

In May 2015, the Competition Commission of South Africa (CCSA) lodged an investigation into cartel conduct by major banks in the foreign currency exchange market affecting the South African rand. The CCSA alleges that certain banks have colluded to fix prices in currency pairs involving the rand.<sup>1</sup> The banks alleged to be involved in the collusive arrangement, called the “ZAR domination” include BNP Paribas, BNP Paribas South Africa, CitiGroup Inc, Citigroup Global Markets (Pty) Ltd, Barclays Bank Plc, Barclays Africa Group Ltd, JP Morgan Chase & Co, JP Morgan South Africa, Investec Ltd, Standard New York Securities Inc and Standard Chartered Bank.<sup>2</sup> The above traders in foreign currencies are under investigation for directly or indirectly fixing prices on bids, offers and bid-offer spreads with regard to spot, futures and forwards currency trades.<sup>3</sup> The CCSA alleges that this conduct is anti-competitive in nature, breaching section 4(1)(b)(i) of the Competition Act No. 89 of 1998. This arrangement is facilitated through electronic messaging platforms used in foreign currency trading, which allow the banks to coordinate and share information regarding their trading activities and charge a stipulated price for a given amount of foreign currency. The conduct under investigation has the effect of distorting foreign exchange prices and artificially inflating the cost of trading in foreign currency, in relation to the rand.<sup>4</sup>

There have been several investigations globally by competition authorities into cartel conduct in foreign exchange markets. Barclays, JP Morgan, Citigroup, Royal Bank of Scotland and UBS were issued heavy penalties amounting to \$5.7 billion in the United States and United Kingdom, following their involvement in the manipulation of the foreign exchange markets.<sup>5</sup> However, it is becoming clear that there are difficulties in detecting these practices in forex markets.<sup>6</sup> An important aspect of financial markets is the ability to collect and publicise information as part of ensuring efficient and transparent markets. However, this sharing of information can result in arrangements which closely mirror anticompetitive information sharing and price fixing especially in cases where banks use such information to determine each other's strategy. Hence, there is a very fine line between bank collusion and market research in the forex space, which raises the question: how do banks do market research or intelligence research without colluding? This implies a role for financial regulators in regulating the exchange of competitively sensitive commercial information. This follows the concern that the disclosure and receipt of non-public pricing information by competitors is likely to contravene competition law especially in instances where competitors are caused to change the way they conduct business in future based on the information received.<sup>7</sup> Lastly, advancements in technology enhances the

possibility and ease of information sharing as in the case of electronic messaging platforms.

The Financial Conduct Authority (FCA) in the UK issued their largest financial penalty in history to Barclays Bank (just more than 280 million pounds) for manipulating the foreign exchange rate. Barclays was found to have been involved in inappropriate sharing of information and manipulation of the spot foreign currency exchange rate.<sup>8</sup> Barclays shared information with other banks using electronic messaging systems, facilitating price fixing through helping traders to determine each other's trading strategies. Barclays unlawfully made huge profits by manipulating the price of currency rates in the market, through making sure that the price at which the bank agreed to sell a particular currency to the market exceeded the average rate at which the bank had bought the same currency in the market. The FCA found Barclays guilty of inappropriate sharing of confidential information in the spot foreign currency exchange market. The disclosure of such information gave other market participants additional information with regard to Barclays' trading activities, which altered their behaviour.<sup>9</sup>

In response to the above challenges, the UK financial regulators, the Fair and Effective Markets Review (FEMR), in June 2015 introduced legislative change meant to prohibit the manipulation of foreign exchange markets in addition to setting up a market standards body meant to oversee the banks' operations.<sup>10</sup> The additional laws are meant to tighten existing loopholes and regulatory gaps which previously made it possible for the banks to manipulate the foreign exchange market. In addition to record fines for banks, the authorities intend to take further personal sanctions against individuals involved in price fixing beyond senior executives and non-key executives.

The United States Department of Justice (USDOJ) also carried out investigations into collusion affecting foreign exchange markets with a particular emphasis on the spot market for trading U.S. dollars and Euros. This process saw the prosecution of five major banks - Citicorp, JPMorgan Chase & Co., The Royal Bank of Scotland, UBS AG, and Barclays PLC -- by the U.S Criminal and Antitrust division in May 2015.<sup>11</sup> Together, these banks account for 25% of annual dollar-euro exchange rate transactions in the US. The respondents admitted to parent-level guilty pleas, and the USDOJ issued unprecedented criminal penalties of more than \$2.5 billion and three years' probation, during which time the authorities would monitor the banks' efforts to effectively implement compliance programs.<sup>12</sup>

The Competition Commission of South Korea is currently undertaking investigations into price fixing of foreign exchange

rates by global banks involving Bank of America, Citigroup, JP Morgan Chase, Royal Bank of Scotland and UBS. This investigation came after the commission alleged that foreign currency price fixing by global banks negatively affected South Korean firms.<sup>13</sup> The investigation is centred on determining whether the manipulation of the price of US dollars and Euros including in derivative markets negatively affected South Korean financial institutions and firms.<sup>14</sup>

Prices of foreign currencies matter to all sectors of the economy, including consumer groups and producers. Price fixing cartels facilitate the creation of market power for players in

the financial market and the maintenance of such positions for long periods of time. This has the effect of eliminating smaller players in the market and heightening barriers to entry.<sup>15</sup> In addition, manipulation of exchange rates artificially creates high prices for local firms and manufacturers who source key industrial inputs from international markets. This has the effect of raising costs of production or even rationing the amount of output produced. These practices in financial markets also have the effect of making products and services, including various financial products, more expensive for the consumer.<sup>16</sup>

## Notes

1. [‘Competition Commission probes foreign currency traders for price fixing’](#) (19 May 2015). *CCSA Media Release*.
2. See note 1.
3. See note 1.
4. See note 1.
5. The Guardian. [‘Five banks fined over foreign exchange scandal’](#) (20 May 2015). *The Guardian*.
6. Binham, C. [‘Financial regulators target high profile cases’](#) (14 June 2015). *The Financial Times*.
7. McGrath, B., Reddy, T., and Proctor, C. ‘Too much information! Recent competition law cases in the banking sector’ (July/August 2014). *Butterworths Journal of International Banking and Financial Law*.
8. Financial Conduct Authority (FCA). [‘FCA fines Barclays £284,432,000 for forex failings’](#) (20 May 2015).
9. See note 8.
10. Jenkins, P. [‘Review to seek new laws banning manipulation of markets’](#) (8 June 2015). *Financial Times*.
11. US Department of Justice. [‘Five major banks agree to parent-level guilty pleas’](#) (20 May 2015).
12. US Department of Justice. [‘Assistant Attorney General Bill Baer Delivers Remarks at a Press Conference on Foreign Exchange Spot Market Manipulation’](#) (20 May 2015).
13. AFP. [‘South Korea probes forex market rigging by global banks’](#) (17 June 2015). *Seoul Economic Daily*.
14. See note 13.
15. See note 12.
16. [‘Price fixing and its impact on communities’](#). Third Anti-Corruption Summit.