



EUROPEAN COMMISSION  
Competition DG

***CASE AT.39914 -  
Euro Interest Rate Derivatives***

(Only the English and French texts are authentic)

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

---

Article 7 Regulation (EC) 1/2003

Date: 07/12/2016

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 replaced by a non-confidential summary in square brackets or are shown as [...].



Brussels, 7.12.2016  
C(2016) 8530 final

**COMMISSION DECISION**

**of 7.12.2016**

**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.39914 – Euro Interest Rate Derivatives (EIRD)**

(Only the English and French texts are authentic)

## TABLE OF CONTENTS

1.	Introduction .....	6
2.	The industry subject to the proceedings .....	6
2.1.	The product .....	6
2.2.	Description of the business .....	6
2.2.1.	Interest rate derivatives .....	6
2.2.2.	The pricing of interest rate derivatives and the yield curve .....	8
2.2.3.	Euro interest-rate benchmarks.....	10
2.2.3.1.	The Euro Interbank Offered Rate (EURIBOR) .....	10
2.2.3.2.	Euro Over Night Index Average (EONIA) .....	11
2.2.3.3.	Other Euro reference rates .....	12
2.2.4.	The trade of interest rate derivative contracts .....	12
2.2.4.1.	Trading terminology.....	12
2.2.4.2.	Market making and proprietary trading .....	14
2.2.4.3.	Lack of market transparency .....	16
2.2.5.	The geographic scope and size of the business.....	16
2.3.	Trade between Member States/Contracting Parties .....	17
2.4.	The undertakings covered by this Decision .....	17
2.4.1.	Crédit Agricole.....	17
2.4.2.	HSBC .....	18
2.4.3.	JPMorgan Chase.....	19
2.5.	Other undertakings subject to the investigation.....	19
3.	Procedure.....	21
4.	Description of the events.....	24
4.1.	Overview .....	26
4.2.	Types of communications between traders .....	28
4.2.1.	Means of communication .....	28
4.2.2.	The functioning of the arrangements .....	29
4.3.	Chronology of events .....	31
5.	Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement .....	93
5.1.	Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement .....	94
5.1.1.	Agreements and concerted practice .....	94
5.1.1.1.	Principles.....	94
5.1.1.2.	Application in this case .....	98

5.1.1.3.	Arguments of the parties and assessment thereof by the Commission .....	101
5.1.2.	Restriction of competition.....	102
5.1.2.1.	Principles.....	102
5.1.2.2.	Application in this case .....	104
5.1.2.3.	Arguments of the non-settling parties and assessment thereof by the Commission.....	111
5.1.2.4.	Conclusion.....	124
5.1.3.	Single and continuous infringement.....	124
5.1.3.1.	Principles.....	124
5.1.3.2.	Application to this case .....	126
5.1.3.3.	Arguments of the parties and assessment thereof by the Commission .....	140
5.1.3.4.	Conclusion on the single and continuous infringement .....	141
5.1.4.	Implementation .....	141
5.1.5.	Conclusion.....	144
5.2.	Effect on trade between Member States and/or Contracting Parties.....	144
5.3.	Application of Article 101(3) of the Treaty .....	145
5.4.	Arguments concerning the procedure and rebuttal by the Commission .....	146
5.4.1.	The procedure against the non-settling parties.....	146
5.4.2.	The settlement decision.....	149
5.4.3.	Statements of the former Commissioner.....	150
5.4.4.	The Statement of Objections .....	153
5.4.5.	Access to file .....	155
5.4.6.	Remedies .....	158
5.4.7.	Conclusion.....	158
6.	Addressees.....	159
6.1.	Principles.....	159
6.2.	Application in this case .....	160
6.2.1.	Crédit Agricole.....	160
6.2.2.	HSBC .....	164
6.2.3.	JPMorgan Chase.....	165
6.2.4.	Conclusion.....	166
7.	Duration.....	166
8.	Remedies .....	170
8.1.	Article 7(1) of Regulation (EC) No 1/2003 .....	170
8.2.	Article 23(2) of Regulation (EC) No 1/2003 .....	170
8.3.	Basic amount of the fine .....	171

8.3.1.	The values of sales .....	171
8.3.1.1.	Principles.....	171
8.3.1.2.	Application.....	172
8.3.1.3.	Arguments from the addressees and findings .....	174
8.3.1.4.	Conclusions on values of sales.....	189
8.3.2.	Gravity.....	189
8.3.2.1.	Principles.....	189
8.3.2.2.	Application.....	190
8.3.2.3.	Arguments from the parties and findings.....	190
8.3.2.4.	Conclusion on the gravity .....	191
8.3.3.	Duration.....	192
8.3.4.	Additional amount.....	193
8.3.5.	Conclusion.....	193
8.4.	Adjustments to the basic amount .....	193
8.4.1.	HSBC .....	194
8.4.2.	Crédit Agricole.....	196
8.4.3.	JPMorgan Chase.....	197
8.5.	Legal maximum .....	198
8.6.	Final amount of fines .....	199

# COMMISSION DECISION

of 7.12.2016

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.39914 – Euro Interest Rate Derivatives (EIRD)**

(Only the English and French texts are authentic)

THE COMMISSION,

Having regard to the Treaty on the Functioning of the European Union<sup>1</sup>,

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<sup>2</sup>, 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 Treaty<sup>3</sup>, and in particular Article 10(a) thereof,

Having regard to the Commission decision of 5 March 2013 to initiate 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 of Commission 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<sup>4</sup>,

Whereas:

---

<sup>1</sup> OJ, C 115, 9/5/2008, p.47.

<sup>2</sup> 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"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

<sup>3</sup> OJ L 123, 27.4.2004, p.18.

<sup>4</sup> Final report of the Hearing Officer of 5 December 2016.

## **1. INTRODUCTION**

- (1) The addressees of this Decision have been involved in an infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. This infringement covered at least the whole of the EEA and consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the sector of Euro Interest Rate Derivatives ("EIRD" or "EIRDs") linked to the Euro Interbank Offered Rate ("EURIBOR") and/or the Euro Over-Night Index Average ("EONIA").
- (2) The legal entities to which this Decision is addressed are collectively referred to as "the addressees" or the "non-settling parties". The term "non-settling parties" is used to make a distinction between the addressees of this Decision and the legal entities that were addressees of the decision adopted on 4 December 2013 under the settlement procedure (the "settling parties") in this case.<sup>5</sup> The undertakings subject to the investigation, meaning the settling parties and the non-settling parties, are collectively referred to as "the parties".

## **2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS**

### **2.1. The product**

- (3) Euro Interest Rate Derivatives are financial derivatives linked to one or several euro interest-rate benchmark(s).<sup>6</sup> The products affected by the collusive behaviour described in this Decision are EIRDs.

### **2.2. Description of the business**

#### *2.2.1. Interest rate derivatives*

- (4) Financial derivatives are contracts entered into between two counterparties, the value of which is linked to the level of one (or several) underlying asset(s) and to market benchmark(s). Interest rate derivatives are financial derivatives deriving their value from one or more benchmark interest rate(s) payable on a notional amount of money.
- (5) Under the terms of an interest rate derivative contract the notional amount does not usually change hands, but certain amounts of money to be received or paid will be directly affected by the fixing of the relevant benchmark interest rate on certain dates specified in the contract.<sup>7</sup> For instance in a EURIBOR-based derivative one party will either pay to or receive from the other party an amount of money based on the notional amount and the EURIBOR rate at some predetermined date(s) in the future, known as the settlement date(s). On that date(s), this party will also either receive from or pay to the other party a predetermined fixed interest based on the same notional amount. Interest rate derivatives thus create positive or negative returns in the form of cash-flows to be received or paid by one party to the other party.

---

<sup>5</sup> Commission Decision C(2013)8512 of 4.12.2013 under the settlement procedure pursuant to Articles 7 and 23(2) of Regulation (EC) No 1/2003 [...].

<sup>6</sup> [...].

<sup>7</sup> [...]. Certain interest rate derivatives may be subject to reset based on the fixing dates along its maturity cycle; a cash flow pay-out may occur at various stages; and, finally, the product reaches its maturity, at which point the underlying value of the contract is (generally) realised.

- (6) The most common EIRDs are (i) forward rate agreements, (ii) interest rate swaps, (iii) interest rate options, and (iv) interest rate futures. EIRDs may be traded over the counter or, in the case of interest rate futures, may be exchange traded. All these products usually involve a floating rate (which is the reference benchmark interest rate of the contract) and a fixed rate.
- (7) **Forward rate agreements ('FRAs')**: these are agreements between two counterparties to fix the interest rate today for a certain time period in the future. The rates are payable on a specified notional amount. One party will pay a fixed rate and receive a reference floating rate and vice versa, where the tenor of the reference interest rate corresponds to the time period of the contract. As with most other financial derivatives, the notional amount of the transaction is not exchanged between counterparties but is used only for calculating the amount of the cash flow to be exchanged. Such cash flows will be based on the net difference between the fixed and the floating rates as established on the fixing date. In other words, the settlement occurs on a net basis only. In contrast to swaps and options, FRAs comprise only one fixing and hence only one cash flow.
- (8) **Interest rate swaps ('IRS')**: these are agreements where the two counterparties agree to exchange (or swap) a series of future interest rate payments at specific intervals and for a set term. One party typically agrees to periodically pay to (or receive from) a floating rate of interest to (or from) another party, and to receive or pay periodically a fixed rate in return, with usually both legs in the same currency. As with FRAs, the notional amount of the transaction is not usually exchanged between the counterparties, but is used only for calculating the amount of the cash flows to be exchanged between the parties. Such cash flows will be at each payment date the difference between the amounts of interest payable or receivable resulting from the fixed rate leg and the floating rate leg of the contract (which is the net settlement value at each settlement date).
- (9) **Interest rate options**: these give the buyer the right (but not the obligation) to either buy from another party or to sell to another party a reference interest rate payable on a specified notional amount at a given level ('strike price'). As for interest rate swaps, interest rate options comprise several periods and the notional amount of the transaction is typically not exchanged between counterparties, but is used only for calculating the amount of the cash flows to be exchanged. Contrary to interest rate swaps, there is not necessarily a cash flow for each period, as a cash flow payment occurs only if the reference interest rate is above (or below) the strike price. Some interest rate options are exchange traded and others are exchanged directly between counterparties ('over-the-counter').
- (10) **Interest rate futures**: these are exchange-traded contracts that entitle participants to make or receive payments based on the movements in the reference interest rate over the life of the contract. The contracts are subject to a final settlement at contract expiration based on prevailing market interest rates at the date of settlement.



### 2.2.2. *The pricing of interest rate derivatives and the yield curve*

- (11) Interest rate derivatives can be traded on the market for a value which derives from the trading price<sup>8</sup> and which reflects the estimated value, at the date of transaction, of the future cash flows expected to be received from or paid on this contract.<sup>9</sup> The present value of these cash flows is normally estimated by using what is called a "discounted cash flow" ("DCF") valuation. This valuation technique takes into account the fact that a specific amount of money is worth more today than the same amount in the future, because of its earning potential capacity, where it can earn interest, and because of the effect of inflation.<sup>10</sup> Accounting and reporting standards such as IFRS and U.S. GAAP define this value as "*the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date*".<sup>11</sup>
- (12) Depending on the type of derivative involved the terms of the transaction will vary, with respect to how the value is transferred to the seller and how the contractual obligations are transferred to the buyer.
- (13) For interest rate options and futures, where a transaction is concluded, this leads to a payment in cash from the buyer to the seller (in euros in the case of EIRDs). For interest rate futures and exchange-traded interest rate options, a published price quotation in an active market is available and the trading price can be measured using quoted prices. For interest rate options which are traded over-the-counter, the trading price is directly agreed upon between the buyer and the seller who each calculate what their own views of the trading price should be prior to concluding the transaction. Interest rate options are, as indicated in recital (9) above, agreements which give the buyer certain rights (but no obligations). This implies that the seller of an option grants such rights to the buyer. Since such right has a value, the seller of an option transfers an option in exchange of a payment in cash, which is called the option premium or the option price.
- (14) With regard to FRAs and IRSs which are for the most part non-standard products, transactions take place in what is called the "over-the-counter" market. This means that transactions are concluded directly between two counterparties and not via a clearing house. In relation to the period under consideration in this Decision, transaction prices were not available to the public for most such products on a regular basis.<sup>12</sup> As these products are designed to have in principle a value of zero at their inception, FRAs and IRSs require no upfront payment from either party to the transaction. The value of FRAs and IRS is commonly calculated with a discounted

---

<sup>8</sup> See recitals (13) (covering options and futures) and (14) (covering FRAs and swaps).

<sup>9</sup> [...].

<sup>10</sup> For instance, with a 10% annual interest EUR 1.1 to be received in one year's time is worth EUR 1 today.

<sup>11</sup> See Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP (US Generally Accepted Accounting practices) and IFRSs (International Financial Reporting standards), Financial Accounting Standards Board, No. 20011-04 of May 2011. Both US GAAP and even more so IFRS are widely used accounting standards.

<sup>12</sup> Until very recently there was no requirement to register the transactions once they had taken place so no post-trading prices were available (see Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.7.2012, p. 1–59).

cash flow approach where the level of the fixed interest leg of the contract is adjusted at the level agreed between the buyer and the seller. The main principle behind the calculation of the fixed rate of a new FRA or IRS is the equivalence in the present value of cash flows to be received by each party. In other words, the fixed rate of a new FRA or IRS is set so that the contract has a value of zero in principle at its inception. This interest rate is the price which buyer and seller negotiate to reach a deal and the trading price results from each trader's estimate of the mid price and the bid-ask spread (see in particular recitals (32) and (34)). The conclusion of transactions for FRAs and IRSs does not usually give rise to payments in cash at inception and are concluded by entering into a new derivative contract.<sup>13</sup> Under this new contract the buyer undertakes the contractual obligations which the seller wishes to trade (whether to pay/receive fixed or floating interest on a specified notional amount). The following trading conventions usually apply to FRAs and IRSs: the buyer (also called payer) pays fixed interest rate and receives floating interest rate and the seller (also called receiver) receives fixed interest rate and pays floating interest rate.

- (15) Therefore the level of the trading price of an EIRD, which is negotiated between a buyer and a seller in this market, is defined either in euros in the case of futures and options, account taken of the notional amount traded, or by an interest rate for FRAs and IRSs. It also follows from this that market players in the EIRD market compete for positive cash flows.
- (16) The trading price of EIRDs reflects expected future cash flows which in turn are a reflection of current and expected future interest rates which are referred to in these derivatives contracts. In other words, the trading price will depend on the level of the floating benchmark interest rate mentioned in the contract at the date of the transaction, as well as on expectations about the future evolution of this floating benchmark interest rate. Any change in the benchmark interest rate(s) alters the resultant cash flows. The benchmark interest rates EURIBOR and EONIA are therefore an essential pricing component for EIRDs.<sup>14</sup>
- (17) The price of EIRDs at any point in time is dependent upon expected future interest rates. Exposure to variations in market interest rates is the main financial risk linked to operating on the market for EIRDs. If the risk perceived by market players increases, so too usually do expectations about future interest rates. Usually, the

---

<sup>13</sup> In some cases FRAs or IRSs can be either cancelled between the parties to the contract (in full or in part) or novated by one of the parties to a third party. Novation refers to the process where one of the two parties to the contract (the transferor) assigns its role to a third party (the transferee). The transferor is described as stepping out of the contract while the transferee is described as stepping into the contract. A novation is analogous to a physical product being sold on by the buyer to a third party. (See to that effect <http://www.isda.org/publications/pdf/2004isdanovdefinitionsug.pdf>).

