

Brain Hartzler, the CEO of Westpac, [gave an excuse to the media](#) when asked about allegations that Westpac traders deliberately manipulated the important Bank Bill Swap Rate (BBSW) benchmark, saying that it was a heavy trading day “after an Easter long weekend”.

Unfortunately, Mr Hartzler has been proved wrong by a set of submissions made by the Australian Securities and Investment Commission (ASIC) to the Federal Court, in relation to its case against Westpac for manipulating the BBSW.

On April 6 2010, which was indeed the day after Easter Monday, trading was pretty brisk, especially in the 30 day BBSW rate, but 100% of the trading was by Westpac’s treasury group. According to the very detailed data released by ASIC, Westpac traders bought around A\$2 billion of bank bills, mainly within the five minute window that determined the BBSW rate.

Mr Hartzler would have us believe that buying so many “yards” of bills was par for the course, and all part of the bank’s sophisticated risk management (or that is what he has been told). Mr Hartzler claimed that:

“We think there are perfectly reasonable explanations as to what that could refer to.”

Maybe it was purely coincidental that being the only buyer on the day, [the yield](#) on [30 day](#) [“paper”](#) was [depressed](#) and as a result the BBSW rate. This was based on the consensus of prevailing yields in the market, which was also depressed, ending up at the bottom of the trading range.

Also apparently coincidentally, Westpac had had a massive [“short”](#) position in their treasury book that day and the merely cutting the BBSW yield by a few basis points made the bank some A\$12 million, as the trader responsible boasted to a colleague in a phone call filled with the usual expletives and jargon:

“Yeah, no, we made about 12 million bucks today, right, so that’s, it’s not, that’s what you call a good day right?... a good day and maybe make a bit — we had a massive rate set today - had like a f—ing \$14 billion of one month ... I had to buy like I bought like f—k - I had \$14 billion of one month”.

Amazingly, ASIC reported another 14 instances where the stars magically aligned and Westpac treasury made a lot of money out of “guessing” the rate at which the BBSW rate would land and make them a profit. While it didn’t stop them, the traders expressed some misgivings

I know it’s completely wrong but, I knew it was completely wrong but fuck it I might as well, I thought fuck it. We’ve got so much money on it, we just had to do it, right. It just had to be done. Some things in life have to be done, right?

Like its overseas equivalent, [LIBOR](#), the BBSW benchmark rate is [not an esoteric anomaly of the financial industry](#). It is the rate at which many commercial loans get set for the next quarter. The Westpac traders recognised who got hurt by artificially moving the BBSW rate up or down:

“That’s my biggest fear and that’s what I will express to them... it’s not so much the interbank counterparties because I don’t care about them - they’re professional, they know what they are doing. It’s just more, it’s the unprofessional, unknown random you know with that \$50 million of debt that’s getting stitched up by his bank getting a 15th rollover that at some point wakes up and has a dummy spit and quite deservedly so...that’s our biggest concern it’s more a reputation amongst that crowd of people rather than the interbank professionals who you know who probably spend half their life trying to stitch people up.”

In the financial markets, so-called “Prime Banks” such as the Big Four, are literally able to print money (by issuing bills at preferential market rates) but in return are expected to play their part by ensuring an orderly market- that is the ‘quid pro quo’. However, it appears there was lots of ‘quids’ with the banks but not much ‘quo’.

The banks involved, currently Westpac and ANZ, insist that we just don’t understand and it’s all

part of the way the markets work. In that they may be right, but it is very far from how the market should work as embodied in the Australian Financial Markets Association (AFMA) Code of Conduct, to which the banks all subscribe and incidentally provide members to the association's major committees.

Manipulation of financial benchmarks is taken much more seriously overseas. In the United Kingdom manipulation of benchmarks is a criminal offence, punishable with up to seven years in prison, for making "misleading statements or misleading impressions, or carrying out any course of conduct, in connection with the setting of a relevant benchmark."

And, in the European Union, manipulation of a benchmark will become a criminal offence when the new [Market Abuse Directive](#) which starts on July 3. New legislation in Canada proposes that offences relating to the manipulation of benchmarks be "punishable by a fine or by imprisonment for a term of not more than 5 years, or by both."

In 2015, as a result of an [FBI investigation](#), five major banks were handed criminal fines totalling almost US\$3.5 billion for "conspiring to manipulate the price of U.S. dollars and euros exchanged in the foreign currency exchange (FX) spot market." This follows fines on banks worldwide totalling over \$13 billion for [manipulation](#) of the LIBOR interest rate benchmark rate.

So governments and regulators around the world have determined that going forward, any attempt to mislead, engage in dishonest conduct, make a false or misleading statement, or give a misleading impression in relation to a financial benchmark should be a criminal offence, with jail and fines for those found guilty.

But what of Australia?

One of the reports in the new government's in-tray (or probably the too-hard basket) is one on financial benchmarks, [prepared by the Council of Financial Regulators](#) (CFR), the body that includes ASIC, the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia. The report proposed that two new benchmark manipulation offences be introduced to criminalise the following types of behaviour:

“(a) making false or misleading statements (including by providing false or misleading data) in connection with the determination of a benchmark; and (b) engaging in dishonest conduct in relation to, or conduct that has or is likely to have the effect of creating or causing the creation of a false or misleading appearance with respect to trading (or the price for trading) in financial products that affects, the determination of the benchmark (whether alone or in combination with other conduct of the same kind, whether by the same or different persons).”

While it is not suggested that application of the CFR proposals should be retrospective, it is nonetheless worth considering the claims that ASIC have made against ANZ and Westpac (and may be about to make against other banks) for manipulating BBSW benchmark could be classified as criminal behaviour by the CFR going forward. Then surely it was serious misconduct (if not yet criminality) at the time?

The usual arguments against regulatory action are being trotted out by the banks, such as the claim that any prosecutions will deter foreign investors. And apparently any criticisms of banks will undermine the public's perception of the banking system.

But the public's perception of banks could hardly be worse than the banks' perception of each other, leaving the last word to a Westpac trader:

“ I got it down to 23. But I got it from f—ing Goldman Sachs - gave me \$300 million. I hate those f—kers as well - Goldman Sachs... I know I have got limit - I just wanna - I'm gonna just trash them on Friday.”

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