



**competition commission**  
south africa

**Media Statement**

**For Immediate Release**

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**COMPETITION COMMISSION REFERS ITS CASE AGAINST BANKS FOR RAND MANIPULATION  
TO THE TRIBUNAL FOR PROSECUTION**

The Competition Commission has filed with the Competition Tribunal a new charge sheet (referral) against twenty eight (28) banks that are accused of manipulating USD/ZAR currency pair trading in line with the Competition Appeal Court (CAC) ruling which ordered that a new charge sheet be filed.

The case relates to collusion to fix prices and divide markets in respect of the USD/ZAR currency pair, in contravention of section 4(1)(b)(i) and (ii) of the Competition Act. Following its investigation, the Commission found that the banks directly and indirectly manipulated trade of the USD/ZAR currency pair in relation to Bids, Offers, Bid-offer spreads, the Spot Exchange Rate and the terms and/or margin of executing client orders at the FIX. The banks have also divided markets by allocating customers in the USD/ZAR currency pair.

This new referral follows the ruling by the CAC in February this year which dismissed the banks' appeal that sought to obtain an order dismissing the Commission's case against them. The main contention of the banks on appeal was that the competition authorities of South Africa do not have jurisdiction over their activities as they took place outside of South Africa, in New York City in particular. The CAC ordered, among other things, that the Commission must file a new referral to replace all the previous ones, and that the new referral must demonstrate that the behaviour of the banks to manipulate the USD/ZAR currency pair had a direct and immediate effect on the South African consumers and the economy.

The new referral provides more details on the operations of the currency manipulation cartel, its effects on South Africa, and expands the scope of the prosecution to include five (5) more banks. The new banks added are the Nedbank Group (constituted by Nedbank Limited and Nedbank Group Limited), Rand Merchant Bank (constituted by RMB Holdings Limited and FirstRand Bank Limited) and Standard Americas Inc.

"The banks must file their answers to these charges, which have now been further substantiated. These charges will not go away. Some of the individual traders involved in the currency manipulation have been dismissed, but their employers - the banks, are yet to be held accountable in South Africa. It is the

responsibility of the South African authorities to get to the bottom of these serious allegations about the manipulation of our currency, wherever it occurred” says Commissioner, Tembinkosi Bonakele.

**[ENDS]**

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## BACKGROUND

On 15 February 2017, the Competition Commission (“Commission”) referred a complaint against seventeen (17) banks accused of colluding to fix prices and divide markets in respect of the USD/ZAR currency pair, in contravention of section 4(1)(b)(i) and (ii) of the Act. The Commission found that banks directly or indirectly fixed prices in respect of the trade in the USD/ZAR currency pair in relation to Bids; Offers; and Bid-Offer spreads; the Spot Exchange Rate; and the terms and/or margin of executing client orders at the FIX. The banks also divided markets by allocating customers in the USD/ZAR currency pair.

The number of the banks implicated subsequently increased from 17 to 23. None of the banks have to date filed their answer to the merits of the case, instead, they filed exceptions challenging the Commission case against them. The main challenge by foreign banks was that the Commission and the Competition Tribunal (“Tribunal”) did not have jurisdiction to prosecute them. The other challenge was that the Commission’s case against them was not clear and should therefore be dismissed.

On 12 June 2019, the Tribunal issued a decision dismissing the challenges brought by various respondent banks, but also ruling that although the Commission could ask for a declaratory order of guilt against banks that have no presence in South Africa, it could not fine such banks. Some of the respondents, namely, Bank of America Merrill Lynch International Limited, JP Morgan Chase and Co., JP Morgan Chase Bank N.A., Australia and New Zealand Banking Group Limited, Macquarie Bank Limited, HSBC Bank USA, National Association Inc and Smith Inc and Credit Suisse Securities (USA) LLC filed an appeal with the Competition Appeal Court (“CAC”) against the decision of the Tribunal.

In addition to filing appeal, JP Morgan Chase and Co., JP Morgan Chase Bank N.A., Australia and New Zealand Banking Group Limited and Credit Suisse Securities (USA) LLC also filed review applications to review and set aside the Tribunal decision. The Commission then filed a cross appeal against certain aspects of the decision of the Tribunal, in particular against an order that banks with no presence in South Africa cannot be fined.

In February 2020, CAC delivered judgment on the appeals and reviews filed by the banks as well as the cross appeal by the Commission. CAC dismissed the appeals and reviews lodged by the banks and upheld the Commission’s cross appeal. It held that the Commission must file a new complaint referral with the Tribunal which will replace the previous referral. The CAC ordered the Commission that the new referral should clearly indicate that the conduct of banks had direct and immediate effects in the South African economy.

The new complaint referral has been filed against the following twenty-eight (28) banks: Bank of America Merrill Lynch International, BNP Paribas, JP Morgan Chase And Co., JP Morgan Chase Bank N.A., Australia and New Zealand Banking Group Limited, Standard New York Securities Inc, Investec Limited, Standard Bank of South Africa Limited, Nomura International Plc, Standard Chartered Bank, Credit Suisse Group, Commerz Bank AG, Macquarie Bank Limited, HSBC Bank Plc, Citibank N.A., ABSA Bank Limited, Barclays Capital Inc, Barclays Bank Plc, HSBC Bank USA, National Association Inc, Merrill Lynch Peirce Fenner and Smith Inc, Bank of America, N.A., Investec Bank Limited, Credit Suisse Securities (USA) LLC, Nedbank Group Limited, Nedbank Limited, RMB Holdings Limited, FirstRand Bank Limited and Standard Americas Inc.

These banks are accused of colluding to fix prices and divide markets in respect of the USD/ZAR currency pair, in contravention of section 4(1)(b)(i) and (ii) of the Act. The banks directly or indirectly fixed prices in respect of the trade in the USD/ZAR currency pair in relation to Bids; Offers; and Bid-Offer spreads; the Spot Exchange Rate; and the terms and/or margin of executing client orders at the FIX. The banks have also divided markets by allocating customers in the USD/ZAR currency pair.

Some of the banks have already admitted to the contraventions in the USA for manipulating the USD/ZAR currency pair.

For instance, in 2014 the New York State Department of Financial Services instituted proceedings against Standard Chartered Bank in relation to their foreign exchange trading business in emerging markets currency prices including the South African Rand. In 2019, Standard Chartered entered into a plea agreement with the New York State Department of Financial Services in respect of the charges.

Standard Chartered Bank admitted its guilt to engaging in “unsafe, unsound and improper conduct” in violation with Banking Law §44 and paid a penalty of \$40 million.

In 2017, Credit Suisse and Credit Suisse USA entered into a plea agreement with the New York State Department of Financial Services in respect of the same charges. Credit Suisse admitted its guilt to engaging in “unsafe, unsound and improper conduct” and paid a penalty of \$135 million. The United States Department of Justice further laid criminal charges against key individuals involved in the conspiracy.

*Note on key terms*

**Bid** is a price at which the banker or dealer is willing to buy the base currency

**Offer** is a price at which the banker or dealer is willing to sell the base currency

**Bid / Offer spread** is the difference between the bid price and the offer price. It represents the profit margin of the dealer/trader.

**Spot exchange rate** is the current price level in the market to directly exchange one currency for another.

**FIX** is a financial benchmark rate which is determined for a large number of foreign exchange rates, e.g. EUR/USD, GBP/USD or USD/ZAR. The benchmark rate is calculated at several times of each day but the benchmark determined at 4pm London time is the most widely used in financial markets (also referred to as the **4pm FIX**). Rates are the prices of the FX spot transactions, being the price at which currency is bought or sold.