<sup>14</sup> [...] The European Banking Federation has in a reply to a consultation by the European Commission stated, with reference to the benchmark rates EURIBOR and EONIA, that "These benchmarks are used to price financial instruments to a very great extent, since most of interest rate derivatives used for swapping fixed with floating rate are linked to Euribor by legal definition. The same applies for EONIA swaps, where counterparty swaps a fixed rate against overnight rate." See [http://ec.europa.eu/finance/consultations/2012/benchmarks/docs/contributions/registered-organisations/euribor-ebf\\_en.pdf](http://ec.europa.eu/finance/consultations/2012/benchmarks/docs/contributions/registered-organisations/euribor-ebf_en.pdf), [page 4](#).

longer the maturity<sup>15</sup> of the contract, the higher the risk and hence the higher the expected market remuneration, namely the interest rate.

- (18) The expectations of market participants about future interest rates (also known as forward rates) for different maturities (for example, 1, 2, 3 months) are linked and called "the term structure of interest rates" or "the yield curve". A yield curve represents the relationship between market remuneration (interest) rates and the remaining time to maturity of EIRDs. The information content of a yield curve reflects the asset pricing process on financial markets. When buying and selling EIRDs, investors include their individual expectations of interest rates and their individual assessment of risks in their own reconstruction of the yield curve, which they then use in order to calculate the value of the EIRDs they trade.

### 2.2.3. *Euro interest-rate benchmarks*

- (19) Rates for a transaction in the money markets are often defined by reference to a benchmark rate set by an industry body which can be referred to by any market participant.<sup>16</sup> For transactions in euros, various benchmark interest rates are used.

#### 2.2.3.1. The Euro Interbank Offered Rate (EURIBOR)

- (20) Banks regularly borrow money from, or lend money to each other for specific periods of time (referred to as "maturities") and at particular interest rates. These transactions between banks, as opposed to other financial institutions, take place on the interbank lending market (in this Decision also referred to as "cash market").
- (21) The EURIBOR is a benchmark interest rate intended to reflect the cost of interbank lending in euros. It is widely used in the international money markets and sponsored by the European Banking Federation ('EBF').
- (22) EURIBOR is defined as the rate at which euro interbank term deposits are offered by one prime bank to another prime bank within the Euro zone and is published at 11:00 am (CET) for spot value ('T+2'). 'T+2' refers to the settlement date for the respective trade, being 2 days after the trade date. EURIBOR is based on the panel banks' individual quotes of the rates at which each of them believes that a hypothetical prime bank would lend funds to another prime bank. EURIBOR is calculated on the basis of the panel bank submissions of these estimated rates to Thomson Reuters, which acts as the calculation agent to the EBF, between 10.45 am and 11.00 am Brussels time. The highest and lowest 15% of all of the submissions collected are eliminated. The remaining rates are averaged and rounded to three decimal places. EURIBOR is thereafter determined and published at 11.00 am Brussels time (10.00 am GMT) on every trading day.<sup>17</sup> Each of the panel banks<sup>18</sup> provide a contribution

---

<sup>15</sup> In the industry, the term "maturity" is usually used to indicate the duration of an EIRD contract (for instance five years, ten years, etc.) and the term "tenor" is usually used to indicate the duration of the underlying rate (for instance 1 or 3 months).

<sup>16</sup> See the UK Financial Services Authority's (FSA) Final Notice of 27 June 2012 on breach of regulatory rules by [non-addressee], point 24-28, [...].

<sup>17</sup> See recital (142). [...]. <http://www.euribor-ebf.eu/euribor-org/about-euribor.html>; the FSA's Final Notice of 27 June 2012 on breach of regulatory rules by [non-addressee], point 29, [...]. Trading days are defined according to a calendar set by the ECB in the context of the Trans-European Automated Real-time Gross settlement Express Transfer (or TARGET).

for each of the 15 different rates of interest, one for each maturity period ranging from one week to one year, which is referred to as "tenors". It is the treasury departments (also called "cash desks") of the panel banks, which are in charge of *inter alia* controlling and maintaining the banks' liquidity, that are responsible for determining a bank's contribution to the calculation agent based on its own perception of the interbank market level.<sup>19</sup> Employees involved in a treasury desk's rate submissions to a calculation agent are referred to as "submitters" in this Decision.

- (23) Until 30 August 2008, the calculation agent made the underlying panel bank data available immediately after the publication of the fixing of the rates on its own system and also to other data vendors including Bloomberg, for a period back to one rolling month. Since 1 September 2008, the underlying data has also been published on the EBF's website.<sup>20</sup>
- (24) The different EURIBOR tenors, such as 1 month, 3, 6 or 12 months, serve as pricing components for EURIBOR-based EIRDs. For EIRDs, the applicable EURIBOR tenor which is maturing or resetting on a specific date may affect either the cash flow a bank receives from the counterparty to the EIRD, or the cash flow a bank is required to pay to the counterparty on that date. Depending on the trading positions/exposures entered into on its behalf by its traders, a bank may either have an interest in a high EURIBOR fixing (when it receives an amount calculated on the basis of EURIBOR), a low fixing (when it is required to pay an amount calculated on the basis of EURIBOR) or to be "flat" (when it does not have a significant position in either direction).
- (25) EURIBOR rates are, *inter alia*, reflected in the pricing of EIRDs, which are globally traded financial products used by corporations, financial institutions, hedge funds, and other undertakings to manage their interest rate risk exposure (hedging, for both borrowers and investors) or for speculation purposes. EIRDs may be traded over-the-counter ("OTC") or, in the case of interest rate futures, through exchanges.
- (26) All parties subject to this investigation were EURIBOR panel banks.<sup>21</sup>

#### 2.2.3.2. Euro Over Night Index Average (EONIA)

- (27) Another common reference rate related to the Euro is the EONIA (Euro Over Night Index Average) which is an effective overnight interest rate computed as a weighted average of all overnight unsecured lending transactions in the interbank market. Unlike Euro LIBOR, the EURIBOR does not have an over-night tenor. This role is taken by the EONIA. The banks contributing to EONIA are the same as the panel banks contributing to EURIBOR and the treasury department of the bank is the responsible department. The EONIA is computed with the help of the European Central Bank (ECB). For this purpose, the panel banks report daily<sup>22</sup> to the European System of Central Banks the aggregate volume of all overnight unsecured lending

---

<sup>18</sup> In the period considered in this Decision, 47 banks were part of the panel, however the composition of the panel has fluctuated over time both in terms of composition and number of panel banks. [...].

<sup>19</sup> [...].

<sup>20</sup> [...] <http://www.euribor-ebf.eu/euribor-org/euribor-rates.html>.

<sup>21</sup> [...].

<sup>22</sup> Except on Saturdays, Sundays and TARGET holidays.

transactions and the weighted average lending rate for these transactions.<sup>23</sup> Put simply, therefore, EONIA can be seen as a "1 day EURIBOR rate", although in reality it is a weighted average of actual unsecured overnight lending rates rather than a survey of unsecured term lending rates. Publicly available research papers formally establish the dynamic relationship between EONIA and EURIBOR, notably via the expectations hypothesis embedded in the term structure of interest rates (also called yield curve).<sup>24</sup>

#### 2.2.3.3. Other Euro reference rates

- (28) There are further Euro interest-rate benchmarks such as Euro LIBOR and EURONIA that are used in the business, although to a much lesser extent than EURIBOR or EONIA.<sup>25</sup> For example, Euro LIBOR was one of the London Interbank Offered Rates published every business day by the British Banking Association and has been replaced in 2014 by the ICE LIBOR which is administered by Intercontinental Exchange Benchmark Administration Ltd. It is to be distinguished from EURIBOR. The purpose of the Euro LIBOR is, as with EURIBOR, to reflect the cost of interbank borrowing. But in contrast to EURIBOR, it is a benchmark based on the rate at which each bank in a panel of 15 contributing banks believes that it could itself obtain unsecured borrowings in Euros in the London interbank market for a range of maturities.<sup>26</sup>
- (29) This Decision covers the sector of interest rate derivatives that are (at least partially) linked to EURIBOR and/or EONIA.<sup>27</sup> This Decision does not cover interest rate derivatives exclusively linked to other Euro interest-rate benchmarks such as Euro LIBOR or EURONIA.

#### 2.2.4. *The trade of interest rate derivative contracts*

##### 2.2.4.1. Trading terminology

- (30) Trades of interest rate derivatives are generally entered into over the phone, by virtue of Bloomberg message, electronic trading e-commerce tools or Reuters and may be entered into either directly or through a broker.<sup>28</sup>
- (31) The term "fixing date" or "fixing" often refers to the date on which the level of the reference rate is determined.<sup>29</sup> The term "fixing" can also refer to the rate which is used to settle a financial contract at a pre-determined date.<sup>30</sup> The term "settlement

---

<sup>23</sup> <http://www.euribor-ebf.eu/euribor-eonia-org/about-eonia.html> and Article 2 of the EONIA code of conduct; [...]

<sup>24</sup> See for example Deutsche Bundesbank Discussion Paper Series 1: Economic Studies no. 01/2006. The other determinants of EONIA are obviously those factors influencing rates in the overnight cash market, in particular the ECB's policy rate and the cash (liquidity) positions of those banks contributing to EONIA.

<sup>25</sup> [...].

<sup>26</sup> [...]; <http://www.bbalibor.com/panels/eur>.

<sup>27</sup> The markets for such instruments are also referred to herein as '*the EIRD sector*'.

<sup>28</sup> [...] See also [...] where JPMorgan Chase distinguishes between dealer-to-dealer trades and dealer-to-client trades stating that these are two individual markets which provide liquidity to different types of end user. However, such a distinction is not supported by the submissions of any of the other parties (see in particular recital (43)).

<sup>29</sup> [...].

<sup>30</sup> [...].

date" or "settlement" refers to the date on which the settlement amount is paid.<sup>31</sup> The term "reset date" refers to the date on which the floating rate payable on an interest rate swap is reset.<sup>32</sup> The term "IMM date" refers to International Money Market dates which are the four quarterly dates of each year which most futures and options contracts use as their scheduled maturity date, this is to say the third Wednesday of March, June, September and December.<sup>33</sup> Sometimes, traders would also refer to the third Wednesday of any other month as "IMM date".

- (32) In simple terms, "*run*" or "*mids*" can be described as price lists of a trader, a trading desk or a bank regarding certain standard financial products. Even though many EIRDs are bespoke and prices in volatile markets change constantly, such price lists provide competitors with a comfort check of the assessment of market conditions by the bank issuing this price list. The term "*spread*" usually refers to a margin that a market player takes for a service, such as for providing liquidity to the market by offering to buy and sell EIRDs at the same time (market making).
- (33) The terms "*run*" or "*run through*" refer to a list of indicative levels for one or more financial instruments at a given moment in time, for example for different tenors of a particular financial derivative product. There is no single manner in which a run is calculated, it represents an individual perception of the market. Exchanging runs and discussing the levels contained in those runs is a means of exchanging opinions on where the market is currently trading or where it is expected to go. It is not yet a firm quote or dealing price with any actual counterparty. To produce a firm quote or dealing price, a trader would take into account a range of considerations such as the size of the trade, the level of risk attaching to the trade and the trading strategy which is not factored into a run of indicative levels. A run produced by a trader with a desire to sell a product may be expected to include levels which are lower than a run produced by a trader with a desire to buy that particular product.<sup>34</sup>
- (34) The term "*mid*" refers to the mid-point or average of the bid and offer prices (for example perceived, modelled, quoted or traded) for a particular product. The mid often serves as a reliable approximation of where a market maker would trade with a client, in particular where the market is liquid and the bid-offer spread is narrow.<sup>35</sup> [...] that derivatives traders use the mid points on their yield curves to help determine the bid or offer prices they are to make to the market. Through knowing a competitor's mid point, although it is not actually the dealing price, a derivatives trader is more easily able to work out the actual bid or offer prices of its competitors.<sup>36</sup> Mids are used for pricing, managing trading positions and appreciation of a portfolio.<sup>37</sup>
- (35) The term "base" or "basis" is used to refer to the difference in price between two related financial instruments. It often refers to the difference between interest rate

---

31 [...].

32 [...].

33 [...].

34 [...].

35 [...].

36 [...].

37 [...].

tenors or to the difference between two different reference rates.<sup>38</sup> "Basis" is also regularly used to refer to the difference between EURIBOR and EONIA for the same tenor.<sup>39</sup>

- (36) A spread is essentially the difference between two values. The term "*spread*" often refers to the "basis" that is to say the difference between two tenors of the same reference rate (for example, 1 month and 3 month EURIBOR) or between reference rates (in this sense it is used in the context of communications described in recital (138)). Alternatively and with regard to the conduct described in this section, the term "*spread*" often refers to the difference between the "*bid*" and "*offer*" prices for particular products.<sup>40</sup> [...] that a collective effort in determining spreads can affect the transaction price of a trade primarily because it can result in more informed quotes for the bidding party, reducing the uncertainty that the party faces about market conditions. At the same time, this puts other market participants at a disadvantage compared to those involved in the collusion.<sup>41</sup> Spreads are used for the pricing, the appreciation and the quotation of financial products.<sup>42</sup>
- (37) On occasions, the discussions between the parties relate to their confidential yield curves. The term "*yield curve*" relates to the representation of the relationship between the level of an interest rate and the time to maturity. In a given currency, there is no single yield curve describing the level of interest rate for applicable to all, but instead several yield curves such as the government bond curves, the corporate bond curves, the swap curves etc. The exchange of such information to competitors discloses a bank's proprietary sensitive assessment of the development of the market and enables a competitor to anticipate the disclosing bank's pricing. For the competitor receiving the information, this means a comfort check to see whether his own assessment of future price developments is shared by other important market players. [Non-addressee] submits that OTC derivatives contracts are priced by market makers based on their yield curves. By exchanging information relating to their own yield curves, the parties are able to offer similar quotes to the market instead of offering two independent and potentially different quotes.<sup>43</sup>

#### 2.2.4.2. Market making and proprietary trading

- (38) Interest rate derivatives contracts are used by financial institutions to manage their interest rate risks (that is to say for "hedging" purposes). They are also used for speculation purposes as financial institutions can make significant profit and losses by entering into such contracts.<sup>44</sup>
- (39) The trading of interest rate derivatives is carried out by the respective trading desks of the banks. Employees involved in a trading desk's trading activity are referred to as "traders" in this Decision.

