Court's decision of 24 September 2019 in case T-105/17,
HSBC vs the Commission

By assistant attorney Simon Christensen

On 24 September 2019, the General Court annulled the fine imposed by the Commission on HSBC, amounting to EUR 33.6 million, on the ground that the reasons given by the Commission when determining the amount of the fine were insufficient. However, HSBC did not succeed in its claim that HSBC's behaviour did not amount to a competition law infringement at all.

The EURIBOR cartel

On 7 December 2016, the European Commission imposed fines on three international banks - Crédit Agricole, HSBC and JP Morgan Chase. The banks were fined EUR 485 million in aggregate for having fixed the price of the EURIBOR rate and for having exchanged confidential information. Read more about the Commission's decision in one of [our previous news articles](#).

The Commission's fine on HSBC amounted to EUR 33.6 million. Normally, such fine would be based on the cartel participant's revenue in the last full financial year in which the participant was active in the cartel. In this case, however, the fine was based on the cash receipts generated by the cash flows that each bank received from their portfolio of Euro Interest Rate Derivatives. This amount was then reduced by a uniform factor for all cartel participants, intended to take into account i.a. that incoming payments were to be set off against outgoing payments and that prices vary a lot.

The Court's annulment of the fine

HSBC appealed the Commission's decision to the General Court, disputing 1) that the infringement had as its object to restrict competition, 2) that HSBC had participated in the anti-competitive practices, and 3) that the Commission's reasoning when calculating the amount of the fine was sufficient.

The Court agreed with the Commission that the infringement had as its object to restrict competition, and that HSBC had participated in the anti-competitive practices. As for the determination of the fine level, however, the Court agreed with HSBC that the reasoning applied by Commission for the cash flow reduction factor was inadequate.

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In these circumstances, the General Court annulled the Commission's fine. For a fined party to be able to assess whether the basis of the fine is correct or whether it may be disputed, the reasoning applied must be sufficiently clear. That is what is reflected in the General Court's decision.

[Read the General Court's decision of 24 September 2019](#)