



EUROPEAN COMMISSION

PRESS RELEASE

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Antitrust: Commission sends statement of objections to 13 investment banks, ISDA and Markit in credit default swaps investigation

The European Commission has informed some of the world's largest investment banks of its preliminary conclusion that they infringed EU antitrust rules that prohibit anti-competitive agreements by colluding to prevent exchanges from entering the credit derivatives business between 2006 and 2009. The sending of a statement of objections does not prejudice the final outcome of the investigation.

Commission Vice President in charge of competition policy Joaquín Almunia said: *"It would be unacceptable if banks collectively blocked exchanges to protect their revenues from over-the-counter trading of credit derivatives. Over-the-counter trading is not only more expensive for investors than exchange trading, it is also prone to systemic risks."*

The statement of objections is addressed to Bank of America Merrill Lynch, Barclays, Bear Stearns, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, Royal Bank of Scotland, UBS as well as the International Swaps and Derivatives Association (ISDA) and data service provider Markit.

Between 2006 and 2009, Deutsche Börse and the Chicago Mercantile Exchange tried to enter the credit derivatives business. The exchanges turned to ISDA and Markit to obtain necessary licenses for data and index benchmarks, but, according to the preliminary findings of the Commission, the banks controlling these bodies instructed them to license only for "over-the-counter" (OTC) trading purposes and not for exchange trading. Several of the investment banks also sought to shut out exchanges in other ways, for example by coordinating the choice of their preferred clearing house.

The Commission takes the preliminary view that the banks acted collectively to shut out exchanges from the market because they feared that exchange trading would have reduced their revenues from acting as intermediaries in the OTC market.

Background on credit default swaps

A credit default swap ("CDS") is a derivative contract designed to transfer the credit risk (the risk of default), linked to a debt obligation referenced in the contract. CDS are used by investors for hedging and investing. As a hedge a CDS provides protection against the credit risk arising from holding debt instruments. As an investment vehicle CDS can be used to express a view on the future development of the debt issuer's creditworthiness and earn a profit if the view is correct.

In the period under investigation (2006-2009) CDS were traded over-the-counter (OTC), that is to say, they were privately and bilaterally negotiated. In OTC trading an investment bank typically acts as intermediary between supply and demand in the market for credit derivatives by promising to be a seller to every buyer and to be a buyer to every seller. Exchange trading, on the contrary, matches supply and demand on an exchange's trading platform. In respect of standardised and liquid credit derivatives exchange trading is less costly and safer than OTC trading. In June 2013, ICE has launched credit futures on its exchange. Whether this entry attempt will succeed is currently uncertain. The suspected anticompetitive behaviour investigated by the Commission occurred in the past and may have delayed exchange trading of derivatives.

In 2013, the gross notional value of the almost 2 million active CDS contracts exceeded € 10 trillion (source: DTCC). Given the importance of financial markets for the real economy, the Commission has been working to improve the regulation of CDS and other derivatives (see [MEMO/12/232](#) and [IP/11/1219](#)). The Commission's antitrust tools are complementary to these regulatory measures, which together seek to ensure safe, sound and efficient financial markets.

Background on the investigation

Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anti-competitive agreements.

The Commission opened the antitrust investigation in April 2011 (see [IP/11/509](#)) and extended its scope to ISDA in March 2013 (see [IP/13/286](#)).

A statement of objections is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission informs the parties concerned in writing of the objections raised against them and the companies can examine the documents in the Commission's investigation file, reply in writing and request an oral hearing to present their comments on the case in front of representatives of the Commission and national competition authorities.

If, after the parties have exercised their rights of defence, the Commission concludes that there is sufficient evidence of an infringement, it can issue a decision prohibiting the conduct and impose a fine of up to 10% of a company's annual worldwide turnover.

More information is available on the Commission's [competition website](#) in the public [case registry](#) under the case number [39745](#).

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