



EUROPEAN COMMISSION

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Statement on CDS (credit default swaps) investigation

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

Press statement

Brussels, 1 July 2013

Today the Commission is sending its objections to some of the world's largest investment banks as well as two bodies that they control, Markit and the International Swaps and Derivatives Associations (ISDA). The sending of this statement of objections is a key step in our ongoing antitrust investigation into credit default swaps, which we opened in April 2011.

The banks involved are Bank of America Merrill Lynch, Barclays, Bear Stearns (now part of JP Morgan), BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, UBS and the Royal Bank of Scotland.

Following our investigation, we have reached the preliminary conclusion that these companies may have breached EU antitrust rules that prohibit anticompetitive agreements. More precisely, we consider that they may have coordinated their behaviour in order to jointly prevent exchanges from entering the CDS market between 2006 and 2009.

CDS are contracts allowing investors to reduce or eliminate the risk that a borrower will default on a loan or a bond. At the time, CDS were traded over the counter. This means that they were negotiated privately and bilaterally, rather than traded on exchanges. However, exchanges did try to enter this market. Indeed, Deutsche Börse and then the Chicago Mercantile Exchange (CME) attempted to launch central clearing and exchange trading of credit derivatives, for which there was already a widespread demand among investors.

To launch these exchange-traded credit derivatives, the exchanges needed licenses for data and index benchmarks. But ISDA and Markit refused to provide these licenses because - according to our findings at this stage of the investigation - the banks had instructed them not to do so. In addition, several investment banks sought to shut out exchanges in other ways, for example by coordinating among themselves the choice of their preferred clearing house. In the end, neither Deutsche Börse nor CME managed to enter the market.

Some of these events occurred before the financial crisis broke out in 2008, some later. Among other factors, this crisis was due to systemic risks. Risks of this type are intrinsic to over-the-counter trading: if one bank defaults, others are quickly affected. The bankruptcy of Lehman Brothers has shown how this mechanism is capable of destabilising the entire financial system. In contrast, when trading occurs through an exchange, counterparty risk is managed more strictly, especially because transactions are automatically settled in a central clearing house.

In sum, exchange-trading of credit derivatives improves transparency and market stability. But the banks acted collectively to prevent this from happening. They delayed the emergence of exchange trading of these financial products because they feared that it would reduce their revenues. This, at least, is our preliminary conclusion. If confirmed, such behaviour would constitute a serious breach of our competition rules.

As you know, the Commission is also engaged in wide-ranging regulatory efforts to make financial markets more transparent and reduce systemic risks. The EMIR regulation provides that standardised derivative contracts must be centrally cleared. In the review of the MIFID Directive the Commission also proposes that these derivatives should be traded on transparent and organised trading platforms. Our regulatory work also seeks to ensure that clear rules are in place for access to benchmarks.

Antitrust enforcement and action at the regulatory level pursue the same objective: ensuring that derivatives trading is safer and more transparent. This means, in particular, that companies that want to provide exchange trading should not be prevented to do so by the anticompetitive behaviour of others. This case illustrates that financial markets must remain open, competitive and fair so that they work at the service of the real economy and of society. This is particularly important for CDS, given the role that these products play in the financial sector – indeed, there are currently almost 2 million active CDS contracts with a joint notional amount of 10 trillion euros worldwide.

The banks that receive our statement of objections – as well as Markit and ISDA – now have the opportunity to defend themselves. Their rights to do so will of course be fully respected. We will look carefully at all their arguments before taking any decision.

If it is confirmed that banks collectively blocked exchanges from the CDS market, breaching the prohibition of anticompetitive agreements enshrined in the Treaty, it would be unacceptable and the Commission could decide to impose sanctions.