

Law Firms Ready to Pull the Trigger on FX Manipulation Claims

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Legal experts in London are edging closer to bringing civil court claims cases against a number of banks for their alleged role in manipulating the 4pm WM/Reuters Fix, despite the absence of a verdict from the European Commission's (EC) probe into the allegations.

The EC's decision regarding the alleged collusion to manipulate FX rates is important as it is binding on the national courts. Therefore, if the EC investigation returns a verdict that the banks did indeed manipulate the FX rates, then that will become a finding of fact that cannot be denied in any subsequent civil litigation.

"Essentially the question of liability is not an issue if you have that finding. Then the dispute tends to be around questions of causation and quantum, so as a general rule it's always better to wait for the decision," says Boris Bronfentrinker, a partner at Quinn Emanuel Urquhart & Sullivan.

However, Bronfentrinker says that these allegations around FX market manipulation might be an exception to this rule, given the evidence that is already in the public domain, such as transcripts of chat room conversations between traders at different banks.

"We're talking to clients about how best to proceed in this instance. We've been waiting for the conclusion of the Commission's investigation, but we may not continue to wait for them," he adds.

Andrew Bullion, a partner at Hausfeld in London, says that his firm is proceeding regardless of the EC investigation.

"We do not intend to wait for the EC decision, which we think will inevitably have a finding of infringement and inevitably will levy fines. We, however, are proceeding ahead with a timeline of our own. If coincidentally the EC decision happens before then, so much the better, because that makes things easier for us procedurally," he says.



Andrew Bullion, partner, Hausfeld

Targeting settlements

The UK's Serious Fraud Office (SFO) dropped their investigation regarding FX market manipulation last month, citing a lack of evidence necessary for prosecution. However, Bullion says that this has no bearing on the EC's decision and points out that the SFO was working to a much more strict evidentiary standard than will be required for a successful civil court case to be brought forward.

"The regulatory train is still rumbling down the tracks, gathering up evidence," says Bullion. "How close are we to bringing an action? Having the evidence of wrongdoing is only part of that, there's also the evidence of quantum and that can be even more complicated than proving wrongdoing. Evidence of damages is a very important and complex aspect of making sure that your case is airtight before you bring it."

Once firms like Quinn and Hausfeld start bringing cases forward, it is unlikely that anything will go to trial, with both firms confident of securing settlements.

"I don't think that the banks are going to roll over and start writing blank cheques, but if there's a willingness on the part of claimants to take a sensible settlement, then I think that the banks are likely to try and agree settlements. You get the sense right now that at least some of the banks are slightly weary of all the legal claims against them and slightly weary of all the negative publicity and attention they are providing," says Bronfentrinker.

But due to differences between the US and UK legal systems, Bronfentrinker says that the banks may behave differently when exploring settlement cases in Europe as compared to the US.

“The UK system is very different to the US in a number of important ways, such as the absence of treble damages, the absence of jury trials and that we have contribution between defendants. The ability to get contribution means that we don’t get the same type of behaviour from defendants in competition cases as you see in the US, where there is often a domino effect. In the US, firms hold the line, but once there’s a crack in the damn, then everyone tends to rush through because they don’t want to be the last one left there facing a large liability,” he explains.



**Boris Bronfentrinker, Partner,
Quinn Emanuel Urquhart & Sullivan**

Building evidence

In the UK, the defendants have the right of contribution against all the other co-cartelists in the case that have settled. According to Bronfentrinker, it is most common that when a settlement is reached, the parties agree that the value of the claim against the settling party is withdrawn from the rest of the claim, so that as each defendant comes out, the claim itself should get proportionally smaller and smaller.

There are also important differences in the legal framework under which the US and UK civil courts operate, which means that it takes longer to ring a case forward in the latter.

Specifically, Bullion says that the class action regime in the US allows a case of this size and complexity to progress more quickly, efficiently and inexpensively than the UK equivalent.

“The work with the clients, with the information that we have per client on this side takes demonstrably longer than doing so in a US class action, where the lead plaintiff aspect of that allows a bit of a foreshortening of the amount of work that goes into it and that work equates to time. So on this side of the Atlantic we are working client-by-client as opposed to working on one single case,” he explains.

Although the civil cases regarding FX market manipulation have been slower to come in the UK than in the US, there is no doubt that they are coming, and it appears that they are likely to come sooner rather than later.