



EUROPEAN COMMISSION
Competition DG

***CASE AT.39924 –
SWISS FRANC INTEREST
RATE DERIVATIVES***

(BID ASK SPREAD INFRINGEMENT)

(ONLY THE ENGLISH TEXT IS AUTHENTIC)

**CARTEL PROCEDURE
Council Regulation (EC) 1/2003**

Article 7 Regulation (EC) 1/2003

Date: 21.10.2014

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are shown as [...].

Strasbourg, 21.10.2014
C(2014) 7602 final

COMMISSION DECISION

of 21.10.2014

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union and Article 53 of the EEA Agreement**

(AT.39924 - Swiss Franc Interest Rate Derivatives)

(Only the English text is authentic)

TABLE OF CONTENTS

1.	Introduction.....	5
2.	Background.....	5
2.1.	The product concerned by the infringement.....	5
2.2.	The undertakings subject to the present proceedings.....	6
2.2.1.	RBS	6
2.2.2.	UBS	6
2.2.3.	JPMorgan.....	6
2.2.4.	Credit Suisse	6
3.	Procedure	7
4.	Description of the infringement	8
4.1.	Nature and scope of the infringement	8
4.2.	Means of communication	9
4.3.	Infringement duration.....	9
4.4.	Geographic Scope of the Infringement	9
5.	Legal assessment.....	9
5.1.	Application of Article 101 of the Treaty and Article 53 of the EEA Agreement.....	9
5.1.1.	The nature of the infringement	9
5.1.1.1.	Agreements and concerted practices.....	9
5.1.1.2.	Single and continuous infringement.....	10
5.1.2.	Restriction of competition	11
5.1.3.	Effect on trade between Member States and between EEA contracting parties.....	11
5.1.4.	Non-applicability of Article 101(3) of the Treaty.....	11
6.	Duration of the infringement	12
7.	Liability	12
7.1.1.	RBS	12
7.1.2.	UBS	12
7.1.3.	JPMorgan.....	12
7.1.4.	Credit Suisse	13
8.	Remedies	13
8.1.	Article 7 of Regulation No 1/2003.....	13
8.2.	Article 23(2) of Regulation No 1/2003	13
8.3.	Calculation of the fines.....	14
8.3.1.	The value of sales.....	14
8.3.2.	Determination of the basic amount	15

8.3.2.1. Gravity	15
8.3.2.2. Duration	15
8.3.2.3. Additional amount.....	16
8.3.2.4. Calculations and conclusions on basic amounts	16
8.3.3. Adjustment to the basic amount: aggravating or mitigating circumstances.....	16
8.3.4. Application of the 10% turnover limit	16
8.3.5. Application of the 2006 Leniency Notice	17
8.3.6. Application of the Settlement Notice	17
9. Conclusion: final amount of individual fines to be imposed in this Decision.....	17

COMMISSION DECISION

of 21.10.2014

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement

(AT.39924 - Swiss Franc Interest Rate Derivatives)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty,¹ and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty,² and in particular Article 10a thereof,

Having regard to the Commission decisions of 24 July 2013 initiating proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 11(1) of Regulation (EC) No 773/2004,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer in this case,³

Whereas:

¹ OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU" or "the Treaty"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the Treaty will be used throughout this Decision. The Agreement creating the European Economic Area is referred to as the "EEA Agreement" in this Decision.

² OJ L 123, 27.4.2004, p. 18.

³ Final report of the Hearing Officer of 17 October 2014.

1. INTRODUCTION

- (1) The addressees of the Decision participated in an infringement of Article 101 of the Treaty on the Functioning of the European Union (hereinafter referred to as the "Treaty" or "TFEU") and Article 53 of the Agreement creating the European Economic Area (hereinafter referred to as the "EEA Agreement").
- (2) The infringement consists of agreements and/or concerted practices covering the territories of the contracting parties to the EEA Agreement the object of which was the restriction and/or distortion of competition in relation to certain short term over the counter Swiss Franc Interest Rate Derivatives.
- (3) This Decision covers one single and continuous infringement of Article 101(1) TFEU and Article 53 EEA.
- (4) This Decision is addressed to (hereinafter "the addressees"):
 - The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc (hereinafter "RBS");
 - UBS AG (hereinafter "UBS");
 - JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association (hereinafter "JPMorgan") and
 - Credit Suisse Group AG, Credit Suisse International and Credit Suisse Securities (Europe) Limited (hereinafter "Credit Suisse").

