

Libor Antitrust Risks Remain Despite Early Settlements

By **Melissa Lipman**

Law360, New York (December 20, 2012, 7:32 PM ET) -- Despite the coordinated deals UBS AG reached with four international regulators over allegations it had manipulated the London Interbank Offered Rate, comments from the European Union's antitrust chief Thursday offered a stark reminder that the banks settling fraud claims over the benchmark rate may be far from done.

European Competition Commissioner Joaquin Almunia reaffirmed that the bloc's probe into potential rate-fixing was ongoing. He emphasized that the competition investigation was distinct from the fraud-focused claims the Swiss bank resolved Wednesday in a \$1.5 billion settlement with regulators in the U.S., U.K. and Switzerland.

"We have to distinguish between the fine on UBS [and the EU probe]," Almunia said. "There were fines imposed by the regulators, but we're a competent authority, and we're investigating the possible abusive practices. So we're looking at a cartel when it comes to Libor."

Though it is unclear whether UBS might have filed for leniency with the European Commission, Almunia's distinction underscores the continuing antitrust risks banks involved in the plot may face, even after paying up to regulators.

"They have had, and will continue to have, big strategic problems in dealing with this many international enforcement jurisdictions around the world," said New York University law professor Harry First. "It's a great strategic challenge for them, and there are lots of zeroes attached to it."

UBS is not the first bank to settle with the U.S. and U.K. agencies — Barclays PLC agreed in June to pay more than \$450 million in a deal with the U.S. Department of Justice, the U.S. Commodity Futures Trading Commission and the U.K. Financial Services Authority.

The Swiss bank did receive conditional immunity from the DOJ's Antitrust Division in 2011, after coming forward about the rate-manipulation plot. But the company still had to pay to settle a variety of other allegations from the DOJ's Criminal Division, the CFTC, the FSA and the Swiss Financial Market Supervisory Authority.

In announcing the settlement, the DOJ hailed the international cooperation involved in resolving a case of this size. But with civil litigation and several foreign antitrust probes continuing, the matter is still far from over.

In response to questions on Wednesday's settlement, Almunia told reporters Thursday that the EC was still investigating after having raided several major banks in late 2011, based on concerns they were fixing the Euro Interbank Offered Rate.

UBS has won conditional leniency not only from the DOJ, but also from the Swiss Competition Commission, which is also investigating possible benchmark rate-fixing. The bank has not disclosed whether it sought leniency from the EC early enough to win antitrust immunity in that case.

But because of their Swiss and U.S. successes, Robins Kaplan Miller & Ciresi LLP partner Stacey Slaughter said, "It's likely that they will also pursue [it] with the EC."

Regardless, the deal with regulators has certainly given the EC plenty of information to work with, according to First, who is advising one of the plaintiffs firms pursuing civil damages in the U.S. over the Libor scandal.

"There's a lot of information that's now out [showing that] it's not just parallel behavior, there's a lot of clear collusion that's running against companies," First said. "So in that sense, I would think that the commission's task is that much easier. And [UBS] must have known that."

--Additional reporting by Evan Weinberger, Eric Hornbeck and Django Gold. Editing by Kat Laskowski and Lindsay Naylor.

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