



Banking in the crosshairs: Investigations by financial regulators and competition authorities in the banking industry – Libor, Forex, what next?

Banking, Finance and Capital Markets Law Commission

Antitrust Commission

Commercial Fraud Commission

53rd Annual AIJA Congress

London, 2015 – Working Session 6

National Report of Hungary

Szabolcs Mestyán

Lakatos, Köves & Partners

Madách str. 14.,

1075, Hungary

+36 1 429 13 00

Szabolcs.mestyan@lakatoskoves.hu

Szabolcs Mestyán, Lakatos, Köves & Partners, Budapest, Hungary

25 March 2015

Certain episodes of benchmark manipulation (Libor, Forex, etc) have generated global doubt and concern with regards to the integrity of many benchmarks, undermining the integrity of the system and legal and commercial certainty, and resulting in major losses for investors.

- 1. Have the authorities from your jurisdiction proposed or adopted any measures to ensure the necessary integrity of the market and of its benchmarks, guaranteeing that they are not distorted by any conflict of interest, that they reflect economic reality and that they are used correctly? (i.e.: measures to better protect investors, reinforce confidence, address unregulated areas, and/or ensure that supervisors are granted adequate powers to fulfil their tasks)**

Basically, the Hungarian regime is based on the implementation of the EU directives. Whilst in respect of banking activities there are numerous specific “local” provisions which apply on top of, or in addition to, the provisions of the directives (e.g. more stringent provisions on licencing, consumer protection, conflicts of interest, remuneration, conduct of business), in the area of investment services this is not the case so far. The only relevant major difference between Hungarian law and the laws of other jurisdictions where MiFID applies is that in Hungary business in both (i.e. any of) spot and forward/future FX transactions is licensable.

- 2. Which authority monitors financial bodies in your jurisdiction?**

Until the fall of 2013 the Hungarian Financial Services Authority was the competent supervisor of the entire financial services market (including investment services and insurance services as well). Currently the National Bank of Hungary exercises the regulatory powers following the merger of the activities and competencies of the former regulator into the National Bank. Current scandals in the investment services sector suggest that the quality of supervision has not increased by such merger.

- 3. [For EU and EFTA member states] has your country completed the transposition of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (also known as «MiFID II»)? If not, when will transposition be completed?**

No. Scheduled implementation date is second quarter of 2016.

4. Have the authorities in your jurisdiction conducted any inquiry on leading banks or institutions in relation anti-trust practices with regards to essential financial information and/or the clearing system?

The banking sector has been under close supervisory scrutiny following the financial crisis. Establishing new bases of regulation was also a politically motivated issue. Both the competition office and the supervisor have conducted targeted investigations and the volume/amount of fines reached record levels. In respect of the clearing system or the fixing of BUBOR (which is Hungarian interbank rate for forint interest) no particular abuses have been revealed or found by authorities.

The most “famous” inquiry in recent years concerned with an alleged cartel practice between 11 commercial banks. By way of background it should be noted that during the first decade of the 2000s the Hungarian households were increasingly indebted in EUR and mainly CHF. The reason of this was that interest rates on the local currency (forint) were four or five times higher than the interest rates on FX mortgages. Households assumed that Hungary will soon join the eurozone or that exchange rates will not differ dramatically compared to their status as of the time of taking the mortgage. However, due the financial crisis the Hungarian forint has been depreciated against the EUR and CHF dramatically.

Various measures have been introduced by the government since then to facilitate the aiding of indebted households. All of these measures were radical. The first measure was introduced in 2011 by adopting a law which forced the banks to allow retail customers to repay their mortgage at a fixed exchange rate (the fixed exchange rate was substantially lower than the then prevailing exchange rate). Since the law allowed in this way full repayment only, it has become obvious that most households will be able to make final repayment only if they receive forint loans (the funds of which will be applied for repayment of the FX loan).

According to the competition office 11 commercial banks agreed in the course of two informal “business breakfasts” and subsequent emails to introduce measures preventing households to have an appetite for forint loans. The competition authority claimed that on the basis of this all involved banks increased forint loan interest rates simultaneously and adopted other measures. The competition office also argued that the banks were in a prisoner’s dilemma: individually they were interested to attract customers from other banks by providing beneficial terms in respect of Hungarian forint loans, but their joint industry interest was to minimize losses relating to the repayment of FX mortgages on artificial exchange rates. In the competition office’s view the banks selected the latter element of the dilemma to be resolved jointly.

The competition office imposed a fine of appr EUR 30 million (which was unprecedented before). The case continues as most of the banks challenged the decision in front of courts.

5. Which new requirements have been established in order to reinforce governance and oversight and introducing measures sanctioning those responsible for LIBOR and other index manipulation?

No particular new requirements have been introduced.

6. Has any similar scandal-malpractice affected your jurisdiction? Have penalties been imposed? and/or administrative or criminal sanctions? If not, which sanctions are foreseen in your jurisdiction for this type of misconducts?

Only scandals of different nature have occurred. At the time of writing this report, the biggest investment services scandal is being investigated. Within a month, three investment services provider went bust or closed by the regulator. Although at this stage only very few information is available and the investigation is still pending it is alleged that the service providers involved hold fictive assets on client accounts and issued fictive bonds. It is expected (and communicated by the government) that further to the lessons to be learned from this event a re-regulation of the sector will take place. details of this are not yet known, although the key proposals relate to establishing more transparent accountability of directors and shareholders and to enabling clients to have direct access to securities-sub account of services providers held at clearing houses.

In principle, both criminal and administrative sanctions are available.

7. How are the potential conflicts of interest affecting banks or other financial institutions addressed in your jurisdiction? Which requirements are adopted to ensure that benchmarks reflect economic reality and that they are used correctly?

Conflict of interest rules are basically mirroring the ones set out in EU directives.

8. Are any measures foreseen in your jurisdiction for the protection of “whistleblowers”?

Whistleblowers are protected and in procedures their identities are not disclosed. It common practice for the regulator and the competition office not to impose fine (reduce fine) on institutions which are assisting in the revelation of a scandal in which they have also participated.

9. Is there any measure in place in your jurisdiction to guarantee suitable and appropriate evaluation of benchmarks?

There are laws on this issue, but most of the practical issues are regulated by soft-laws. Further to this there are many who do not consider the evaluation process as being sufficiently transparent. The general rules which are currently in force are considered as being “easy to circumvent”.

10. Which requirements and/or transparency rules –if any- are undertaken in your jurisdiction in order to prevent distortions of competition resulting from divergences between other national laws and/or to provide more legal certainty for market participants? (i.e. to prevent or limit regulatory complexity and potential regulatory arbitrage)

The possibility of preventing regulatory arbitrage is limited since the freedom of provide services applies. However, the Hungarian regulation is usually considered as being strict in terms of licensable activities. For instance the definition of licensable lending is very broad and covers also even the mere management of collateral. Purchasing receivables is also licensable etc. Undertakings in other EU member states which wish to enter to the Hungarian market often face with the fact that despite their activity is not licensable in their home state, it is licensable in Hungary. In such a situation they could not “passport” their (non-existent) licence and hence the only way to provide services in Hungary is to apply for a local licence (which is burdensome, requires funds and therefore not ideal from a business perspective).