



EUROPEAN COMMISSION
COMPETITIONDG

Deputy Director General Antitrust

Brussels, 09/07/2021

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COMP.D.2/JB/SM/CHH

International Swaps and Derivatives
Association, Inc.
Mr Scott O'Malia, Chief Executive Officer
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United Kingdom

Via:

Jordan Ellison, John Bardsley
SLAUGHTER AND MAY
One Bunhill Row
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Subject: IBOR fallbacks

Dear Mr O'Malia,

I refer to your letter to Mr Olivier Guersent and myself of 28 January 2021 in which you request DG COMP to issue a public statement to clarify that it does not currently consider ISDA's work on IBOR fallbacks to raise antitrust concerns under Article 101 TFEU. Your letter suggests that such a public statement could, for instance, take the form of an inapplicability decision under Article 10 of Council Regulation (EC) No 1/2003 or an informal guidance letter pursuant to Recital 38 of the same Regulation.

DG COMP is keen to assist ISDA in the important fallback design and implementation process as IBORs cease to be published. We appreciate your awareness that self-assessment is the main avenue to ensure that this process is undertaken in an antitrust compliant manner but we understand that ISDA wishes to check with DG COMP regarding specific developments and potentially problematic issues.

In our view, the best way forward to allow for the effective development and implementation of fallbacks, in line with antitrust rules is to engage in an open and transparent dialogue. We would propose to structure this dialogue around regular reports presented by your association at periodic meetings. At such meetings, we would discuss the implementation process and identify potential red flags/antitrust compliance issues that might require adjustments as they arise.

We also have considered your request for a potential Article 10 inapplicability decision. At this stage, we do not consider that such a step would be justified in the present case,

since the assessment of agreements required for the design and implementation of IBOR fallbacks would not appear to require a clarification of the law nor prevent the consistent application of antitrust principles throughout the Community. As for your suggestion on the possible issuance of a guidance letter, it appears at this stage that you may not be able to provide us ex ante the required detailed information on the implementation processes given their complexity and evolving nature.¹

In order to discuss these issues further and to agree the structure of our proposed future structured dialogue with ISDA, we would welcome a meeting in September. We look forward to hearing from your association.

Yours sincerely,

[e-signed]
Linsey McCALLUM

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¹ Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters) Official Journal C 101, 27.04.2004, p. 78-80.