2. BACKGROUND

2.1. The product concerned by the infringement

- (5) The products to which the infringement addressed in this Decision relates are certain short term over the counter Swiss Franc Interest Rate Derivatives of a maturity of up to 24 months ("ST OTC CHF Interest Rate Derivatives" or "ST OTC CHIRDS" for short).
- (6) ST OTC CHIRDS are financial products that are used by corporations, financial institutions, hedge funds, and other global undertakings to manage their interest rate risk exposure (hedging, for both borrowers and investors) and to generate fees as an intermediary or for speculation purposes. According to the Bank for International Settlements OTC derivatives statistics, interest rate derivatives, which include ST OTC CHIRDS, constitute the largest segment of all OTC derivatives products. In June 2013, outstanding CHF denominated interest rate derivatives had a gross market value of USD 113 billion⁴.
- (7) The specific types of ST OTC CHIRDS concerned by the infringement were limited to: (i) forward rate agreements⁵ (referenced to Swiss Franc LIBOR) and (ii) swaps⁶,

⁴ Bank for International Settlements; <http://www.bis.org/statistics/dt21a21b.pdf>

⁵ A forward rate agreement is an agreement between two counterparties to fix the interest rate today for a certain time period in the future and payable on a specified notional amount.

⁶ A swap is an agreement in which two counterparties agree to exchange (or swap), at specific intervals and for a set term, streams of future interest rate payments.

which include overnight index swaps (referenced to the Swiss Franc TOIS⁷) and interest rate swaps (referenced to Swiss Franc LIBOR).

2.2. The undertakings subject to the present proceedings

2.2.1. RBS

(8) This Decision is addressed to the following legal entities:

- The Royal Bank of Scotland Group plc with registered offices at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom;
- The Royal Bank of Scotland plc with registered offices at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom.

(9) RBS is a leading provider of banking and integrated financial services. It is headquartered in the United Kingdom and active in Europe, United States and Asia Pacific. At the time of the infringement, RBS was a market maker⁸ in ST OTC CHIRDS.

2.2.2. UBS

(10) This Decision is addressed to the following legal entity:

- UBS AG with registered offices at Bahnhofstraße 45, 8001 Zürich, Switzerland.
- UBS is a global financial institution headquartered in Switzerland and has offices in more than 50 countries including all major financial centres. It offers financial services including wealth management, investment banking and asset management. At the time of the infringement, UBS was a market maker in ST OTC CHIRDS.

2.2.3. JPMorgan

(11) This Decision is addressed to the following legal entities:

- JPMorgan Chase & Co. with registered offices at 270 Park Avenue, New York, NY 10017, U.S.A.;
- JPMorgan Chase Bank, National Association with registered offices at 1111 Polaris Parkway, Columbus, Ohio 43240, U.S.A.

(12) JPMorgan is a financial institution headquartered in the United States of America. It currently operates in more than 60 countries around the world. At the time of the infringement, JPMorgan was a market maker in ST OTC CHIRDS.

2.2.4. Credit Suisse

(13) This Decision is addressed to the following legal entities:

- Credit Suisse Group AG with registered offices at Paradeplatz 8, CH-8001, Zurich, Switzerland;

⁷ TOIS is the Swiss Franc Tomorrow/next unsecured lending rate. It is used as reference rate for Swiss Franc denominated overnight index swaps.

⁸ Market makers hold themselves out as able and willing to sell or to buy the concerned financial products at prices determined by them generally and continuously rather than in respect of each particular transaction. The difference between the price at which a market maker is willing to buy a contract and sell a contract is called the "bid ask spread" and this reflects the profit margin that is sought.

- Credit Suisse International with registered offices at One Cabot Square, London E14 4QJ, UK;
 - Credit Suisse Securities (Europe) Limited with registered offices at One Cabot Square, London E14 4QJ, UK.
- (14) Credit Suisse is a global financial institution headquartered in Switzerland, with offices in more than 50 countries. At the time of the infringement, Credit Suisse was a market maker in ST OTC CHIRDS.