---

<sup>38</sup> [...].

<sup>39</sup> [...].

<sup>40</sup> [...].

<sup>41</sup> [...].

<sup>42</sup> [...].

<sup>43</sup> [...].

<sup>44</sup> [...] and the FSA's Final Notice of 27 June 2012 on breach of regulatory rules by [non-addressee], points 38 and 41[...].

- (40) Bank derivatives traders compete with other derivatives traders for customer trades, leading to exposures which they need to risk-manage and may keep for (proprietary trading) but may also act as market makers.<sup>45</sup> Market makers are individuals or companies which hold themselves out as able and willing to sell or to buy financial products, such as securities or financial derivative products, at prices determined by them generally and continuously (through firm bids and offers), rather than in respect of each particular transaction.
- (41) While in some financial markets there are designated market makers, which are required to operate according to codified rules, there are no designated market makers in respect of trading in financial derivative products based on Euro interest rates. It is open to firms and to individuals to perform such a role. There is, however, no obligation to do so. The main role of market makers is to bring liquidity to the market, to increase transparency and to manage the risks derived from the positions adopted by clients and counterparties.<sup>46</sup> Liquidity in the context of derivatives trading generally refers to the degree to which a contract can be bought or sold in the market without affecting its price. A liquid market is often characterized by a high level of trading activity which generally means a high number of potential buyers and sellers at any given time and a high volume of trades being conducted in the market.<sup>47</sup>
- (42) The difference between the price at which a market maker is willing to buy the contract and sell the contract is called the "spread" and this reflects the profit margin that is sought. Once the market maker has offered a price, he is obliged to buy or sell at the price quoted. He may then immediately seek an "offsetting" trade to reduce the risk acquired from his customer. In this context, he may enter into an interim trade, which is a separate financial transaction designed to create liquidity until the position can be unwound. Market makers are typically placed in competition by end user clients who will customarily ask a number of market makers to quote prices. This has the effect of decreasing spreads.<sup>48</sup> The reward for the market maker of the risks taken to price at any time on any market is to be found in the numerous transactions it makes, which enable it to raise its profile, to decrease the market risk and potentially to make profits if it is priced well.<sup>49</sup>
- (43) When acting as market makers derivatives traders can trade directly with their competitors or indirectly through brokers. Market makers also compete with other market makers for volume of customer flows in the market.<sup>50</sup> Market makers display their buy and sale quotations as widely as possible, and therefore to any clients, regardless of whether they are pure clients or also competitors. It should be noted, however, that such legitimate information on price and volumes would normally be made available to all customers in the EIRD market.

---

45

[...]

For the sake of clarity, the infringement relates to EIRDs traded by the addressees, whether acting as market makers or otherwise. Their respective trading positions and exposures in EIRDs would be a product of all trading activities.

46

[...].

47

[...].

48

[...].

49

[...].

50

[...].



- (44) Traders of all parties involved in this investigation acted as market makers for EIRDs.<sup>51</sup> [...].<sup>52</sup>

#### 2.2.4.3. Lack of market transparency

- (45) During the period under consideration in this Decision, there was very limited transparency on the market with regard to volumes and prices of EIRDs.<sup>53</sup> This is explained by the fact that most EIRD transactions are negotiated on a bilateral basis between market players ("over-the-counter" or OTC derivatives) and until 2012 there was no obligation to register transactions in a trade repository.<sup>54</sup> Actual trading prices and volumes were not published with the exceptions of listed futures and some options, which are exchange-traded. Therefore, transaction prices and volumes for most EIRDs were not visible to the rest of the market, and despite there being some indications on price levels, such as on Bloomberg pages of some brokers or banks, these indications were not available for all products, not reliable and would change constantly.
- (46) The lack of market transparency has been confirmed [...].<sup>55</sup> JPMorgan Chase have submitted in particular that "*lack of transparency is an important feature of the EIRD sector in relation to both the prices and the volumes of transactions*" and HSBC underline "*the opaque and complex nature of OTC markets*" and add that "*transparency regarding the volumes and prices of traded OTC is also limited*". [non-addressee] has also submitted that there is "*limited transparency on the details of parties to transactions*" in the EIRD market.<sup>56</sup>

#### 2.2.5. The geographic scope and size of the business

- (47) EIRDs are traded globally in the international money markets and as such involve counterparties from various jurisdictions around the world. As a result, the geographic scope of the cartel is at least EEA-wide.
- (48) There is no reliable estimate of the size of the worldwide market for EIRDs. The Bank of International Settlements ("BIS") publishes semi-annual statistics on over-the-counter single-currency interest rate derivatives, which may provide an indication although it does not reflect the exact scope of this case. In December 2015 this category of Euro instruments had a gross market value of USD 4 747 billion while the overall notional amounts outstanding on this date amounted to USD 117 849 billion. According to the BIS statistics, interest rate derivatives constitute by far the largest portion of all OTC financial derivatives. In December 2015 the gross

---

<sup>51</sup> [...].

<sup>52</sup> [...].

<sup>53</sup> For listed EIRDs such as futures and standard forms of options which are exchange-traded, there was a listed price. For standard FRAs and swaps there were pricing indications for instance on the Bloomberg pages of brokers. However, for the majority of OTC EIRDs for which the price was bespoke, there was no transparency on prices nor on volumes.[...].

<sup>54</sup> See Regulation (EU) No 648/2012 and [http://europa.eu/rapid/press-release\\_IP-15-5459\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5459_en.htm)

<sup>55</sup> [...].

<sup>56</sup> [...].

market value of all OTC financial derivatives was USD 14 492 billion, of which USD 10 148 billion were interest rate derivatives (all currencies).<sup>57</sup>

### **2.3. Trade between Member States/Contracting Parties**

- (49) EURIBOR and EONIA are the most important financial benchmark rates regarding the euro. The euro has been the currency of 12 Member States until the end of 2006, of 13 Member States in 2007, of 15 Member States in 2008 and presently of 17 Member States.
- (50) In addition, various undertakings and public bodies within the EEA routinely enter into EIRD contracts. Also counterparties situated outside of the EEA routinely enter into EIRDs to hedge financial risks emerging from their dealings in the EEA. As the EURIBOR and the EONIA are single market benchmark rates applicable to a wide variety of financial products such as EIRDs, the cartel conduct has potentially or actually affected all actors in the market for EIRDs within the EEA. Moreover, there are significant trade flows within the EEA as the parties entering into EIRDs are often situated in different Member States/Contracting Parties.
- (51) Consequently it is inherent to the product that forming a cartel pertaining to EIRDs as described in this Decision affects trade between Member States/Contracting Parties (see also section 5.2).

### **2.4. The undertakings covered by this Decision**

#### *2.4.1. Crédit Agricole*

- (52) The Crédit Agricole group carries out six major activities: (i) retail banking in France via the Caisses Régionales of Crédit Agricole, (ii) retail banking in France via LCL, (iii) international retail banking, (iv) specialised financial services, (v) asset management, insurance and private banking, (vi) financial banking and investment.<sup>58</sup> Crédit Agricole is present in 70 countries with approximately 160 000 employees and 54 million clients.<sup>59</sup>
- (53) Crédit Agricole carries out its financial banking and investment activity via Crédit Agricole Corporate and Investment Bank ("CACIB"), a joint stock company established under French Law which is the employing entity of the individuals identified in recital (56).<sup>60</sup> Before 6 February 2010, CACIB was called Calyon.<sup>61</sup>
- (54) CACIB's parent company is Crédit Agricole SA which is also a joint stock company established under French Law.<sup>62</sup> During the period of the infringement, 97.33% of the shares in CACIB have been owned by Crédit Agricole SA. 2.67% of the shares in CACIB have been held by other entities of the Crédit Agricole group. Crédit Agricole SA is the ultimate parent company of the Crédit Agricole group.<sup>63</sup>

---

<sup>57</sup> Semi-annual OTC derivatives statistics at end-December 2015, Bank for International Settlements, available at <http://www.bis.org/statistics/derstats.htm>. Several of the parties are listed as the biggest market players for different EIRD products in the industry surveys of "Risk" magazine, [...].

<sup>58</sup> [...].

<sup>59</sup> [...].

<sup>60</sup> [...].

<sup>61</sup> [...]. This was purely a change of name of the legal entity.

<sup>62</sup> [...].

<sup>63</sup> [...].

- (55) Crédit Agricole submits that the responsibility for trading financial derivative products based on Euro interest rates and submission of EURIBOR within Crédit Agricole lies with the Interest Rates Derivatives department within CACIB and the Treasury Desk whose business is booked in the name of Crédit Agricole.<sup>64</sup>
- (56) The individuals in charge of submitting the EURIBOR rates during the period of the infringement and the individuals involved in trading financial derivative products based on Euro interest rates during this period within the Crédit Agricole group were all employed by CACIB.<sup>65</sup> The Crédit Agricole traders mentioned in this Decision are [employee of Credit Agricole] and [employee of Credit Agricole]; a Crédit Agricole submitter mentioned is [employee of Credit Agricole].<sup>66</sup>
- (57) Crédit Agricole SA and/or any other entities directly or indirectly controlled by it are commonly referred to as Crédit Agricole in this Decision.

#### 2.4.2. HSBC

- (58) HSBC Holdings plc is the holding and ultimate parent company of the HSBC group.<sup>67</sup> The business activities of the HSBC are organised into four business units: (i) Retail Banking and Wealth Management, (ii) Private Banking, (iii) Commercial Banking and (iv) Global Banking and Markets.<sup>68</sup> HSBC is present all around the world via its subsidiaries, branches and offices.<sup>69</sup>
- (59) HSBC submits that, within HSBC, the responsibility for trading financial derivative products based on euro interest rates lies with HSBC France and HSBC Bank plc<sup>70</sup> whilst the responsibility for submitting the EURIBOR rates lies with the Balance Sheet Management Team within HSBC France.<sup>71</sup> HSBC France is a joint stock company (société anonyme) under French law. HSBC Bank plc is a wholly-owned subsidiary of HSBC Holdings plc, and owns 99.99 percent of the share capital and voting rights of HSBC France.<sup>72</sup>
- (60) The individuals in charge of submitting the EURIBOR rates during the period of the infringement and the individuals involved in trading financial derivative products based on euro interest rates during this period within HSBC were all employed by HSBC France.<sup>73</sup> The HSBC traders mentioned in this Decision are [employee of HSBC], [employee of HSBC], [employee of HSBC] and [employee of HSBC].<sup>74</sup>
- (61) HSBC Holdings plc and/or any other entities directly or indirectly controlled by it are commonly referred to as HSBC in this Decision.

---

<sup>64</sup> [...].

<sup>65</sup> [...].

<sup>66</sup> For further information on their employment, see recital (591).

<sup>67</sup> [...].

<sup>68</sup> [...].

<sup>69</sup> [...].

<sup>70</sup> [...].

<sup>71</sup> [...].

<sup>72</sup> [...].

<sup>73</sup> [...].

<sup>74</sup> For further information on their employment, see recital (608).

### 2.4.3. *JPMorgan Chase*

- (62) JPMorgan Chase is one of the oldest financial institutions in the United States and is active across the EEA. It currently operates in more than 60 countries, where it serves millions of consumers and small businesses, as well as corporate, institutional and government clients. JPMorgan Chase serves its customers and clients under its Chase and JPMorgan brands.<sup>75</sup>
- (63) The ultimate parent company of JPMorgan Chase is JPMorgan Chase & Co., a US company incorporated under the laws of Delaware.<sup>76</sup> JPMorgan Chase submits that the responsibility for trading financial derivative products based on euro interest rates lies with JPMorgan Chase Bank, National Association (JPMorgan Chase Bank, N.A.) while the responsibility for the EURIBOR submissions within the JPMorgan Chase group lies with J.P. Morgan AG.<sup>77</sup>
- (64) The individuals in charge of submitting the EURIBOR rates during the period of the infringement and the individuals involved in trading financial derivative products based on euro interest rates or the setting of EURIBOR during the period of the infringement within the JPMorgan Chase group were employed by J.P. Morgan Services LLP.<sup>78</sup> The trader mentioned in this Decision is [employee of JPMorgan Chase]; submitters mentioned are [employee of JPMorgan Chase] and [employee of JPMorgan Chase].<sup>79</sup> JPMorgan Chase & Co and/or any other entities directly or indirectly controlled by it are commonly referred to as JPMorgan Chase in this Decision.

## 2.5. **Other undertakings subject to the investigation**

- (65) Four other undertakings were involved in this investigation and were subject to a settlement decision on 4 December 2013.<sup>80</sup> Reference is made in this Decision to the settling parties where this is necessary for the understanding of the behaviour or the non-settling parties and of the market context of such behaviour.

### 2.5.1. [...]

- (66) [...] <sup>81</sup> [...] <sup>82</sup>
- (67) [...] <sup>83</sup> [...]
- (68) [...] <sup>84</sup> [...] <sup>85</sup>
- (69) [...] <sup>86</sup> [...]
- (70) [...].

---

<sup>75</sup> [...].

<sup>76</sup> [...].

<sup>77</sup> [...].

<sup>78</sup> [...].

<sup>79</sup> For further information on their employment, see recital (613).

<sup>80</sup> See recital (95).

<sup>81</sup> [...].

<sup>82</sup> [...].

<sup>83</sup> [...].

<sup>84</sup> [...].

<sup>85</sup> [...].

<sup>86</sup> [...].

2.5.2. [...]

(71) [...]<sup>87</sup>

(72) [...]<sup>88</sup>

(73) [...]<sup>89</sup> [...]<sup>90</sup>

(74) [...]<sup>91</sup>

(75) [...]<sup>92</sup>

(76) [...]

2.5.3. [...]

(77) [...]<sup>93</sup>

(78) [...]<sup>94 95</sup>

(79) [...]<sup>96</sup>

(80) [...]

2.5.4. [...]

(81) [...]<sup>97</sup> [...]<sup>98</sup> [...]

(82) [...]<sup>99</sup> [...]<sup>100</sup>

(83) [...]<sup>101</sup> [...]<sup>102</sup> [...]<sup>103</sup> [...]<sup>104</sup> [...]<sup>105</sup>

(84) [...]<sup>106</sup>

(85) [...]

---

87 [...].  
88 [...].  
89 [...].  
90 [...].  
91 [...].  
92 [...].  
93 [...].  
94 [...].  
95 [...].  
96 [...].  
97 [...].  
98 [...].  
99 [...].  
100 [...].  
101 [...].  
102 [...].  
103 [...].  
104 [...].  
105 [...].  
106 [...].

