JONES DAY

ALERT

APRIL 2019

EU Publishes Study on Impact of Loan Syndication on Competition

The study identifies market practices that may have collusive outcomes.

In April 2019, the European Commission published its long-awaited "study on loan syndication in the EU and its impact on competition in credit markets." While the study refrains from considering syndicated loans anticompetitive, it identifies a number of market practices that could potentially have collusive outcomes. As a result, it should be in the interest of all market participants to review the study and to identify any potential for improving existing practices.

The study—written by outside economic consulting and law firms—was performed on the basis of available economic literature as well as 43 interviews with 37 lenders. It focuses on the analysis of the competitive conditions in the syndicated loan markets in France, Germany, the Netherlands, Poland, Spain, and the United Kingdom.

The study's analysis of the syndicated loan markets in the EU's most important jurisdictions shows that in most markets there are no signs of any competitive issues. It identifies, however, the following market practices as potentially facilitating collusive outcomes:

- Market soundings by mandated lead arrangers ("MLA") if the sounding crossed the boundary between generic sounding and the sounding required for a specific deal (if the latter occurs without client consent).
- The requirement from the borrower that it obtain ancillary services to the loan from either the members of the syndicate or the MLA.
- A tacit reciprocity in the market for inviting and obtaining invites to participate in the syndicate (in particular in underwritten deals).

With respect to the question of whether the cooperation between banks in the context of syndicated loans may itself restrict competition, the study found that banks generally cooperated within the mandated instructions of borrowers. Further, the study assumes that ultimately no one bank could provide the required capacity on its own. Even if a syndicated loan agreement had to be considered showing anticompetitive effects, the study considers it likely that a justification would be available on the basis of procompetitive effects (under Article 101 (3) TFEU).

The study's results provide, however, ample reason for every market participant to review its procedures and practices in the syndicated loans markets.


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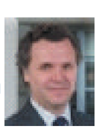
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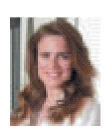
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