

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|----------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 80 Civil 0393 |
| |) | |
| v. |) | (LWP) |
| |) | |
| FOREX ASSOCIATION OF NORTH |) | |
| AMERICA, and |) | Filed: December 24, 1980 |
| FOREIGN EXCHANGE BROKERS |) | |
| ASSOCIATION, |) | |
| |) | |
| Defendants. |) | |

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF PROCEEDINGS

This is a civil antitrust action by the United States against the FOREX Association of North America ("FOREX") and the Foreign Exchange Brokers Association ("FEBA"). The Complaint, filed on January 21, 1980, alleged that, beginning at least as early as 1971 and continuing until the Complaint was filed, FOREX, FEBA and unnamed co-conspirators had violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by combining and conspiring to fix, stabilize and maintain the commissions banks paid to brokers for their services in arranging foreign exchange and Eurocurrency deposit transactions. The Complaint sought an injunction prohibiting FOREX and FEBA from continuing their combination and conspiracy and from engaging in other activities having a similar purpose or effect in the future.

Entry by the Court of the proposed Final Judgment will terminate this action against both Defendants.

II.

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

FOREX and FEBA are unincorporated trade associations.

FOREX's membership consists of bank traders, brokers and other individuals interested in the foreign exchange and Eurocurrency deposit markets. FOREX's principal place of business is New York City. FEBA's membership consists of foreign exchange and Eurocurrency deposit brokers. FEBA's principal place of business is in New York City.

Banks actively trade foreign exchange (e.g., United States dollars, Japanese yen, and German Deutschmarks) and Eurocurrency deposits (e.g., Eurodollars and Eurodeutschmarks) principally for their own account and also for large corporations. These transactions total billions of dollars each month. Banks trade foreign exchange and Eurocurrency deposits either through brokers or by dealing directly with one another. When using a broker, a bank tells the broker the price or interest rate at which it would deal in a particular currency. Other banks may accept the quoted transaction or ask the broker to seek better terms.

Brokers are paid a commission on each foreign exchange and Eurocurrency deposit transaction they complete. This fee varies with the currency involved and the nature and size of the transaction. When this Complaint was filed, banks paid, in the aggregate, in excess of \$1 million per month in brokerage commissions for foreign exchange and Eurocurrency deposit transactions.

The Complaint alleged that defendants FOREX and FEBA combined and conspired beginning at least as early as 1971 to fix, stabilize and maintain the commission rates paid for brokers' services in the trading of foreign exchange and Eurocurrency deposits. According to the Complaint, the Defendants, in effectuating this conspiracy, discussed between themselves and among their respective members the commissions to be paid by banks for brokerage services for foreign

exchange and Eurocurrency deposit transactions; agreed upon the commission rates to be paid for such services; and adhered to the agreed upon commission rates.

The Complaint alleged that the combination and conspiracy had the following effects, among others: (a) commissions paid for brokerage services in trading foreign exchange and Eurocurrency deposits were fixed, maintained and stabilized, and (b) competition for such brokerage services was restrained, suppressed and eliminated.

III.

EXPLANATION OF THE PROPOSED CONSENT DECREE

The United States and Defendants have agreed that a Final Judgment in the form negotiated by the parties may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), provided that the United States has not withdrawn its consent. The Stipulation provides that there has been no admission by any party with respect to any issue of law or fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the Final Judgment is conditioned upon a determination by the Court that the Judgment is in the public interest.

The proposed Final Judgment contains two principal forms of relief. First, each Defendant is enjoined from repeating the behavior which characterized the combination and conspiracy and also from engaging in certain other related conduct. Second, the proposed Final Judgment places an affirmative burden on each Defendant to inform its members of the Final Judgment.

A. Prohibited Conduct

Section IV of the proposed Final Judgment prohibits each Defendant, whether acting alone or together with any person, including the other Defendant, from determining the commissions brokers charge for their services in arranging foreign exchange and Eurocurrency deposit transactions.