### 3. PROCEDURE

- (86) [non-addressee] applied for a marker by informing the Commission of the existence of a cartel in the EIRD sector and expressing its willingness to cooperate with the Commission under the terms of the 2006 Leniency Notice.<sup>107</sup> [...]
- (87) Inspections took place from 18 to 21 October 2011 at the premises of [non-addressee], JPMorgan Chase, [non-addressee] in London and [non-addressee], Crédit Agricole, HSBC in Paris.<sup>108</sup> Various requests for information were sent to the parties inspected and other market players.<sup>109</sup>
- (88) The Commission received leniency applications from [non-addressees]. The Commission informed them [...] of its intention to apply a reduction of their fines within a specified band on the basis of the preliminary conclusion that they fulfilled the conditions for such fines reduction.<sup>110</sup>
- (89) By decisions of 5 March 2013 and 29 October 2013,<sup>111</sup> the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against [non-addressee], Crédit Agricole, [non-addressee], HSBC, JPMorgan Chase, [non-addressee] and [non-addressee].<sup>112</sup>
- (90) The Commission fixed a [...] time period for all parties to express their interest to engage in settlement discussions, to which all parties responded positively.<sup>113</sup>
- (91) The Commission informed all parties about the objections that it envisaged raising against them and gave them an early disclosure of the evidence used to establish these potential objections. All parties received DVDs containing a list of the documents in the Commission files and copies of the relevant pieces of documentary evidence and recordings to be relied upon in the context of the settlement discussions.<sup>114</sup> The parties also received access at the Commission's premises to the various statements made by [non-addressees] under the 2006 Leniency Notice in this proceeding.<sup>115</sup>
- (92) The Commission presented the substance of its objections and the evidence underpinning them in several bilateral meetings with all parties that had expressed their interest to engage in settlement discussions. Following those meetings, the Commission determined the range of potential fines, and gave the undertakings concerned [...] days to submit formal proposals for a settlement.<sup>116</sup>

---

<sup>107</sup> Commission Notice on Immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17.

<sup>108</sup> Article 20(4) of Regulation 1/2003.

<sup>109</sup> Article 18 of Regulation (EC) No 1/2003 or point 12 of the 2006 Leniency Notice. [...]

<sup>110</sup> Points 12, 24, 25, 26, 27 and 29 of the 2006 Leniency Notice.

<sup>111</sup> [...]

<sup>112</sup> [...]

<sup>113</sup> Article 10a (1) and 17(3) of Regulation (EC) No 773/2004. [...]

<sup>114</sup> All parties returned the material after the settlement procedure. [...]

<sup>115</sup> Crédit Agricole, HSBC and JPMorgan Chase received access between 2.4.2013 and 22.4.2013.

<sup>116</sup> Article 10a (2) of Regulation (EC) No 773/2004. [...]

- (93) [non-addressees] submitted proposals for a settlement within the given time period. No settlement submission was received from Crédit Agricole, HSBC and JPMorgan Chase.
- (94) On the basis of the settlement proposals received, the Commission issued on 29 October 2013 a Statement of Objections under the settlement procedure against [non-addressees].<sup>117</sup> In response to the Statement of Objections, all settling parties confirmed that the Statement of Objections corresponded to the content of their proposals for a settlement.
- (95) On 4 December 2013 the Commission adopted a decision pursuant to Articles 7 and 23(2) of Regulation (EC) No 1/2003 against the settling parties [...] holding them liable for the respective conduct in their regard in this case.<sup>118</sup>
- (96) For the parties that had not submitted a settlement proposal, Crédit Agricole, HSBC and JPMorgan Chase, the Commission continued the investigation under the standard procedure.
- (97) The Commission also carried out an announced inspection at the premises of JPMorgan Chase in London between 11 and 14 February 2014, during which the Commission gathered relevant evidence that JPMorgan Chase had been unable to provide in reply to requests for information before.<sup>119</sup>
- (98) On 19 May 2014 the Commission issued a Statement of Objections (hereinafter "SO") under the standard procedure against legal entities of Crédit Agricole, HSBC and JPMorgan Chase for the conduct in their regard in this case.<sup>120</sup>
- (99) Subsequently, Crédit Agricole, HSBC and JPMorgan Chase were given access to the Commission's case file. They received three DVDs with the accessible parts of the Commission's investigation file and their legal representatives received further access to those parts that were accessible at Commission premises only.<sup>121</sup>
- (100) Following specific requests, Crédit Agricole, HSBC and JPMorgan Chase also received access to the Statement of Objections of 29 October 2013 adopted in the context of the settlement procedure, the replies of the settling parties to this Statement of Objections and the Settlement decision of 4 December 2013.<sup>122</sup>
- (101) In addition, they requested and received further access to financial data gathered by the Commission for fines calculation purposes, for assessing if no discriminatory

---

<sup>117</sup> [...].

<sup>118</sup> [...] - Commission Decision C(2013) 8512 of 4.12.2013 addressed to[...] 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.39914 – Euro Interest Rate Derivatives (EIRD)(Settlement)).

<sup>119</sup> [...] in recitals, (157), (160), (165), (170), (174), (180), (183), (194), (205), (210), (220), (230), (239), (243), (262).

<sup>120</sup> [...] Statement of Objections C(2014) 3420 of 19.5.2014 (hereinafter "SO") addressed to Crédit Agricole SA, Crédit Agricole Corporate and Investment Bank, HSBC Holdings plc, HSBC Bank plc, HSBC France, JPMorgan Chase & Co., JPMorgan Chase Bank, National Association and J.P. Morgan Services LLP.

<sup>121</sup> Crédit Agricole, HSBC and JPMorgan Chase received access between 2.6.2014 and 4.6.2014.

<sup>122</sup> The matter was referred to the Hearing Officer by Crédit Agricole and JPMorgan Chase when the Commission had given access to a redacted version of the settlement decision in which all references to the settling parties and information regarding the fining methodology was redacted.

approach is applied by the Commission in its fines calculations.<sup>123</sup> To grant this financial data for which confidentiality was claimed appropriate protection, full access was restricted to external counsel and economic advisors in a data room procedure.<sup>124</sup>

- (102) [non-addressee] provided the Commission in February 2015 with additional information discovered in ongoing investigations by other public authorities.<sup>125</sup> As some of this information corroborated the facts alleged in the Statement of Objections of 19 May 2014, the Commission intended to rely on it to further support its objections in a decision. The addressees of the Statement of Objections of 19 May 2014 were informed accordingly and given access to this additional information from [non-addressee] in the form of a Letter of Facts that was sent on 30 March 2015.<sup>126</sup>
- (103) [non-addressee] requested and received the right to be heard as an interested third person, pursuant to Article 13 of Regulation No 773//2004.<sup>127</sup> [non-addressee] was informed of the nature and subject matter of the standard procedure and made known its views in writing.<sup>128</sup> [non-addressee] did not request to attend the oral hearing.
- (104) All addressees of the Statement of Objections of 19 May 2014 made known in writing to the Commission their views on the objections raised against them as well as their comments, if any, on the Letter of Facts by the prescribed deadlines.<sup>129</sup> They

---

<sup>123</sup> The matter was referred to the Hearing Officer when there was discussion about the confidential character of this financial data. As a result, less redacted versions were disclosed and the full confidential version of this data was made accessible in a data room procedure.

<sup>124</sup> See Conditions of Access to the Data room:[...]; Implementing measures:[...]; Confidentiality agreements:[...]; Declarations of Consent: [...].

The data room procedure took place at the premises of DG Competition between 21 and 27.10.2014.  
[...].

<sup>125</sup> [...].  
<sup>126</sup> Point 111 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ C 308 of 20.20.2011 p. 6.

The Letter of Facts of 30.3.2015 contained and specified the items of evidence that the Commission intended to rely on to further support its objections [...]. Upon request from Crédit Agricole and following an intervention from the Hearing Officer, the Commission further disclosed on 28.4.2015 all material it had received from [non-addressee] [...].

<sup>127</sup> 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 , OJ L 123, 27.4.2004, p. 18–24, as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004 as regards the conduct of settlement procedures in cartel cases, OJ L 171, 1.7.2008, p. 3-5.

[...].

<sup>128</sup> [...].

<sup>129</sup> Crédit Agricole submitted its response to the SO on 14.11.2014 [...]. The response was completed on 31.3.2015 with a consolidated version including comments on the methodology for calculating the fines [...]. Crédit Agricole submitted comments to the Letter of Facts on 6.5.2015 [...]. A non-confidential version of these documents was submitted on 24.7.2015 [...]. Crédit Agricole submitted additional facts to support its comments on 21.12.2015 [...].

HSBC submitted its response to the SO on 14.11.2014 ([...] + annexes). The response was completed on 31.3.2015 with a consolidated version ([...] + annexes). HSBC submitted comments to the Letter of Facts on 20.4.2015 [...]. A non-confidential version of the response to the SO was submitted on 28.8.2015 ([...] + annexes).

JPMorgan Chase submitted its response to the Statement of Objections on [...]. The response was completed on 31.3.2015 with a consolidated version [...]. A correction was submitted on 11.6.2015 [...] and a non confidential version on 29.07.2015 [...]. JPMorgan Chase did not submit comments to the Letter of Facts.



also presented their views orally during an oral hearing that was organised in Brussels on 15-17 June 2015.

- (105) On 6 April 2016, the Commission adopted a decision amending Article 2 of the Settlement decision of 4 December 2013 in respect of [non-addressee].<sup>130</sup>
- (106) The non-settling parties received access to this amending decision. In order to assess once more whether any discriminatory approach had been applied by the Commission in its fines calculations, they also received access to the underlying correspondence with [non-addressee] and the corrected financial data submitted by [non-addressee] that had led the Commission to adopt the decision of 6 April 2016 amending the settlement decision of 4 December 2013.<sup>131</sup> They provided their comments on this data on 12 July 2016.<sup>132</sup>
- (107) The Commission sent a second Letter of Facts to JPMorgan Chase on 9 September 2016, informing the latter about the possible use of two communications reported by JPMorgan Chase in its reply of 21 November 2012 to a Commission Request for Information. JPMorgan Chase replied to this Letter of Facts on 3 October 2016.<sup>133</sup>

#### 4. DESCRIPTION OF THE EVENTS

- (108) This section sets out the basic principles of organisation of the cartel (section 4.1), explains the types and means of information exchanged between traders (section 4.2) and describes relevant contacts prior to the period of the infringement which are useful for the understanding of the present case as well as in the period of infringement (section 4.3).
- (109) The main evidence used for this description of events consists of: (i) contemporaneous records of communications between employees of major financial institutions (mainly online chats and e-mails) provided by the immunity applicant and the leniency applicants; (ii) documents and recordings copied during the Commission's inspections; (iii) declarations of the immunity applicant and the leniency applicants; and (iv) replies to requests for information including any annexes. To the extent that this section makes reference to the behaviour of the settling parties, such references are necessary for the understanding of the behaviour or the non-settling parties and of the market context of such behaviour.
- (110) The individuals involved in the cartel operated in a working environment in which a considerable volume of their communications are customarily recorded. The main

---

<sup>130</sup> [...] - Commission Decision C(2016) 1995/4 of 6.4.2016 amending Commission Decision C(2013) 8512 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement [...].

<sup>131</sup> Crédit Agricole, HSBC and JPMorgan Chase received access by means of a CD-ROM on 1.6.2016, at EC premises on 6.6.2016 and in a data room on 16-17 June 2016 (Crédit Agricole ) and 20 June 2016 (HSBC and JPMorgan Chase).

<sup>132</sup> Crédit Agricole submitted its comments on the amending decision of 6 April 2016 and the underlying correspondence on 12.7.2016 [...]; HSBC submitted its comments on the amending decision of 6 April 2016 and the underlying correspondence on 12.7.2016 [...]; JPMorgan Chase submitted its comments on the amending decision of 6 April 2016 and underlying correspondence on 12.7.2016[...]. HSBC submitted on 19 November 2016 additional observations to its comments of 12 July 2016 [...], shortly after it was offered a State of Play meeting.

<sup>133</sup> [...]

evidence relied on are various mainly bilateral online chats and e-mails and – as far as provided by the parties – also recordings of telephone calls.<sup>134</sup> As this contemporaneous documentary evidence regularly contains shorthand and indirect references, this Decision also relies on the explanations provided by the immunity applicant, the leniency applicants, the other parties and other market participants in relation to these contemporaneous documents and the functioning of the business.

- (111) Although professional contacts between the individuals involved in the cartel are well documented, there are certain limitations to the availability of documents and records on such contacts. Telephone recordings of contacts between the individuals involved in the cartel have only been partially available or, if available, often submitted to the Commission in a way that it is not possible to establish with precision the identity of the actual interlocutors. [Non-addressee] has explained that phone recordings were not available for its Euro Swaps Desk for the cartel period<sup>135</sup> although in late February 2015 it submitted a few relevant recordings and transcripts.<sup>136</sup> [Non-addressee] did not have any voice recordings pertaining to the cartel period to submit to the Commission.<sup>137</sup> JPMorgan Chase explained during the investigation that it was not in a position to provide audio conversations as they were not able to "*readily identify*" their trader's counterparties to these communications<sup>138</sup> and that it was not in a "*position to ask [employee of JPMorgan Chase] what he understood it to mean as [employee of JPMorgan Chase] is no longer employed by JPMC*".<sup>139</sup> HSBC explains that, while being in possession of telephone recordings back to October 2006, it would be extraordinarily burdensome to identify those relevant and provide them to the Commission, particularly for the period prior to January 2008.<sup>140</sup> Crédit Agricole,<sup>141</sup> [Non-addressee] and [non-addressee] have provided (at least partial) voice recordings, although Crédit Agricole was unable to provide phone recordings for the period from 31 May until 13 December 2006.<sup>142</sup>
- (112) The evidence also indicates on occasions meetings between participating individuals in person. The Commission has not obtained any records directly emanating from meetings between the individuals, even though there are indications that traders preferred to discuss very sensitive issues regarding the cartel over the telephone or if possible in person.<sup>143</sup> For instance in an online exchange on 3 August 2005 between two traders of [non-addressee] and [non-addressee], the [non-addressee] trader explains that employees at the treasury desks of several English banks decide when they go to the pub in the evening whether, according to their exposure, benchmark

---

<sup>134</sup> See Judgment of the Court of Justice of 8 July 1999, *Hercules Chemichals v Commission*, C-51/92 P, ECLI:EU:C:1999:357, paragraph 19; See also Judgment of the General Court of 14 March 2013, *Dole Food Company v Commission*, T-588/08, ECLI:EU:T:2013:130, paragraphs 88, 109, 391 and 397; and Judgment of the General Court of 14 March 2013, *Fresh Del Monte Produce v Commission*, T-587/08, ECLI:EU:T:2013:129, paragraph 807.

<sup>135</sup> [...].

<sup>136</sup> [...].

<sup>137</sup> [...].

<sup>138</sup> [...] Some voice recordings were however copied during the inspections at JPMorgan Chase [...].

<sup>139</sup> [...].

<sup>140</sup> [...] HSBC was able to provide some recordings [...].

<sup>141</sup> [...].