3. PROCEDURE

- (15) On 9 August 2011, RBS applied for a marker under points 14 and 15 of the Notice on immunity from fines and reduction of fines in cartel cases (hereinafter “the Leniency Notice”).⁹ The application [...]. By decision of 20 February 2012, the Commission granted RBS conditional immunity pursuant to point 8(a) of the Leniency Notice.
- (16) On [...], UBS applied for a reduction of fines under the Leniency Notice [...]. The application [...].
- (17) On [...], JPMorgan applied for a reduction of fines under the Leniency Notice [...]. The application [...].
- (18) On 24 July 2013, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of the present Decision (also referred to as the “parties” or individually the “party”) with a view to engaging in settlement discussions.
- (19) Settlement meetings with the parties took place between [...]. At these meetings, the Commission informed the parties about the objections it envisaged raising against them and disclosed the main pieces of evidence in the Commission file relied on to establish the potential objections.
- (20) The parties were also given access to [...]. The parties were further provided with an estimation of the range of the fines likely to be imposed by the Commission.
- (21) Each party expressed its view on the objections which the Commission envisaged raising against them. The parties' comments were carefully considered by the Commission and, where appropriate, taken into account.
- (22) At the end of the settlement discussions, all the parties considered that there was a sufficient common understanding between them and the Commission as regards the preliminary objections as well as the estimation of the range of likely fines in order to continue the settlement process.
- (23) Between [...], the parties submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004¹⁰, solely for the purpose of reaching a settlement with the Commission in the present proceeding and without prejudice to any other proceedings (the “settlement submissions”). The settlement submissions of each party contained:

⁹ OJ C 298, 8.12.2006, p. 17.

¹⁰ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty establishing the European Community, OJ L 123, 27.4.2004, p. 18.

- an acknowledgement in clear and unequivocal terms of its liability for the infringement in summary form described as regards its object, the main facts, its legal qualification, including the party's role and the duration of its participation in the infringement in accordance with the results of the settlement discussions;
 - an indication of the maximum amount of the fine each party foresees to be imposed by the Commission and which it would accept in the framework of a settlement procedure;
 - the party's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;
 - the party's confirmation that it does not envisage requesting access to the file or requesting to be heard in an oral hearing, unless the Commission does not reflect its settlement submission in the Statement of Objections and the Decision;
 - the party's agreement to receive the Decision and the final Decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.
- (24) Each of the parties made the above-mentioned submission conditional upon the imposition of a fine by the Commission which will not exceed the amount as specified in its settlement submission.
- (25) On 23 September 2014, the Commission adopted a Statement of Objections addressed to RBS, UBS, JPMorgan and Credit Suisse, all of which confirmed in their replies that the Statement of Objections reflected the contents of their settlement submissions and that they remained committed to following the settlement procedure.

4. DESCRIPTION OF THE INFRINGEMENT

4.1. Nature and scope of the infringement

- (26) The parties to the infringement - RBS, UBS, JPMorgan and Credit Suisse - engaged in the following anti-competitive conduct: traders at RBS, UBS, JPMorgan and Credit Suisse agreed to quote wider, fixed bid ask spreads on the relevant ST OTC CHIRDS for trades with third parties (including interdealer brokers), whilst maintaining narrower bid-ask-spreads for trades amongst themselves¹¹. The term bid ask spread refers to the difference between the bid price and the ask price quoted on a particular contract. The bid price is the price at which a trader is willing to buy a particular contract, and the ask price is the price at which a trader is willing to sell a particular contract. The aim of these contacts was to lower the banks' own transaction costs and maintain liquidity between each other¹² whilst seeking to impose wider spreads on third parties and thus increase the banks' profits.¹³ An associated objective of this collusive behaviour was to impede the ability of other market players to compete on the same terms as the main four players.

¹¹ See, for example, [...].

¹² Tighter spreads offer more attractive prices for transactions between the parties.

¹³ See, for example, [...]. Wider spreads offer less attractive prices to third parties.

4.2. Means of communication

- (27) As to the means of communication, the participants in the infringement used online chats on the Bloomberg and/or Reuters platform, emails and telephone contacts.

4.3. Infringement duration

- (28) The evidence demonstrates that RBS, UBS, JPMorgan and Credit Suisse participated in the infringement from **7 May 2007** until **25 September 2007**.¹⁴

4.4. Geographic Scope of the Infringement

- (29) The geographic scope of the infringement covered the entire EEA.