Specifically, each Defendant is enjoined from entering into, furthering or claiming any rights under any agreement, understanding or plan to fix, maintain or stabilize

commissions; recommending or suggesting that any bank or broker adhere to any specific schedule of commissions; adopting or disseminating any actual or proposed schedule of commissions; surveying or discussing current levels of commissions; adopting, enforcing or disseminating any rules, policy statements, or codes of behavior that discourage or prohibit banks and brokers from independently negotiating commissions to be paid by a bank; and, retaliating against any person for refusing to change its commissions.

B. Defendant's Affirmative Obligations

Section V requires each Defendant to furnish copies of the Final Judgment to each officer or member during the period from January 1, 1978 through the date of expiration of the decree. Each Defendant is required to obtain a receipt from each person to whom it supplies a copy of the Judgment and to keep that receipt in its files for the life of the Judgment.

C. Other Provisions

The proposed Final Judgment expressly provides in Section III that its terms apply to each Defendant as well as to its officers, directors, employees, agents, successors and assigns and to all other persons (including FOREX and FEBA members) in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

Section VI provides that the Department of Justice will have access, upon reasonable notice, to each Defendant's records and personnel in order to assess its compliance with the provisions of the Final Judgment. Under Section VII of the Final Judgment, jurisdiction is retained by the Court for the purpose of enabling any party to apply for such orders or directions as may be necessary to carry out the Final Judgment, for modification of any of its provisions, or for punishment of violations of it.

Section VIII provides that the Final Judgment will remain in effect for a period of ten (10) years from the date it is entered by the Court.

D. Effect of the Proposed Final Judgment on Competition

The terms of the Final Judgment are designed to insure that FOREX and FEBA will not participate in the negotiation of the commissions charged by individual foreign exchange and Eurocurrency deposit brokers, or in the formulation or distribution of the amount of commissions or commission schedules for foreign exchange and Eurocurrency deposit transactions. Compliance with the proposed Final Judgment will promote the competitive determination of commissions by ensuring that purchasers of foreign exchange and Eurocurrency deposit brokerage services will be able to bargain for those services with individual brokers or brokerage firms.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured in his business or property as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action. Under Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a), the proposed Final Judgment may not be used as prima facie evidence in any subsequent private antitrust action brought against either or both Defendants because it is a consent judgment entered before any testimony has been taken.

V.

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED CONSENT JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division, Room 504-B Safeway Building, U.S. Department of Justice, Washington, D.C. 20530, within the 60-day period

provided by the Act. Such comments and responses to them will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should be determined that some modification of the Final Judgment is necessary.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

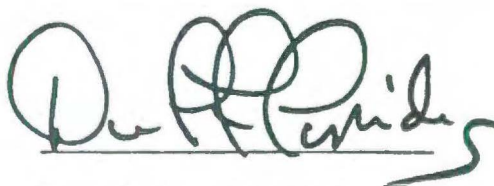
This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this proposed Final Judgment. The proposed Judgment includes all the relief requested in the Complaint.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

There are no materials or documents which the United States considered determinative in formulating the proposed Final Judgment. Therefore, none are being filed along with this Competitive Impact Statement.

DATED: December 23, 1980

A handwritten signature in dark ink, appearing to read "David L. Lapidès", with a long horizontal flourish extending to the right.

DAVID L. LAPIDES
Attorney

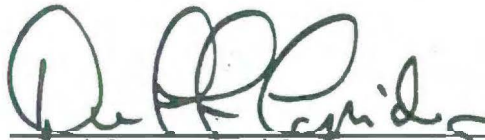
Antitrust Division
Department of Justice
Washington, D.C. 20530
202/724-6793

CERTIFICATE OF SERVICE

I, David L. Lapidès, attorney for Plaintiff, certify that on this date I have served copies of the Stipulation, proposed Final Judgment and Competitive Impact Statement on Defendants by mailing same to their counsel of record, addressed as follows:

David H. Marks, Esquire
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Dated: December 23, 1980