<sup>142</sup> [...].

<sup>143</sup> [...].

rates should be high or low.<sup>144</sup> To give another example, in an online chat between two traders of [non-addressee] and HSBC on 19 March 2007, the [non-addressee] trader explains to the HSBC trader that he would tell him more details about a collusive strategy when they would meet the next time in London.<sup>145</sup>

#### 4.1. Overview

- (113) [Non-addressee], [non-addressee], JPMorgan Chase, [non-addressee], Crédit Agricole, HSBC and [non-addressee] have participated in a series of bilateral contacts in the EIRD sector that largely consisted of the following practices between different parties.
- (a) On occasions, certain traders employed by different parties communicated and/or received preferences for an unchanged, low or high fixing of certain EURIBOR tenors. These preferences depended on their trading positions/exposures.
  - (b) On occasions, certain traders of different parties communicated and/or received from each other detailed not publicly known/available information on the trading positions or on the intentions for future EURIBOR submissions for certain tenors of at least one of their respective banks.
  - (c) On occasions, certain traders also explored possibilities to align their EIRD trading positions on the basis of such information as described under (a) or (b).
  - (d) On occasions, certain traders also explored possibilities to align at least one of their banks' future EURIBOR submissions on the basis of such information as described under (a) or (b).
  - (e) On occasions, at least one of the traders involved in such discussions approached the respective bank's EURIBOR submitters, or stated that such an approach would be made, to request a submission to the EBF's calculation agent towards a certain direction or at a specific level.
  - (f) On occasions, at least one of the traders involved in such discussions stated that he would report back, or reported back on the submitter's reply before the point in time when the daily EURIBOR submissions had to be submitted to the calculation agent or, in those instances where that trader had already discussed this with the submitter, passed on such information received from the submitter to the trader of a different party.
  - (g) On occasions, at least one trader of a party disclosed to a trader of another party other detailed and sensitive information about his bank's trading or pricing strategy regarding EIRDs.
- (114) In addition, on occasions certain traders employed by different parties discussed the outcome of the EURIBOR rate setting, including specific banks' submissions, after the EURIBOR rates of a day had been set and published.
- (115) Each party has participated in at least several of these forms of conduct. This participation occurred throughout the period of the parties' respective involvement in

---

<sup>144</sup> [...].

<sup>145</sup> For details see recital (328).

the infringement, although not every party participated in all instances of the collusion and the intensity of the collusive contacts varied over the period of the infringement.

- (116) The non-settling parties participated in at least several of these forms of conduct during the following periods (for details see section 4.3):<sup>146</sup>
- (a) Crédit Agricole: 16 October 2006 – 19 March 2007
  - (b) JPMorgan Chase: 27 September 2006 – 19 March 2007;
  - (c) HSBC: 12 February 2007 – 27 March 2007;
- (117) The network of bilateral contacts revolved around [non-addressee] and [non-addressee]. Although there are indications that contacts between traders existed before, the starting date of the infringement in the settlement decision has been set on 29 September 2005, when [employee of non-addressee] and [employee of non-addressee] started to develop a consistent pattern of contacts. The evidence shows a series of bilateral contacts before September 2005 (see examples in recitals (144), (145), (147)), and at this time, [non-addressee] also had regular contacts of a similar nature with a trader of [non-addressee] ([employee of JPMorgan Chase]) who left [non-addressee] in [...] <sup>147</sup> to work for JPMorgan Chase.
- (118) From February 2006 onwards, the communications between [non-addressee] and [non-addressee] became more frequent. At the end of March 2006, [employee of non-addressee] started exchanges such as those described in recital (113) with a trader at [non-addressee] ([employee of non-addressee]). In October 2006, [employee of non-addressee] began similar discussions with traders from Crédit Agricole. Finally, [non-addressee] involved HSBC in the discussions as from 12 February 2007.
- (119) [Non-addressee] continued its bilateral contacts with [employee of JPMorgan Chase] when he joined JPMorgan Chase [...].
- (120) After March 2007, [non-addressee] and [non-addressee] continued their collusive contacts until mid-May 2007 when [employee of non-addressee] left [non-addressee] to work for [non-addressee] as of the end of August 2007. At [non-addressee], [employee of non-addressee] resumed his bilateral contacts with [non-addressee], [non-addressee] and [non-addressee] during the autumn of 2007 and, less frequently, during the first half of 2008.
- (121) During the period between October 2006 and March 2007, the collusive activity increased in terms of organisation and intensity. This period was characterised by recurrent attempts to influence the 1 month, 3 months and 6 months EURIBOR rates (although not always for all three maturities at the same time).
- (122) Whilst on occasions the discussions between traders related to the EURIBOR fixing of the day on which the discussion took place, there were instances in which the traders (and on occasions also involving one or several submitters of their banks)

---

<sup>146</sup> [...].

<sup>147</sup> [...].

would discuss the EURIBOR fixing of a particular date, days, weeks or even months in advance.

- (123) For instance, preparations for the high 1 month EURIBOR fixing on 16 October 2006 started already at least on 7 September 2006 (see recitals (151) to (154), (155), (177), (183) to (186), (187) and (188)); those for the low 1 month EURIBOR fixing on 13 November 2006 initiated on 7 September 2006 as well (see recitals (151)-(154), (177), (193), (203), (204), (205) to (207) and (209); discussions on the 3 months EURIBOR fixing on 29 December 2006 took place at least since 21 December 2006 and possibly as early as 7 September 2006 (see recitals (236), (237) and (258)). The manipulation of the 3 months EURIBOR fixing on 19 March 2007 was prepared over a period of at least two months (see recitals (257), (262) to (264), (266) to (270), (271) to (275), (278) to (282), (289) to (291), and (302) to (332)), possibly even up to six months (see recital (258)).
- (124) The plan to manipulate the 3 months EURIBOR on 19 March 2007 was the most sophisticated collusive scheme of the cartel and involved [non-addressee], [non-addressee], [non-addressee], Crédit Agricole, HSBC and JPMorgan Chase.<sup>148</sup> On this date, the parties aimed at narrowing in a concerted action the spread between the 3 months EONIA and the 3 months EURIBOR. This date was particularly important as it was the roll date for many standardised derivative products on the International Monetary Market (IMM).<sup>149</sup> Very large trading positions were at stake on that date.
- (125) The arrangements between the traders involved in the cartel were supplemented and implemented through communications between these traders and their submitters within the treasury departments of the banks and the EURIBOR quotations submitted by these submitters to the EBF's calculation agent.

## **4.2. Types of communications between traders**

### *4.2.1. Means of communication*

- (126) For communications between the banks but also within the banks, the individuals involved in the bilateral exchanges generally used online bilateral chats (mainly on the Bloomberg terminal but also other platforms used by major financial institutions, such as Reuters Dealing 3000), e-mail and the telephone. These communication channels are used in the financial industry as principal means of communication among the industry actors, serving, for example, to arrange trades, scope out the market and discuss market trends. In addition, as noted in recital (112) the individuals met in person from time to time.
- (127) The traders contacted one another for example via Bloomberg instant messages and e-mail, a messaging platform offered by Bloomberg to its users to allow them to communicate with one or many users at once, in real time, through the use of chat rooms.<sup>150</sup> Such online chats often go on for hours or even days and deal with various

---

<sup>148</sup> JPMorgan Chase was made aware of [employee of non-addressee]'s trading strategy for EIRDs related to the 3 months EURIBOR with a fixing on 19 March 2007 and drew profit from it (see recitals (239)-(242), (262)-(264), (308)-(315), (332)-(337)).

<sup>149</sup> See recital (31).

<sup>150</sup> [...].

issues, sometimes simultaneously, including personal communications and legitimate business contacts as well as collusive business communications. Most of the online chats mentioned in section 4.3 are bilateral chats which involve only traders from two banks.

- (128) Although professional contacts between the individuals involved in the arrangements and other market participants are well documented, the communications between the individuals involved in the collusive behaviour often contain abbreviations,<sup>151</sup> trading jargon, slang, sarcasm or misspellings. The interpretation of these exchanges between traders has to be made in view of these elements as well as the overall context in which such exchanges take place.

#### 4.2.2. *The functioning of the arrangements*

- (129) The infringement in this case relates to several interrelated forms of conduct that are summarised in recital (113). As stated in section 2.2, an EIRD can be bought and sold as it has a market value (reflected in the trading price) which reflects the future (potential) cash-flows expected to be received from or paid during the maturity cycle of the contract. EIRDs therefore create positive or negative returns in the form of one or more received or paid (actual) cash-flows, and that market players in the EIRD market in essence compete for positive cash flows.
- (130) An EIRD trader's strategy to take a specific trading position/exposure on behalf of his bank depends on his view of the aggregated current value of his portfolio of EIRDs (or, in other words, the net-risk emerging from that portfolio) arising from these contracts which in turn reflect the potential cash-flows expected to be received from or paid on the contracts. The bilateral discussions between the parties to the arrangements in the present case related to price components of EIRDs and to their respective trading positions on certain EIRDs and aimed at increasing the value of the EIRDs they had in their portfolio, to the detriment of the counterparties to these EIRDs.
- (131) While there are many examples in the case file of contacts between traders which take place in the context of an approach in view of a potential transaction, the evidence indicates that none of the bilateral exchanges mentioned in section 4.3 were linked to a discussion on a potential trade between two traders.<sup>152</sup> These discussions went beyond what can be considered to be necessary for traders as potential counterparties to transactions, and the information disclosed between the parties was commercially sensitive and would normally be considered as confidential by the banks.<sup>153</sup> Discussions involving such competitively sensitive information between competitors cannot be justified by a need for "*increased transparency*" in financial markets.
- (132) The parties discussed on occasions their respective trading positions/exposures in relation to EIRDs, on occasions about intended EURIBOR rate submissions to the calculation agent and on occasions colluded to influence the submission of their respective contributions to the EBF for the purpose of calculating EURIBOR rates

---

<sup>151</sup> [...].

<sup>152</sup> See for instance recitals (162), (198)-(199), (221)-(222), (227), (242), (246)-(248), (262)-(264), (285), (288), (295), (390) and (403).

<sup>153</sup> [...].

towards a specific direction ("*high*" or "*low*"). Traders of the parties also discussed their expectations on future "*fixings*" of the EURIBOR benchmark rate, predominantly the 1 month, 3 months, 6 months tenors.

- (133) For the pricing of such EIRDs, the respective EURIBOR tenor which is maturing or resetting on the date in question may either determine the cash flow a bank receives from the counterparty or the cash flow a bank needs to pay to the counterparty with whom it has entered into that trade. In other words, from the bank's point of view the EURIBOR can either be the basis for the received cash-flow from such a trade or the paid cash-flow of such a trade. In order to increase its profit, a bank may, depending on its trading position/exposure, either have an interest in a high EURIBOR fixing (when it receives an amount calculated on the basis of EURIBOR), a low fixing (when it needs to pay an amount calculated on the basis of EURIBOR) or be "flat" (when it does not have a significant position in either direction).
- (134) [...] that where a bank's desk is (in net terms) paying on a particular date, this will mean that the desk's interests will lie in a relatively lower reference interest rate; conversely where the desk is (in net terms) receiving on a particular date, the desk's interests will lie in a relatively higher reference rate.<sup>154</sup>
- (135) The arrangements functioned in principle as follows:<sup>155</sup> traders employed by the parties regularly discussed their preferences for a low or high EURIBOR fixing of certain tenors in relation to which they had positions settling. These preferences depended on their trading positions/exposures. On numerous occasions, they then agreed to request their banks' EURIBOR submitters to quote contributions in line with their preferences to the EBF's calculation agent. There were also instances where a trader who did not have any or only a small exposure due to settling trades agreed to support another trader by asking his submitter to make a submission according to the other trader's preference. On occasions, the traders also aligned their trading positions or explored possibilities to align their trading positions. These discussions usually happened in anticipation of upcoming fixings in their derivatives trades. While some of these discussions occurred on the day of the respective EURIBOR fixing or a short time before that day, there were instances in which such moves were planned weeks or even months in advance. On occasions, the submissions of the communicated, coordinated or agreed EURIBOR rates took place. The evidence shows that traders requested the rate submitters in the treasury departments of their banks to submit EURIBOR rates in accordance with their preferences and that often the submitters would act accordingly.
- (136) The functioning of this scheme is [...] the online chats between traders suggest derivatives traders of different banks agreed to apply pressure to their respective cash desks to contribute EURIBOR submissions which suited their trading positions, when these positions were aligned. [Non-addressee] states that there are a number of documents which indicate that traders guessed that another trader would have adopted a particular trading position, based in part on the level of esteem in which

---

<sup>154</sup> [...].

<sup>155</sup> See Section 4.3 below and recitals (123), (124), (358), (392).

that trader is held and therefore the likelihood that they would have spotted the relevant trading opportunity.<sup>156</sup>

- (137) [...] the traders in question agreed with each other to take steps to ask the individuals responsible for the daily EURIBOR submission for their respective institutions to submit a lower or higher EURIBOR submission for certain EURIBOR maturities on certain days, thereby attempting to influence the rate(s) at which EURIBOR was determined on those days. According to [non-addressee], the Bloomberg chats show discussions between traders at different banks agreeing as to where they wanted to influence the EURIBOR rate to fix (higher or lower) for certain maturities of interest, and in some instances, agreeing on a specific rate that they would seek to have submitted, as well as discussions between [non-addressee] traders and [non-addressee] rate submitters with the trader attempting to influence the [non-addressee] EURIBOR submission in accordance with the earlier trader-to-trader discussion. The online chats also show in some instances further follow-up conversations between traders at the different banks to discuss the perceived success (or otherwise) of their attempts. [Non-addressee] submits that the online chats also show that on certain occasions the EURIBOR contributors at [non-addressee] responded that they would do as asked. In [non-addressee]' understanding, the traders believed they could benefit their positions by certain EURIBOR contributions or levels.<sup>157</sup>
- (138) Discussions pertaining to the components relevant for cash-flows of EIRDs (see the previous sections) are closely related to bilateral discussions [...] pertaining to the trading prices of the EIRDs. These discussions regarding trading prices pertained, in particular, to the bank's internal (future) pricing strategy of EIRDs (such as "runs", "mids" or "spreads") and individual deals between one or several parties on one hand and non-colluding counterparties on the other that had either already been concluded or were planned. The discussions went beyond the normal exchange of information in a competitive market in that they incorporated disclosures concerning the behaviour of other market players and transactions (prices, timing) entered into by the traders themselves.

### 4.3. Chronology of events

- (139) Most of the communications between the individuals participating in the behaviour which is the subject of the investigation took place in online chat rooms. Unless indicated otherwise, the contacts referred to in this and the following sections were bilateral online chats on the Bloomberg and Reuters platforms.
- (140) The contacts between banks did not start on 27 September 2006 (starting date of the infringement by JPMorgan Chase) or 16 October 2006 (starting date of the infringement for Crédit Agricole) or 12 February 2007 (starting date for HSBC). The traders were in contact before and were engaged in more and more frequent discussions which rendered their participation in the infringement possible as of September 2006.
- (141) This is the reason why it is useful in the interest of clarity to give examples of previous exchanges as part of the context and the preparation of the infringement.