5. LEGAL ASSESSMENT

- (30) Having regard to the body of evidence, the facts as described above and the parties' clear and unequivocal acknowledgement of the facts and their legal qualification thereof, the Commission makes the following legal assessment.

5.1. Application of Article 101 of the Treaty and Article 53 of the EEA Agreement

5.1.1. The nature of the infringement

5.1.1.1. Agreements and concerted practices

Principles

- (31) Article 101 of the Treaty and Article 53 of the EEA Agreement prohibit anticompetitive agreements between undertakings, decisions by associations of undertakings and concerted practices.
- (32) An agreement may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101 of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of concerted practices and that of agreements between undertakings, the object is to bring within the prohibition of those Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition. Thus, a conduct may fall under Article 101 of the Treaty and Article 53 of the EEA Agreement as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour.¹⁵
- (33) In the case of a complex infringement, it is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. It would be analytically artificial to sub-divide a continuing common enterprise having one and the same overall objective into several different forms of

¹⁴ See, for example, [...].

¹⁵ Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 256. See also Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraph 64, and Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 *Suiker Unie and others v Commission* [1975] ECR 1663, paragraphs 173-174.

infringement. An infringement may therefore be comprised of both agreements and concerted practices at the same time.¹⁶

Application to this case

- (34) The facts described above indicate that the collusive arrangement between the undertakings concerned can be characterized as an infringement which can either be classified as agreement or concerted practice, within which the competitors knowingly substituted practical cooperation between them for the risks of competition.
- (35) This conduct, which is described above at recital (26), constitutes an agreement and/or concerted practice, which had as its **object** the prevention, restriction and/or distortion of competition in the ST OTC CHIRD sector within the EEA.

5.1.1.2. Single and continuous infringement

Principles

- (36) A complex cartel may properly be viewed as a single and continuous infringement for the timeframe in which it existed. The concept of “single agreement” or “single infringement” presupposes a complex of practices adopted by various parties in pursuit of a single anticompetitive economic aim.¹⁷ The cartel may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.
- (37) The mere fact that each participant in an infringement may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same anticompetitive object or effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement, where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.¹⁸

Application to this case

- (38) As the evidence reveals that the participants engaged in the anticompetitive practice described above in recital (26) with the common objective of the restriction and/or distortion of competition in the ST OTC CHIRD sector, the above described conduct

¹⁶ Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 264.

¹⁷ Joined Cases T-25/95 *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 369.

¹⁸ Case 49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 83: “an undertaking that had taken part in such an infringement through conduct of its own which formed an agreement or concerted practice having an anti-competitive object for the purposes of Article 85(1) of the Treaty and which was intended to help bring about the infringement as a whole was also responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement. That is the case where it is established that the undertaking in question was aware of the offending conduct of the other participants or that it could reasonably have foreseen it and that it was prepared to take the risk.”

between the parties constitutes a single and continuous infringement of Article 101 TFEU and Article 53 EEA between 7 May 2007 and 25 September 2007.¹⁹

5.1.2. *Restriction of competition*

Principles

- (39) Article 101 of the Treaty and Article 53 of the EEA Agreement prohibit agreements and concerted practices which have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions. It is settled case-law that, for the purpose of the application of Article 101 of the Treaty and Article 53 of the EEA Agreement, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market.²⁰ The same applies to concerted practices.²¹

Application to this case

- (40) The participants to the infringement described in this Decision engaged in behaviour, described above in recital (26), which had as its **object** the prevention, restriction and/or distortion of competition in the ST OTC CHIRD sector within the EEA within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.²²

5.1.3. *Effect on trade between Member States and between EEA contracting parties*

Principles

- (41) Article 101 of the Treaty is aimed at agreements and concerted practices which might harm the attainment of an internal market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogenous EEA.

Application to this case

- (42) ST OTC CHIRDS are traded within the EEA and undertakings such as banks, corporations, hedge funds, pension funds, and investment banking firms within the EEA routinely enter into ST OTC CHIRD contracts for the purposes of hedging and/or speculation.
- (43) The infringement covered the entire EEA and related to trade within the EEA and was therefore capable of having an appreciable effect upon trade between EU Member States and between contracting parties to the EEA Agreement.

5.1.4. *Non-applicability of Article 101(3) of the Treaty*

- (44) The provisions of Article 101 of the Treaty and Article 53 of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or

¹⁹ See recital 26.

