

SOUTH AFRICA / JUDGMENT

Competition Commission of South Africa v Standard Chartered Bank (CR212Feb17; SA128Nov23) [2023] ZACT 68; [2024] 1 CPLR 11 (CT) (15 November 2023) [2023] ZACT 68

COURT

Competition Tribunal

BEFORE

L Mncube, I Valodia, A Ndoni

CASE / FILE NUMBER

CR212Feb17; SA128Nov23

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR212Feb17/SA128Nov23

In the matter between:

The Competition Commission of South Africa Applicant

And

Standard Chartered Bank Respondent

Panel : L Mncube (Presiding Member)

: I Valodia (Tribunal Member)

: A Ndoni (Tribunal Member)

Heard on : 15 November 2023

Decided on : 15 November 2023

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Standard Chartered Bank annexed hereto.

Presiding Member Prof. Liberty Mncube

Concurring: Prof. Imraan Valodia and Ms Andiswa Ndoni

Date: 15 November 2023

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No: CR212FEB17

CC Case No: 2015Apr0147/

2016Aug0432

In the matter between

COMPETITION COMMISSION

APPLICANT

and

STANDARD CHARTERED BANK

RESPONDENT

SETTLEMENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND STANDARD CHARTERED BANK, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i) AND (ii) OF THE COMPETITION ACT, 1998, AS AMENDED

The Competition Commission and Standard Chartered Bank hereby agree that an application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b)(i) and (ii) of the Act, on the terms set out below.

1. DEFINITIONS

For the purposes of this Settlement Agreement the following definitions shall apply:

1.1. "Act" means the Competition Act, No. 89 of 1998, as amended;

1.2. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 3rd Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.3. "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;

1.4. "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number: 2015Apr0147 and 2016Aug0432;

1.5. "Parties" means the Commission and Standard Chartered Bank;

1.6. "Respondent" means Standard Chartered Bank;

1.7. "Settlement Agreement" means this Agreement duly signed and concluded between the Commission and Standard Chartered Bank in full and final settlement of Commission case number: 2015Apr0147 and 2016Aug0432;

1.8. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.9. USD and "Dollars" means the lawful currency of the United States of America;

1.10. ZAR means the South African Rand, the lawful currency of the Republic of South Africa.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS INTO THE ALLEGED CONTRAVENTIONS

2.1 On 01 April 2015, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against Barclays Bank Plc, Barclays Africa Group Ltd, BNP Paribas, BNP Paribas South Africa, Citigroup Inc, Citigroup Global Markets (Pty) Ltd, JP Morgan Chase & Co, JP Morgan South Africa, Investec Ltd, Standard New York Securities Inc and Standard Chartered Bank ("the respondents").

2.2 The complaint related to allegations that the Respondents entered into an agreement and/ or engaged in a concerted practice to directly or indirectly fix the prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and future trades involving the ZAR in contravention of Section 4(1)(b)(i) of the Act. The complaint was investigated under case number: 2015Apr0147.

2.3 On 31 August 2016, the Commissioner amended the initiation to include ABSA Bank Limited, Barclays Capital Inc, Credit Suisse Group, Commerzbank AG, Bank of America Merrill Lynch International Limited, HSBC Bank Plc, ANZ, Citibank N.A, JP Morgan, Nomura International Plc, Macquarie Bank Limited and JP Morgan Chase Bank N.A as additional Respondents and to include the conduct of market allocation by allocating customers against the Respondents. This case was investigated under case number: 2015Apr0147 and 2016Aug0432.

2.4 The amended complaint involved allegations that the Respondents being competitors in the foreign exchange market, in relation to the ZAR, engaged in the exchange of confidential and/or sensitive information with regards to bid offer spreads, forex futures and/or forward spreads, price fixing or fixing of trading conditions and market division by allocating customers in the foreign exchange market in contravention of Section 4(1)(b)(i) and (ii) of the Act.

2.5 On 15 February 2017, the Commission referred the matter against all the Respondents to the Tribunal for adjudication.

2.6 The Commission's investigation revealed the following:

2.6.1 Between 2007 and 2013, the Respondents' fixed prices of bids, offers and bid-offer spreads in relation to spot trades of ZAR currency pairs through bilateral and multilateral communications using instant messaging platforms and other means of communication.

2.6.2 The Respondents assisted each other through allowing a trader with a large open risk position to complete his trades first before trading and through holding and/or pulling their trades to reverse liquidity for each other instead of trading normally in the market.

2.7 This conduct amounts to price fixing and market allocation in contravention of Section 4(1)(b)(i) and (ii) of the Act.

3. ADMISSION OF LIABILITY

3.1. Standard Chartered Bank admits that it engaged in the prohibited practices described in paragraph 2.6 above, which contravene section 4(1)(b)(i) and (ii) of the Act.

4. COOPERATION

4.1. Standard Chartered Bank confirms that it has ceased to engage in the conduct set out in paragraph 2.6 above.

4.2. Standard Chartered Bank has agreed to fully cooperate with the Commission in relation to the prosecution of other participants in the alleged contravention in the Complaint.

4.3. Standard Chartered Bank has agreed to provide evidence, written or otherwise, which is in its possession or under its control (and which is not subject to legal privilege) concerning the alleged contraventions contained in this Settlement Agreement.

5. AGREEMENT REGARDING FUTURE CONDUCT

5.1. Standard Chartered Bank agrees and undertakes to:

5.1.1 refrain from engaging in any conduct that may be in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;

5.1.2 prepare and circulate a statement summarizing the contents of this Settlement Agreement to its employees, managers and directors who have market-making responsibilities at Standard Chartered Bank within

30 (thirty) days from the date of confirmation of this Settlement Agreement as an order of the Tribunal;

5.1.3 continue to implement its existing competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors, and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;

5.1.4 submit a copy of such compliance programme to the Commission within 90 (ninety) days from the date of confirmation of the Settlement Agreement as an order by the Tribunal.

6. ADMINISTRATIVE PENALTY

6.1. Having regard to the provisions of section 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, Standard Chartered Bank is liable to pay an administrative penalty.

6.2. Standard Chartered Bank agrees and undertakes to pay an administrative penalty in the amount of R42 715 880 (Forty-Two Million Seven Hundred and Fifteen Thousand Eight Hundred and Eighty Rands). This amount does not exceed 10% (ten percent) of Standard Chartered Bank's annual turnover for the financial year ending 31 December 2019.

6.3. Standard Chartered Bank will pay the amount of the administrative penalty set out in paragraph 6.2 above to the Commission within 30 (Thirty) days from date of the confirmation of this Settlement Agreement as an order of the Tribunal.

6.4. The payment shall be made into the Commission's bank account, details of which are as follows:

Bank name: Absa Bank

Branch name: Pretoria

Account holder: Competition Commission Fees Account

Account number: [...]

Account type: Current Account

Branch Code: 632005

Reference: 2015Apr0147/2016Aug0432/Standard

Chartered Bank

6.5. The penalty will then be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

7. FULL AND FINAL SETTLEMENT

This Settlement Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and Standard Chartered Bank relating to the conduct that comprises the Commission investigation under Case Nos. 2015Apr0147 and 2016Aug0432. Upon confirmation as an order by the Tribunal, no further action will be brought by the Commission against Standard Chartered Bank, its parents, subsidiaries, affiliates, current or former employees,

managers and directors with respect to the matters comprising the alleged contraventions in the Complaint.

Dated and signed at Singapore on the 13th day of November 2023

For Standard Chartered Bank

Roberto Hoornweg

Global Head Financial Markets

For the Commission

Doris Tshepe Commissioner

Dated and signed at

on the day of 2023

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