---

<sup>156</sup> [...].  
<sup>157</sup> [...]



- (142) As far as time indications are given below for ease of reference, they normally refer to Greenwich Mean Time (GMT/UTC). These time indications do not take into account time changes due to daylight saving time such as British Summer Time (BST) or Central European Summer Time (CEST) that start on the last Sunday in March and end on the last Sunday in October. As EURIBOR submissions are made at 11.00 am Brussels time (this is to say CET which is GMT+1 or, during summer, CEST which is GMT+2), an online chat which is shown in GMT/UTC to take place after 9.00 am during summer time will have taken place after the submission deadline.<sup>158</sup>
- (143) The following exchanges describe the conduct of the addressees of this Decision, Crédit Agricole, HSBC and JPMorgan Chase. The conduct of other market players or of the settling parties is described where this is necessary for the understanding [...] of the case.
- (144) It is relevant to understand that the trader of JPMorgan Chase ([employee of JPMorgan Chase]) was already in contact with a trader of [employee of non-addressee] before he joined JPMorgan Chase [...].<sup>159</sup> [employee of JPMorgan Chase] (then [non-addressee]) discussed with [employee of non-addressee] amongst other things, their banks' future EURIBOR submissions and other pre-pricing information such as "*spreads*" and "*mids*".
- (145) On 3 August 2005 a trader of an investment bank that is not an addressee of this Decision discusses via e-mail with [employee of non-addressee] that the 3 month EURIBOR fixing of that day is "*crazy*" and asks who is manipulating such things. [employee of non-addressee] replies that employees at the treasury desks of several banks decide when they go to the pub in the evening whether, according to their exposure, rates should be high or low. [employee of non-addressee] then offers that, if the other trader has a big fixing, he would ask his treasury desk and the treasury desk of [non-addressee] for support.<sup>160</sup>
- (146) In another example on 29 September 2005<sup>161</sup> two bilateral communications take place between [employee of JPMorgan Chase] (then [non-addressee]) and [employee of non-addressee], and in parallel between [non-addressee] and [non-addressee]. The routine nature of these communications indicates that this was not the first contact of this type between the participating traders. In an e-mail message [employee of non-addressee] tells [employee of JPMorgan Chase] (then [non-addressee]) not to forget the high 3 months EURIBOR fixing for the FRA/EONIA spreads. [employee of JPMorgan Chase] (then [non-addressee]) responds that this should be ok and explains that [...] will "*go for 18*" (i.e. 2.18 for the submission for the 3 months EURIBOR fixing) to which [employee of non-addressee] replies that he hopes that [non-addressee] is going that high as well. In a parallel chat with [employee of non-addressee], [employee of non-addressee] tells [employee of non-addressee] not to forget to put a high 3 month EURIBOR fixing. [employee of non-addressee] replies that he has spoken to his treasury, but they want to set it at 2.13%.

---

<sup>158</sup> [...].

<sup>159</sup> [...].

<sup>160</sup> [...].

<sup>161</sup> [...].

- (147) Exchanges of [employee of JPMorgan Chase] with other traders before he joined JPMorgan Chase are a significant element of context and relevant because they demonstrate that [employee of JPMorgan Chase] was familiar with exchanging information with competing traders, in particular [employee of non-addressee], with a view to coordinate high or low EURIBOR submissions depending on their respective trading positions.<sup>162</sup> They also show that [employee of JPMorgan Chase] was equally familiar before joining JPMorgan Chase with the fact that this involved contacting their respective treasury desks. For instance, on 10 June 2005<sup>163</sup> [employee of non-addressee] reports to [employee of JPMorgan Chase] ([non-addressee]) the intended submission of his cash desk ("*am getting 12 fix here*") which [employee of JPMorgan Chase] ([non-addressee]) suggests will be similar to that of his own cash desk ("*luks like we will b same*") and [employee of non-addressee] asks if [employee of JPMorgan Chase] (then [non-addressee]) contacted another specific bank about their intended EURIBOR submission. [employee of JPMorgan Chase] confirms he did speak with this bank; on 28 June 2005<sup>164</sup> [employee of non-addressee] reports to [employee of JPMorgan Chase] (then [non-addressee]) that he tried to persuade his cash desk to submit a 3 month EURIBOR higher than 2.08 ("*I tried to lift him on his EURIBOR fixing and he said that hell put it higher tomorrow*"); on 1 July 2005<sup>165</sup> [employee of JPMorgan Chase] (then [non-addressee]) asks [employee of non-addressee] where his cash desk ([non-addressee]) intends to submit the 3 month EURIBOR and reports on his own cash desk's intended submission ("*we r going 2.11*") which is what [non-addressee]; on 4 July 2005<sup>166</sup> [employee of non-addressee] complains to [employee of JPMorgan Chase] (then [non-addressee]) about the outcome of his discussions with [non-addressee]'s cash desk on EURIBOR submissions "*I keep telling them*"; on 28 September 2005<sup>167</sup> [employee of JPMorgan Chase] (then [non-addressee]) replies to [employee of non-addressee], who is asking about the level of the submission of [non-addressee] cash desk the next day, that he will speak with his cash desk ("*will spk with my frd guess 17 will fix*"). Such early contacts also rule out any potential "misunderstanding" on [employee of JPMorgan Chase]'s behalf regarding subsequent exchanges with competing traders on the topics of prospective EURIBOR submissions and related trading positions or "*spreads*" or "*mids*".
- (148) In the period between 29 September 2005 and September 2006<sup>168</sup> a number of bilateral communications take place which fall under at least some form of conduct as described in recital (113) and which involve [non-addressee] and [non-addressee], and from 31 March 2006 also [non-addressee]. It is important to note that [non-addressee], [non-addressee] and [non-addressee] have accepted, as established in the Settlement decision of 4 December 2013, that they were at that time already involved in anticompetitive contacts.

---

<sup>162</sup> These exchanges are, of course, not part of the infringement against JPMorgan Chase.

<sup>163</sup> [...].

<sup>164</sup> [...].

<sup>165</sup> [...].

<sup>166</sup> [...].

<sup>167</sup> [...].

<sup>168</sup> [...].

- (149) On 12 January 2006,<sup>169</sup> a third party market participant asks [employee of non-addressee] for a bid. In this context, the third party market participant refers to [non-addressee]'s screen, which is allegedly quoting a spread of 0.5 basis points. In a parallel chat between [employee of non-addressee] and [employee of non-addressee], the latter confirms that the other market participant is lying to [employee of non-addressee]. [employee of non-addressee] explains that "*the screen is [only] indicative*" and that [non-addressee]'s spread is actually at 1.25 basis points. [employee of non-addressee] thanks [employee of non-addressee] for this information
- (150) In a telephone call on 31 March 2006,<sup>170</sup> [employee of non-addressee] and [employee of non-addressee] discuss in general about the interest of treasury desks in certain levels of EURIBOR. They agree that in spite of the size of the EURIBOR panel, it is still worth trying to ask the treasury desks for submissions that are favourable to the respective trader's trading positions. [employee of non-addressee] adds that ideally one should ask 5 to 6 banks and offers to [employee of non-addressee] to coordinate their fixings on occasions. [employee of non-addressee] is surprised to find out that [employee of non-addressee] is making similar requests to his submitters as [employee of non-addressee] to his submitters.
- (151) On 3 August 2006<sup>171</sup> at 5.56 am, [employee of non-addressee] and [employee of non-addressee] discuss in an online chat the 1 month EURIBOR fixing. While [employee of non-addressee] needs a low fixing, [employee of non-addressee] wants a high fixing. Following [employee of non-addressee]'s proposal, they exchange their respective exposures and discuss whether they should, according to [non-addressee], hedge each other's positions. In this context, [employee of non-addressee] explains that [non-addressee]'s treasury wants a low 1 month EURIBOR fixing for the whole month of August. [employee of non-addressee] also explains that he has asked 8 banks for a high fixing and 7 of them would be on his side. At 8.04 am, [employee of non-addressee] indicates that [non-addressee] would submit 3.05% for the 1 month EURIBOR. After the EURIBOR has been announced, [employee of non-addressee] seems to indicate that he has made a profit of EUR 265 000 on this day. In another online chat, [employee of non-addressee] asks [employee of non-addressee] at 6.46 am whether he needs a low or a high 1 month EURIBOR. [employee of non-addressee] states that he is re-selling EUR 1.2 billion and wants a high rate. He promises to ask his submitters. [employee of non-addressee] confirms that he wants a very high 1 month rate, too. In an e-mail to his submitter, [employee of non-addressee] thanks him for the help stating that the fixing was much better than he had hoped for.
- (152) A first reference in the evidence in the Commission case file to the involvement of [employee of JPMorgan Chase] when at JPMorgan Chase dates back to [...].
- (153) On **7 September 2006**<sup>172</sup> at 5.54 in the morning, [employee of non-addressee] and [employee of non-addressee] continue a discussion they started the day before about the 1 month EURIBOR submissions of this day. [employee of non-addressee]

---

<sup>169</sup> [...]. A basis point is defined as one hundredth of one percentage point.

<sup>170</sup> [...].

<sup>171</sup> [...].

<sup>172</sup> [...].

explains that his submitters will submit a very high quote and [non-addressee] should counterbalance them.<sup>173</sup> [employee of non-addressee] then contacts one of the [non-addressee] submitters by e-mail and asks for a very low 1 month submission. A little later, [employee of non-addressee] sends another e-mail to another [non-addressee] submitter asking for a low 1 month submission. He then forwards the latter e-mail together with the submitter's reply, that [non-addressee] will do its best, to [employee of non-addressee] who once again confirms that his treasury desk will act against his interest. At 7.22, [employee of non-addressee] contacts [employee of non-addressee] asking for a very low 1 month submission. [Employee of non-addressee] promises to see what he can do and replies a few minutes later confirming that the message has been passed on to his submitters and that [non-addressee] has a similar exposure. At this time, [employee of non-addressee] reports to [employee of non-addressee] in their online chat that he has contacted his submitters. He also reports about his contact with [non-addressee] and their willingness to submit low. After the end of the deadline to submit quotes, [employee of non-addressee] thanks [employee of non-addressee] for the low [non-addressee] submission and complains about the higher submissions of [non-addressee] and [non-addressee]. After stating that he will "use" [non-addressee]' submitters again, [employee of non-addressee] goes on to discuss with [employee of non-addressee] their strategy for the period October to December 2006. [employee of non-addressee] explains that he has significant exposures of EUR 65 billion and EUR 72 billion, respectively, in October and November. [employee of non-addressee] explains that he is interested in a high EURIBOR fixing in October and a low EURIBOR fixing in November. [employee of non-addressee] declares to have the same interest for both months. [employee of non-addressee] discloses that his treasury desk and [non-addressee] will be against them so they need to do some lobbying. He promises to talk to "[employee of JPMorgan Chase]" whom he assumes has the same trading position. At 10.07 am, [employee of non-addressee] and [employee of non-addressee] discuss their preferences for an unspecified "basis" in December which [non-addressee] considers to relate to EURIBOR. [employee of non-addressee] suggests that they "make a hit" with the treasury desks of [non-addressee], [non-addressee], [non-addressee] and JPMorgan Chase concluding that with four banks there is a chance that it will work. On the same day, [employee of non-addressee] also contacts his submitter ([employee of non-addressee]) asking for a low 1 month EURIBOR submission. The submitter however replies that he has a similar interest, but cannot help "today" as his boss has an interest in the other direction and a trading position four times bigger than the submitter.<sup>174</sup>

- (154) In their observations to the SO,<sup>175</sup> JPMorgan Chase claim that this does not constitute direct evidence that [employee of non-addressee] effectively contacted [employee of JPMorgan Chase]. This may be true, but this exchange shows that [employee of JPMorgan Chase] was considered at the time by the traders of [non-addressee] and [non-addressee] to be part of the small group of traders from whom they would ask for submissions in a certain direction (see also later recitals (183) and (212)).

---

<sup>173</sup> This chat contains also passages where the [non-addressee] trader seems to joke by telling to quote the opposite direction. However [...],he finally asked for the requested submission.

<sup>174</sup> [...].

<sup>175</sup> [...].

- (155) On **8 September 2006**<sup>176</sup> [employee of non-addressee] explains to [employee of non-addressee] that the EURIBOR fixings are very manipulated which he considers being scandalous and that one should never have a fixing against [non-addressee] or [non-addressee], otherwise one is "*dead*". On the same day<sup>177</sup> at 5.48 am, [employee of non-addressee] and [employee of non-addressee] discuss in an online chat the 3 months EURIBOR fixing. [employee of non-addressee] explains to [employee of non-addressee] that he wants a low 3 months EURIBOR fixing and they discuss their respective exposures. After the end of the deadline to submit the EURIBOR quotes, [employee of non-addressee] jokes that [non-addressee]'s submission was the highest and that he will remember. A little later he admits that he has not checked yet what submission [non-addressee] had made to the EURIBOR calculation agent. After the end of the deadline to submit the EURIBOR quotes, [employee of non-addressee] confirms that he has asked his submitters, but that he had warned [employee of non-addressee] already the day before that his submitters would quote in the other direction.
- (156) On **11 September 2006**<sup>178</sup> at 10.41 am, [employee of non-addressee] and [employee of non-addressee] agree that they should put the EURIBOR fixing in October "*sky high*".
- (157) On **18 September 2006**<sup>179</sup> [employee of JPMorgan Chase] and [employee of non-addressee] have online discussions in which [employee of non-addressee] states that he wants the 3 months October to be high, to which [employee of JPMorgan Chase] responds that they have the same interest even though he has reduced his exposure for October. [employee of JPMorgan Chase] asks "*HAPPY WITH SEP OUT AT 66?*" and [employee of non-addressee] replies "*VERY HAPPUY NOW WE WANT 2EE 3MTH OCTOBER TO BE HIGH*", to which [employee of JPMorgan Chase] replies "*SAME HERE AMUIGO EVEN THOUGH UNWOUND QUITE AA BIT OF THAT ALREADY BUT SEP THERE WAS QUITE NICE SEE WHAT HAPPOENS IN OCT*". Both also discuss trading strategies when [employee of JPMorgan Chase] states "*I ACTUALLY LEGGED INOT IT N WORKED OK TOOK OFF WHAT HAD BECOME DEC6-DEC7 TODAY N LOOKING TO PUT SOME DOWNSIDE IN MAR7 OR JUN7 DUINNO WHICH YET*" and "*WHAT DO U THINK?*" and [employee of non-addressee] answers "*PUT DOWNSIDE IN BOTH*".
- (158) In their observations to the SO,<sup>180</sup> JPMorgan Chase contend that this communication does not concern rate manipulation and that "*there is no evidence cited in the SO suggesting that there was any attempt to manipulate the September 2006 IMM*".
- (159) This exchange mentions the upcoming 3 month EURIBOR fixings during the month of October. [employee of non-addressee] reveals clearly his trading interest and [employee of JPMorgan Chase] replies that he has the same interest. [employee of non-addressee] also clearly states that he wants 3 month EURIBOR October fixings to be high – and indeed, he will mention the same topic to [employee of JPMorgan Chase] later (see recitals (160), (165), (170) and (174). In light of their past

---

<sup>176</sup> [...].  
<sup>177</sup> [...].  
<sup>178</sup> [...].  
<sup>179</sup> [...].  
<sup>180</sup> [...].

relationship (see recitals (143) to (147)), [employee of JPMorgan Chase] could reasonably expect that if [employee of non-addressee] tells him that he wants high 3 month fixings in October he might coordinate with other traders in order to push for higher submissions on that EURIBOR tenor.