²⁰ Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178 and case-law cited therein.

²¹ Case C-199/92 *P Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-166.

²² As mentioned above, the aim of this behaviour was to lower the parties' own transaction costs and maintain liquidity between each other whilst seeking to impose wider spreads on third parties and thus increase their profits.

economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

- (45) On the basis of the facts before the Commission, there are **no indications** that suggest that the conditions of Article 101(3) of the Treaty or 53(3) of the EEA Agreement could be fulfilled in this case.

6. DURATION OF THE INFRINGEMENT

- (46) The duration of each of the undertakings' involvement in the infringement is as follows: 7 May 2007 – 25 September 2007.²³

7. LIABILITY

Principles

- (47) According to the settled case-law where a parent company has a 100% shareholding in a subsidiary which has infringed the competition rules of the Union, the parent company can exercise decisive influence over the conduct of the subsidiary and there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary²⁴.
- (48) Having regard to the body of evidence and the facts described above, the parties' clear and unequivocal acknowledgements of the facts and the legal qualification thereof, this Decision is addressed to the legal entities listed below.

7.1.1. RBS

- (49) The Royal Bank of Scotland plc acknowledged that it directly participated in the infringement for the duration indicated above. In addition, The Royal Bank of Scotland Group plc acknowledged that it exercised decisive influence over its subsidiary The Royal Bank of Scotland plc and is jointly and severally liable for the conduct of its subsidiary for the whole duration of the latter's participation in the infringement.
- (50) Liability for the infringement is therefore imputed jointly and severally to The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc.

7.1.2. UBS

- (51) UBS AG acknowledged that it directly participated in the infringement for the duration indicated above.

7.1.3. JPMorgan

- (52) JPMorgan Chase Bank, National Association acknowledged that it directly participated in the infringement for the duration indicated above. In addition, JPMorgan Chase & Co. acknowledged that it exercised decisive influence over its subsidiary JPMorgan Chase Bank, National Association and is jointly and severally liable for the conduct of its subsidiary for the whole duration of the latter's participation in the infringement.

²³ See recital 28.

²⁴ Case C-97/08 *P Akzo Nobel and others v Commission* [2009] ECR I-08237, paragraph 60.

- (53) Liability for the infringement is therefore imputed jointly and severally to JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association.

7.1.4. Credit Suisse

- (54) Credit Suisse International and Credit Suisse Securities (Europe) Limited acknowledged that they directly participated in the infringement for the duration indicated above. In addition, Credit Suisse Group AG acknowledged that it exercised decisive influence over its subsidiaries Credit Suisse International and Credit Suisse Securities (Europe) Limited and is jointly and severally liable for the conduct of its subsidiaries for the whole duration of the latter's participation in the infringement.
- (55) Liability for the infringement is therefore imputed jointly and severally to Credit Suisse Group AG, Credit Suisse International and Credit Suisse Securities (Europe) Limited.

8. REMEDIES

8.1. Article 7 of Regulation No 1/2003

- (56) Where the Commission finds that there is an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation 1/2003.²⁵
- (57) Given the secrecy in which the infringement was carried out, it is not possible to declare with absolute certainty that it has ceased.
- (58) It is therefore necessary for the Commission to require the undertakings to which the present Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

8.2. Article 23(2) of Regulation No 1/2003

- (59) Under Article 23(2) of Regulation No 1/2003,²⁶ the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.
- (60) In the present case, the Commission considers that, based on the facts described in this Decision, the infringement has been committed intentionally.
- (61) The Commission therefore imposes fines on the undertakings to which this Decision is addressed.
- (62) Pursuant to Article 23(3) of Regulation No 1/2003, the Commission must in fixing the amount of the fine have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred

²⁵ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1 of 4.1.2003, p. 1.

²⁶ Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102] of the EC Treaty [...] shall apply *mutatis mutandis*". (OJ L 305/6 of 30 November 1994)

to in the Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to an infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.

- (63) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003²⁷ (hereinafter “the Guidelines on fines”). Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (hereinafter “the Settlement Notice”).²⁸

8.3. Calculation of the fines

- (64) In applying the Guidelines on fines, the basic amount for each party results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking’s participation in that infringement. The additional amount (“entry fee”) is calculated as a percentage between 15% and 25% of the value of sales. The resulting basic amount can then be increased or reduced for each undertaking if aggravating or mitigating circumstances are retained.