- (160) On 27 September 2006<sup>181</sup> at 5.21 am, [employee of non-addressee] states in an online chat to [employee of non-addressee] that he has forgotten whether [non-addressee] wants a high or low EURIBOR fixing in October. [employee of non-addressee] confirms that he wants it high. On this day, [employee of non-addressee] has several online communications with his submitter ([employee of non-addressee]) discussing [non-addressee]'s interest for the 1 and 3 months EURIBOR in October. In parallel, [employee of non-addressee] asks [employee of JPMorgan Chase] about his trading position and suggests he put high 3 months EURIBOR fixings if it suits his interests: "*which way are u in 3 mth oct fras? If you receiving libor, I hope u gonna put high fixings*". [employee of JPMorgan Chase] responds by communicating his trading positions on EIRDs priced by reference to the 1, 3 and 6 months EURIBOR fixings and on EIRDs priced by reference to the EONIA and states that he will check where his bank intends to put the 3 months fixing the next day "*surprised how low it came out but now I am neutral 3m fixings like low 1s fixing n high 6 fixings neutral eonia till end of res...but think days of cheap eonias gone amigo...what do u habve think will check where we r gonna put 3 s tom*". [employee of non-addressee] goes on to ask to [employee of JPMorgan Chase] where he thinks the EONIA will fix "*where is eonia goona fix now...?*". [employee of JPMorgan Chase] responds and [employee of non-addressee] then indicates that he hopes this will have a spill-over effect on the 3 months EURIBOR fixing "*cool hopefully will spill over 3mth lbio*". [employee of JPMorgan Chase] goes on to comment the EURIBOR fixing of the day "*you guys could have gone higher today*" to which [employee of non-addressee] replies that "*they had a fix today*".<sup>182</sup>
- (161) In their observations to the SO<sup>183</sup> JPMorgan Chase state that "*in this exchange, [...] and [...] are discussing their views on where EONIA is trading*" and "*its likely impact on 3 month EURIBOR*". Whilst JPMorgan Chase acknowledge that in saying "*I am neutral 3 m fixings*", [Employee of JPMorgan Chase] is indicating "*the direction of his book*" (in other words, his trading position) they contend that in the rest of the sentence ("*like low 1s fixing n high 6 fixings neutral eonia*") [employee of JPMorgan Chase] "*is now giving his view of the market*". As regards [employee of JPMorgan Chase]'s statement "*think will check where we r gonna put 3 s tom*" JPMorgan Chase explain that this is "*presumably to determine whether his cash desk also take the same view about where EONIA is trending and its likely impact on 3 month EURIBOR*". JPMorgan Chase further state that "*there is no suggestion in [employee of JPMorgan Chase]'s comments that he is intending to attempt to influence [JPMorgan Chase's submission for the 3 months EURIBOR on the next day] or any rate*".
- (162) It should first be stated that during the investigation JPMorgan Chase stated that it was not in a position to provide explanations of what [employee of JPMorgan Chase]

---

181 [...].

182 [...].

183 [...].

meant or understood<sup>184</sup> and only came up with explanations at the stage of their Response to the SO. In their Response to the SO, JPMorgan Chase summarise now this conversation as a discussion of exchange of views on "*where EONIA is trading*". JPMorgan Chase's explanation does not seem tenable. [employee of non-addressee] clearly discloses at the start of the conversation his trading position in FRAs priced by reference to the 3 month EURIBOR<sup>185</sup> and asks in an unambiguous manner to [employee of JPMorgan Chase] if he can help him with a high fixing on this tenor if he has the same interest ("*if u receiving libor, I hope u gonna put high fixings*"). [employee of JPMorgan Chase] does not show any surprise at [employee of non-addressee]'s question and does not distance himself from this request. Instead, [employee of JPMorgan Chase] replies by first indicating his trading interest, that is to say the direction of his trading book, and does so not only for EIRDs linked with 3 month EURIBOR but also for those linked with 1 and 6 month EURIBOR. The reply goes beyond [employee of non-addressee]'s question, which is only about [employee of JPMorgan Chase]'s trading interest on 3 months EURIBOR EIRDs. The disclosure by [employee of JPMorgan Chase] about his trading position is not connected to a preliminary discussion on a potential deal between the two traders but only to [employee of non-addressee]'s original question. In addition, the information [employee of JPMorgan Chase] discloses confirms what he told [employee of non-addressee] a few days before (see recital (157)). This indication that an important competitor such as [employee of JPMorgan Chase] does not have an opposite interest is valuable information for [employee of non-addressee] which other competitors do not have. [Employee of JPMorgan Chase] then indicates separately his trading position for EIRDs linked with EONIA ("*neutral EONIA*"). Contrary to what JPMorgan Chase contend, [employee of JPMorgan Chase] does not refer to a market analysis nor to "*market views*" but talks about his personal trading position ("*I am neutral*") in reply to [employee of non-addressee]'s question. [employee of JPMorgan Chase] also uses in this sentence the expression "[I] like low 1s fixing n high 6 fixings" which is another indication that he is not talking about market trends but his own trading position.

- (163) Furthermore, [employee of JPMorgan Chase] then asks [employee of non-addressee] how much he has "*what do u habve*" - [on 3month EURIBOR FRAs] just before indicating that he accepts to check with his submitters what they are going to submit for "*3s tom*", which therefore makes clear reference to the 3 months EURIBOR fixing the next day and also shows that he understands that [employee of non-

---

<sup>184</sup> In its reply to a Request for information of [...], JPMorgan Chase states that it is not in a "*position to ask [Employee of JPMorgan Chase] what he understood it to mean as [employee of JPMorgan Chase] is no longer employed by JPMC*" [...]. In its reply to a Request for information of [...] JPMorgan Chase states "*To the extent the references in respect of which the Commission has questions were authored by [employee of JPMorgan Chase], JPMC is not in a position to provide explanations of what he meant or was referring to in those documents*" [...]. In their Response to the SO [...] JPMorgan Chase states that "*This Response [...] has been prepared following discussions with various current and former JPMC employees, including [employee of JPMorgan Chase]*." JPMorgan Chase have provided no evidence, including transcripts or audio evidence, of any discussions with [employee of JPMorgan Chase] and have not indicated which particular documents or other evidence they have discussed with [employee of JPMorgan Chase] or on which [employee of JPMorgan Chase] has commented.

<sup>185</sup> [...] [employee of non-addressee] confirmed that "libor" was often interchangeable with "EURIBOR" in the discussions between traders.

addressee]'s request refers to the fixing the next day and not to the October IMM date as JPMorgan Chase suggest. In light of this, [employee of JPMorgan Chase]'s statement ("*think will check where we r gonna put 3s tom*") cannot be interpreted as aiming to "*determine whether his cash desk also take the view about where EONIA is trading*" as JPMorgan Chase claim, but it is directly linked with [employee of non-addressee]'s request "*hope u gonna put high fixings*" for the submission of 3 month EURIBOR the next day. In addition, [employee of JPMorgan Chase]'s expressed intention to check what submission his cash desk is likely to make the next day contains the implicit promise that he will give an answer to [employee of non-addressee].

- (164) Lastly, both [employee of JPMorgan Chase]'s remark that [non-addressee] could have "*gone higher today*" - which JPMorgan Chase acknowledge relates to the EURIBOR fixings of the day, to which [non-addressee] would contribute a submission - and [employee of non-addressee]'s reply further point to an exchange about EURIBOR fixings and not on views on "*where EONIA is trending*" being at the centre of the discussion, even though the evolution of EONIA is also discussed by the two traders.
- (165) On **28 September 2006**<sup>186</sup> at 5.57 am, [employee of non-addressee] and [employee of non-addressee] discuss the submission for the 3 and 6 months EURIBOR. [employee of non-addressee] insists on a high 3 months submission from [non-addressee]. [employee of non-addressee] replies that he will try, but may not succeed since most of the trading desk prefers a low fixing, and proposes to call discretely [Employee of Credit Agricole] and [non-addressee]. At 8.29 am, [employee of non-addressee] inquires whether [employee of non-addressee] has asked for high 3 and 6 months submissions of his submitters and [employee of non-addressee] confirms that he has done so for the 3 months rate. At 7.14 am [employee of non-addressee] also asks [employee of JPMorgan Chase] whether he will put a high 3 month EURIBOR fixing if it suits him "*...hope you gonna put a high fix if it suits?*". [employee of JPMorgan Chase] answers that he is neutral but will check with his cash desk: "*Amigo will check with cash here think they go to 42 to b honest v neutral to this one where do you guys see it?*". [employee of non-addressee] replies that "*am hopin for 425 or 43...thats where it shud be really*". [employee of JPMorgan Chase] agrees and asks for confirmation as to where [non-addressee] cash desk intends to make their submission: "*ur cash guy go 43?*" (in other words, "do your submitters intend to submit 3.43 for the 3months EURIBOR"?). Later [employee of non-addressee] and [employee of JPMorgan Chase] discuss the outcome of the submissions and [employee of non-addressee]'s disappointment with the [non-addressee] cash desk submission on this occasion (which goes against his interest) and [employee of JPMorgan Chase] states that he used to have his cash desk against him at [non-addressee] but that it is less the case at JPMorgan Chase "*Cannot believe that ur cash desk is agst u mind u in [non-addressee] that was case with me here better*".
- (166) Even though JPMorgan Chase have repeatedly stated during the investigation that it was not in a position to provide explanations of what [employee of JPMorgan Chase] meant or understood,<sup>187</sup> in their observations to the SO<sup>188</sup> JPMorgan Chase

---

<sup>186</sup> [...].

<sup>187</sup> See footnote 184.



characterise this chat (as they do for the discussion of 27 September 2006, see recital (161)) as "a mutual exchange of views about how EURIBOR submissions were perceived to be out of step with market developments at this time" and that if [employee of non-addressee]'s statement was meant as an overture to collusion "it was not accepted by [employee of JPMorgan Chase]". The bank agrees that [employee of JPMorgan Chase] discloses that his position is neutral and that "[employee of JPMorgan Chase] indicates that he will check with JPMC's Treasury as to where they will be putting their submission" but argue that his "think they go to 42" derives purely on his expectations based on public information and that "it is not based on any discussion with JPMC's Treasury" and that such estimate was no more than [employee of JPMorgan Chase]'s guess that the spread between the 3 month EONIA of the day and the 3 month EURIBOR would be approximately 6 basis points. JPMorgan Chase further argue that the comment by [employee of JPMorgan Chase] later in the conversation about the fact that it "is taking the cash guys a little time to realise that the days of cheap eonias are gone" further puts the focus of the whole conversation on mutual "exchange of views about the accuracy of the EURIBOR submissions".

- (167) [employee of non-addressee] makes a clear request to [employee of JPMorgan Chase] to help him with a high 3 month EURIBOR fixing if he has the same interest. JPMorgan Chase does not contest that [employee of JPMorgan Chase] and [employee of non-addressee] are discussing the 3 month EURIBOR,[...]. Even though this is not explicitly stated in this conversation it appears clear to both traders owing to the figures they discuss and to their conversation the previous day. As was the case on the previous day, [employee of JPMorgan Chase] seems neither surprised at -, nor does he distance himself from [employee of non-addressee]'s request. [employee of JPMorgan Chase] also confirms that his trading position is neutral on EIRDs linked to the 3 month EURIBOR and indicates very explicitly that he accepts to check with his submitters what they are going to submit, which JPMorgan Chase do not contest.
- (168) Contrary to what JPMorgan Chase submit in their response there is no evidence in the case file that [employee of non-addressee]'s overture to collusion "was not accepted by [employee of JPMorgan Chase]" (or that he distanced himself from this proposal) nor that [employee of JPMorgan Chase]'s statement that he thinks his cash desk will submit 42 "is not based on any discussion with JPMC's Treasury". However, evidence submitted by JPMorgan Chase suggests that exchanges of information between the JPMorgan Chase treasury and [employee of JPMorgan Chase] about EURIBOR submissions were quite routine<sup>189</sup>. [non-addressee] have

---

<sup>188</sup>

[...].

<sup>189</sup>

For instance, in an exchange of 30 March 2007 before the day's submissions, a JPMorgan Chase trader on the EIRD desk informs the submitter that he is "covering today whilst [...] [i.e. [employee of JP Morgan Chase]]" is away. The submitter responds that he usually lets "the guys [i.e. [employee of JPMorgan Chase] and his colleague] know about our contributions for EURIBORs". The trader asks for the levels and states that he needs to know the EURIBORs. The submitter proceeds to give the levels of the bank's contributions for one, three, six, nine and twelve months. In view of this habitual exchange of information between the submitters and the traders, together with [employee of JPMorgan Chase]'s own words, the conclusion to draw is that [employee of JPMorgan Chase] would pass on information derived from the JPMorgan Chase submitters and further, that he would check whether or not the information received and relayed is correct[...]. See also to that effect recitals (265)-(267) [...].

pointed out<sup>190</sup> that [employee of JPMorgan Chase] is entirely correct in where he thinks his submitters are going as JPMorgan Chase's submission on that day was 3.42 (it was 3.39 the previous day). If the two traders are simply discussing market expectations for any bank [employee of JPMorgan Chase] would not ask [employee of non-addressee] whether he knows the level [non-addressee]'s 'cash guy' will make his submission that particular day. The discussion centres around the specific levels of submissions of their respective cash desks as [employee of JPMorgan Chase] states "*think they go 42*" and asks "*ur cash guy go 43?*". Whereas [employee of JPMorgan Chase] is correct in the figure of his cash desk's submission, [employee of non-addressee] only replies "*maybe a bit higher*" to [employee of JPMorgan Chase]'s question on where his cash desk will submit. This illustrates that there is an uncertainty as regards the levels of submission of the cash desks, an uncertainty which is pointed to by JPMorgan Chase in their response to the SO at paragraph 6.6.44 where they state that the spread between 3 month EONIA and 3 month EURIBOR could "*shift upwards from 5 to 6 basis points to between 6 to 7 basis points*". Compared to the previous day [non-addressee] raised its submission for 28 September 2006 on the 3 month EURIBOR by 3 basis points (from 3.37 to 3.40) as did JPMorgan Chase (from 3.39 to 3.42) but the official 3 month EURIBOR rose by much more (from 3.376 to 3.413, i.e. 3.7 basis points). Given the size of the trading positions of traders in this market a difference of less than a basis point could represent a significant gain/loss, and [employee of JPMorgan Chase] and [employee of non-addressee] are discussing the level of this uncertainty.