8.3.1. The value of sales

- (65) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales,²⁹ that is, the value of the undertakings’ sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA. The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.³⁰ It may however depart from this practice, should another reference period be more appropriate in view of the characteristics of the case.³¹
- (66) In determining the value of sales with respect to this infringement, it must be considered that ST OTC CHIRDS are contracts based on a specified notional amount. These notional amounts serve as a basis for the calculation of the actual amount earned by market makers. Therefore the Commission calculates the annual value of sales for RBS, UBS, JPMorgan and Credit Suisse on the basis of the notional amounts traded of the ST OTC CHIRDS contracts referenced to Swiss Franc LIBOR or to Swiss Franc TOIS and entered into with EEA-located counterparties during the months corresponding to the undertakings’ participation in the infringement, which are subsequently annualised.
- (67) Accordingly, for RBS, UBS, JPMorgan and Credit Suisse, the Commission takes into account the annual value of sales as defined above, which each of these parties confirmed in their formal settlement submissions for this infringement.

²⁷ OJ C 210, 1.9.2006, p. 2.

²⁸ OJ C 167, 2.7.2008, p. 1–6.

²⁹ Point 12 of the Guidelines on fines.

³⁰ Point 13 of the Guidelines on fines.

³¹ Case T-76/06, *Plásticos Españoles (ASPLA) v Commission*, not yet reported, paragraphs 111-113.

(68) In recognition of the particularities of the ST OTC CHIRDS contracts and of the nature of this infringement the Commission reduces these respective notional amounts in the following way. On an individual transaction, market makers earn, conceptually, the notional amount multiplied by half the bid ask spread. Thus, the Commission considers the notional amounts multiplied by half the bid ask spread as the proxy of the market making revenues of each party. In addition, to take into account that the parties also acted as traders, the Commission considers the notional amounts multiplied by another time half the bid ask spread as the proxy of the trading revenues of each party. Therefore the Commission applies to the notional amounts referred to in recital (67) a uniform factor representing the bid ask spread.

(69) Accordingly, the Commission takes into account the following values of sales of RBS, UBS, JPMorgan and Credit Suisse:

(70) Table 1: Value of sales of RBS, UBS, JPMorgan and Credit Suisse

Undertaking	Value of sales (in EUR)
RBS	[...]
UBS	[...]
JPMorgan	[...]
Credit Suisse	[...]

8.3.2. *Determination of the basic amount*

8.3.2.1. Gravity

(71) In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.³²

(72) In its assessment, the Commission takes into account the fact that the infringement is, by its very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for the infringement is set at the higher end of the scale.³³

(73) The Commission also takes into account the fact that the infringement covered the entire EEA.

(74) Accordingly, the proportion of the value of sales to be taken into account is 16%.

8.3.2.2. Duration

(75) In calculating the fine to be imposed on each undertaking, the Commission takes also into consideration the duration of the infringement, as described in recital (46) above. The increase for duration is calculated on the basis of full months taking into account the actual duration of each undertaking's participation in the infringement on a

³² Points 21-22 of the Guidelines on fines.

³³ Point 23 of the Guidelines on fines.

rounded down monthly and *pro rata* basis. This leads to the following duration multipliers:

(76) Table 2: Duration of the infringement

Undertaking	Duration	Multiplier
RBS	7 May 2007 – 25 September 2007	0.33
UBS	7 May 2007 – 25 September 2007	0.33
JPMorgan	7 May 2007 – 25 September 2007	0.33
Credit Suisse	7 May 2007 – 25 September 2007	0.33

8.3.2.3. Additional amount

(77) The Commission includes in the basic amount a sum of between 15% and 25% of the value of sales to deter the undertakings from entering into such illegal practices on the basis of the criteria listed above with respect to the variable amount.³⁴

(78) Taking into account the factors listed above, the percentage to be applied for the purposes of calculating the additional amount is 16%.

8.3.2.4. Calculations and conclusions on basic amounts

(79) Based on the criteria explained above, the basic amount per undertaking per infringement is presented in the tables below.

(80) Table 3: Basic amounts for the infringement

Undertaking	Basic amount (in EUR)
RBS	[...]
UBS	[...]
JPMorgan	[...]
Credit Suisse	[...]

8.3.3. Adjustment to the basic amount: aggravating or mitigating circumstances

(81) The Commission may consider aggravating or mitigating circumstances resulting in an increase/decrease of the basic amount.³⁵ These circumstances are listed in a non-exhaustive way in points 28 and 29 of the Guidelines on fines.

(82) In the present infringement, the Commission does not apply any aggravating or mitigating circumstances.

8.3.4. Application of the 10% turnover limit

(83) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking for each infringement shall not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.

³⁴ Point 25 of the Guidelines on fines.

³⁵ Points 28-29 of the Guidelines on fines.

- (84) In this case, none of the fines exceed 10% of an undertaking's total turnover relating to the business year preceding the date of this Decision.

8.3.5. *Application of the 2006 Leniency Notice*

- (85) On 20 February 2012, RBS was granted conditional immunity from fines in relation to the infringement. RBS's co-operation fulfilled the requirements of the Leniency Notice. RBS is therefore granted immunity from fines for this infringement.
- (86) The Commission also received an application for a reduction of fines from UBS. UBS added significant value to the Commission's investigation by providing [...]. Furthermore, UBS provided [...].
- (87) In view of the assessment set out above, UBS is granted a 30% reduction of the fine that would otherwise have been imposed on it for its participation in the infringement.
- (88) Furthermore, the Commission received an application for a reduction of fines from JPMorgan. JPMorgan added significant value to the Commission's investigation by submitting [...]. Furthermore, JPMorgan provided [...].
- (89) In view of the assessment set out above, JPMorgan is granted a 25% reduction of the fine that would otherwise have been imposed on it for its participation in the infringement.

8.3.6. *Application of the Settlement Notice*

- (90) In accordance with point 32 of the Settlement Notice, the reward for settlement is a reduction of 10% of the amount of the fine to be imposed on an undertaking after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement is added to their leniency reward.
- (91) As a result of the application of the Settlement Notice, the amount of the fines to be imposed on RBS, UBS, JPMorgan and Credit Suisse is reduced by 10% and this reduction is added to any leniency reward.

9. CONCLUSION: FINAL AMOUNT OF INDIVIDUAL FINES TO BE IMPOSED IN THIS DECISION

- (92) The fines imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are as follows:

- (93) Table 4: Fines amounts

Undertaking	Fines (in EUR)
RBS	0
UBS	12 650 000
JPMorgan	10 534 000
Credit Suisse	9 171 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating from 7 May 2007 until 25 September 2007 in a single and continuous infringement consisting of agreements and/or concerted practices covering the entire EEA, which had as its object the restriction and/or distortion of competition in the ST OTC CHIRD sector within the EEA:

- (a) The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc;
- (b) UBS AG;
- (c) JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association;
- (d) Credit Suisse Group AG, Credit Suisse International and Credit Suisse Securities (Europe) Limited.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

- (a) The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc jointly and severally liable: EUR 0;
- (b) UBS AG: EUR 12 650 000;
- (c) JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association jointly and severally liable: EUR 10 534 000;
- (d) Credit Suisse Group AG, Credit Suisse International and Credit Suisse Securities (Europe) Limited jointly and severally liable: EUR 9 171 000.

The fines shall be paid in Euro within three months of the date of notification of this Decision to the following account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT

1–2, Place de Metz

L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000

BIC: BCEELULL

Ref.: European Commission – BUFI / AT. 39924

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date by either providing an acceptable bank guarantee or making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.³⁶

³⁶ OJ L 362, 31.12.2012, p. 1.

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to

- (a) The Royal Bank of Scotland Group plc, 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom;
- (b) The Royal Bank of Scotland plc, 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom;
- (c) UBS AG, Bahnhofstraße 45, 8001 Zürich, Switzerland;
- (d) JPMorgan Chase & Co., 270 Park Avenue, New York, NY 10017, U.S.A.;
- (e) JPMorgan Chase Bank, National Association, 1111 Polaris Parkway, Columbus, Ohio 43240, U.S.A.;
- (f) Credit Suisse Group AG, Paradeplatz 8, CH-8001, Zurich, Switzerland;
- (g) Credit Suisse International, One Cabot Square, London E14 4QJ, UK;
- (h) Credit Suisse Securities (Europe) Limited, One Cabot Square, London E14 4QJ, UK.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Strasbourg,

For the Commission

Joaquín ALMUNIA
Vice-President