- (169) Although [employee of non-addressee] shows disappointment with his own 'cash guy' this is clearly a discussion between competing traders on the forthcoming submissions of their respective banks for a particular tenor as well as their related trading positions, which includes an explicit offer by [employee of JPMorgan Chase] to check the submission of his cash desk. JPMorgan Chase's analysis of the discussion as based purely on market expectations is incompatible with the words of [employee of non-addressee] and [employee of JPMorgan Chase]. In addition, this exchange and that of 27 September between the two traders should be read in the context of exchanges between the two traders in the period prior to [employee of JPMorgan Chase] joining JPMorgan Chase (see recitals (143) to (147)), which demonstrate the familiarity between the traders and the full knowledge on the part of Mr. [employee of JPMorgan Chase], even while he was employed by JPMorgan Chase, that [employee of non-addressee] was willing and able to at least attempt to influence his bank's submitters to procure a high or low fixing.
- (170) On **29 September 2006**<sup>191</sup> at around 8.30 am, [employee of JPMorgan Chase] asks [employee of non-addressee] "AMIGO POOFMASTER ARE YOU GOING FOR 3.40 FIXING TOM 3S?" (the contribution for the 3 month EURIBOR the next day). "3.40" is the level at which [non-addressee] had made its submission the previous day. [employee of non-addressee] complains about the behaviour of his submitters and that "*this crap*" is hurting him too. [employee of JPMorgan Chase] comments that he is surprised how slowly it moves and that he hopes they get where they

---

<sup>190</sup> [...]. A basis point is defined as one hundredth of one percentage point.

<sup>191</sup> [...].

should be the following week. They also complain that [...] are not worrying about putting the 1 month EURIBOR fixing higher than 25.

- (171) In their observations to the SO,<sup>192</sup> JPMorgan Chase argue that [employee of non-addressee]'s comment that he "is not in charge of this crap" would be "*inconsistent with the case set out in the SO that [employee of non-addressee] involved [employee of JPMorgan Chase] in Rate Manipulation*" and that "*if {employee of non-addressee} was involved in Rate Manipulation at this time (...) he certainly was not sharing that fact with [employee of JPMorgan Chase]*".
- (172) It is [employee of JPMorgan Chase]'s initiative to start the conversation by asking [employee of non-addressee] about the likely level of submission of [non-addressee] on the 3 month EURIBOR the next day. In addition, it cannot be concluded from the fact that [employee of non-addressee] failed to persuade his cash desk on the previous day to put a high fixing that he would not have aimed and attempted to do so on this day. Further, as [employee of JPMorgan Chase] is referring to [non-addressee]'s submission for the 3 month EURIBOR on the previous day this exchange further confirms that both were speaking mainly about EURIBOR in the two previous days and much less about "*where EONIA is trending*".
- (173) On Sunday **1 October 2006**,<sup>193</sup> [employee of non-addressee] informs his assistant [employee of non-addressee] that his mobile phone will not be connected the following day. He instructs [employee of non-addressee] for the next day to ask the [non-addressee] submitter to put a high 6 months EURIBOR submission and to call [employee of non-addressee] and [employee of non-addressee]. He also requests him to hedge their position and asserts that they definitely have to make 1 basis point (0.01% point) on that fixing.
- (174) On **2 October 2006**,<sup>194</sup> [employee of JPMorgan Chase] congratulates [employee of non-addressee] on the "*lovely touch*" from [non-addressee]'s treasury desk and they conclude that the contributions by [non-addressee] and [non-addressee] are even better. [employee of JPMorgan Chase] states that "*cash guys have made good money lending 3S*" and wonders until when EURIBOR will remain at a certain level ("*curve correctly reflect thata let's wait n see in how long euribor reflect that*"), to which [employee of non-addressee] replies "*probably when I'll have no more fixings*"<sup>195</sup> and thanks [employee of JPMorgan Chase] for the improvement on the terms of the trade they have concluded.
- (175) In their observations to the SO,<sup>196</sup> JPMorgan Chase do not contest that [employee of non-addressee]'s reply "*probably when I'll have no more fixings*" relates to 3 month EURIBOR fixings but argue that it is just "*a joking or despondent remark*".

---

<sup>192</sup> [...].

<sup>193</sup> [...]. On this day, [employee of non-addressee] contacts his submitter and asks for a higher fixing of the EURIBOR once another person's fixings have "*rolled off*"; this communication however relates to the 3 months EURIBOR, not the 6 months EURIBOR [...].

<sup>194</sup> [...].

<sup>195</sup> Which means when he will no longer hold trading positions of EIRDs which have fixings with reference to the 3 months EURIBOR.

<sup>196</sup> [...].

- (176) However, the reply from [employee of non-addressee] takes place in the context of his exchanges with [employee of JPMorgan Chase] who cannot ignore that [employee of non-addressee] has asked him a couple of times in the previous days to ask his cash desk to submit high 3 month EURIBOR fixings. Therefore, even accepting that there was an element of self-mockery in [employee of non-addressee]'s statement, it clearly points to his objective to manipulate the 3 month EURIBOR fixings (whether successful or not) of which [employee of JPMorgan Chase] has been made aware of and has been invited to participate during the previous days.
- (177) On **4 October 2006**<sup>197</sup> at 6.49 am [employee of non-addressee] and [employee of non-addressee] discuss in an online chat again about the EURIBOR fixing on the IMM date in October and November. After pretending that he does not know whether [non-addressee] is interested in a high or low fixing, [employee of non-addressee] confirms again that he, too, is interested in high fixings on both dates. He explains that he has asked [...] ([employee of Crédit Agricole] of Crédit Agricole) and [non-addressee], as well as the cash desk at [non-addressee]. [employee of non-addressee] asks [employee of non-addressee] not to tell the [non-addressees] anything.
- (178) Crédit Agricole claims in its observations to the SO<sup>198</sup> that there is no evidence that the [...] referred to by [employee of non-addressee] is [employee of Crédit Agricole]. Second, Crédit Agricole also claims that there is no evidence of a direct contact between [employee of non-addressee] and [employee of Crédit Agricole] on this date.
- (179) Concerning the first claim, [non-addressee] note that this is [employee of Crédit Agricole] and both [employee of non-addressee] and [employee of non-addressee] referred to [employee of Crédit Agricole] as "[...]". [non-addressee] also note that "[...]" is most likely a reference to [employee of Crédit Agricole]. According to documents on file there was no other [...] in the close circle of traders dealing with [employee of non-addressee] and [employee of non-addressee] on EIRDs. With regard to contacts between [employee of non-addressee] and [Employee of Crédit Agricole] the Commission has asked for phone recordings between the two traders on this date, and Crédit Agricole has indicated that it had kept phone recordings of [Employee of Crédit Agricole] up to the beginning of 2006 but that unfortunately the tapes corresponding to the period from 31 May until 13 December 2006 were damaged.<sup>199</sup> In any event, this exchange shows that [Employee of Crédit Agricole] was considered at the time by the traders of [non-addressee] and [non-addressee] to be part of a small group of traders to whom they could ask for submissions in a certain direction.
- (180) **On 6 October 2006**,<sup>200</sup> [employee of non-addressee] and [employee of JPMorgan Chase] first discuss possible trades and then go on to discuss their trading positions and strategies. Following [employee of non-addressee]'s request for a quote for a FRA and [employee of JPMorgan Chase]'s reply, [employee of non-addressee] goes

---

<sup>197</sup> [...].

<sup>198</sup> [...].

<sup>199</sup> [...].

<sup>200</sup> [...].

on to suggest that [employee of JPMorgan Chase] could hedge his position on these FRAs with 2007 March IMM futures contracts, to which [employee of JPMorgan Chase] explains that he has reduced his exposure to the FRAs (*"I HAD THIS POSITION FOR A WHILE UNWINDING MOST OF THE RISK AT THE MOM"*) and he discloses his trading strategy on 2007 March IMM futures which anticipates a narrowing of the spread between the EONIA and the EURIBOR in March 2007 (*"TOLD U THIS MNG BESIDE THINK FRA=-EONIA SPREAD IN MAR7 QUITE WIDE SO REDUCED MY SHORET EURIBOR AGST PAYING A LITTLE OF THIS"*) even though it does not relate to the trade they have just discussed.

- (181) JPMorgan Chase argue in their observations to the SO<sup>201</sup> that "*{employee of non-addressee} thinks that the price [employee of JPMorgan Chase] is offering ("6575/6475") is too high*" and "*{employee of non-addressee} tries to convince [employee of JPMorgan Chase] to lower his price by suggesting that he hedge his position using March future contracts*" (*"U BETTER FOR GIVING THAT VS MARCH BOR"*). In addition, according to JPMorgan Chase [employee of JPMorgan Chase]'s explanation of his trading strategy for the 2007 March IMM futures is just "*high level information*" and would provide "*[employee of non-addressee] with no information about (...) what trading strategy he intends to pursue in relation to that aspect of his book*".
- (182) There is nothing in the discussion which suggests that [employee of non-addressee] "*thinks the price is too high*". [employee of non-addressee] simply does not reply to [employee of JPMorgan Chase]'s offer to trade. In any event, if [employee of non-addressee] wanted to convince [employee of JPMorgan Chase] to lower his price he would not have suggested a hedge. As JPMorgan Chase acknowledge the trading position which [employee of JPMorgan Chase] is talking about is specific, and even though he does not disclose the exact size of it he gives a clear indication that he is expecting the spread between the EONIA and the EURIBOR in March 2007 to narrow, and he suggests that he has a small position (*"PAYING A LITTLE OF THIS"*).
- (183) On **10 October 2006**,<sup>202</sup> [employee of non-addressee] and [employee of non-addressee] discuss in an online chat about the 1 month EURIBOR fixing of the following Monday (16 October 2006). [employee of non-addressee] announces that he will do something good for [non-addressee] "*I will do something good for you*". Both agree that they would like a higher fix and [employee of non-addressee] immediately announces that he will talk to [employee of JPMorgan Chase]; "*I will talk to [...]*", while [employee of non-addressee] promises to talk to Crédit Agricole and [non-addressee] "*me to cai and sg*". As agreed with [employee of non-addressee], [employee of non-addressee] enters into an online chat with [employee of JPMorgan Chase] only a few minutes later. In this chat, [employee of non-addressee] asks [employee of JPMorgan Chase] what his position is in respect of 1 month forward rate agreements referencing EURIBOR terminating on the IMM date (*"how u posi on 0/1 imm fra?"*). [employee of JPMorgan Chase] responds "*I am lent 1m fras in October*" (forward rate agreements priced with 1 month EURIBOR on the October IMM date). [employee of non-addressee] remarks "*bad luck okay amigo*"

---

<sup>201</sup> [...].

<sup>202</sup> [...].

indicating that he has an opposite interest. [employee of JPMorgan Chase] then remarks that he hopes that the 1 month EURIBOR remains low ("*let's hope this Im euribor stay nice n low...*").

- (184) Whilst JPMorgan Chase have repeatedly stated during the investigation that it was not in a position to provide explanations of what [employee of JPMorgan Chase] meant or understood,<sup>203</sup> in their observations to the SO<sup>204</sup> JPMorgan Chase state that in asking how he is positioned in the 1 month FRA [employee of non-addressee]'s is simply "*seeking to explore whether [employee of JPMorgan Chase] was positioned differently from him in the 1 month FRA such that they could hedge their positions with each other*". JPMorgan Chase further contend that [employee of non-addressee]'s response "*bad luck*" to [employee of JPMorgan Chase]'s "*lent*" position (which meant that [employee of JPMorgan Chase] would benefit from a low 1 month EURIBOR fixing on the October IMM date) should be most naturally read as meaning that he had a similar position, so that he could not enter into a hedge with [employee of JPMorgan Chase], and that the Commission's reading that [employee of non-addressee] had "*an opposite interest*" is wrong. Finally, JPMorgan Chase argue that [employee of JPMorgan Chase] did not understand that [employee of non-addressee] had an opposite interest, and that even if [employee of non-addressee]'s statements are "*an overture to possible manipulation*", the evidence would be inconsistent with [employee of JPMorgan Chase] having understood this.
- (185) In view of the evidence from several previous discussions<sup>205</sup> between [employee of non-addressee] and [employee of non-addressee] on how they could push higher the 1 month EURIBOR fixings on the October IMM date, it is implausible that [employee of non-addressee] would all of a sudden seek to hedge his position with [employee of JPMorgan Chase] a few days from the fixing. In addition, [employee of non-addressee] had a large trading position (he mentions EUR 65 billion on 7 September) fixing with the 1 month EURIBOR on the October IMM date, which he confirmed on 13 October to [employee of non-addressee] ("*lundi c'est le gros fixing*"). There is no indication in the evidence on file that [employee of non-addressee] would have sought to reduce his trading exposure to the 1 month EURIBOR fixing on the October IMM date in 2006. In addition, if as JPMorgan Chase claim [employee of non-addressee] would have explored a hedge for his position he would have proposed a size and/or a price directly to [employee of JPMorgan Chase], as he would normally do. Instead, [employee of non-addressee] asks [employee of JPMorgan Chase] about the direction of his trading position, most likely ahead of a request for a higher/lower fixing if they had the same trading interest.
- (186) Second, it is equally implausible that the exchange between [employee of non-addressee] and [employee of JPMorgan Chase] should be "*naturally read*" as meaning that they had a similar trading position, which [employee of non-addressee] did not have as can be deduced from his discussions with [employee of non-addressee]. This argument contradicts JPMorgan Chase's first argument that

---

<sup>203</sup> See footnote 184.

<sup>204</sup> [...].

<sup>205</sup> See recitals (153), (156), (160), (177) related to conversations on 7, 11, 27 September and 4 October) and [...].

[employee of non-addressee] and [employee of JPMorgan Chase] would seek to *"hedge their positions with each other"*. Having discovered that they had different trading positions as regards the 1 month EURIBOR fixing on the IMM date, [employee of non-addressee] goes no further. In light of this and of the body of evidence of previous conversations between [employee of non-addressee] and [employee of JPMorgan Chase] (including recitals (143) to (147)), it is reasonable to conclude that [employee of JPMorgan Chase] understood very well [employee of non-addressee]'s generic question on his trading position (as opposed to an overture for a deal which would be more specific) as a pre-check of his trading interest before a request for a high/low fixing on the 1 month EURIBOR IMM.

- (187) On Friday, **13 October 2006**<sup>206</sup> at 8.14 am, [employee of non-addressee] and [employee of non-addressee] discuss in an online chat (once again) about the EURIBOR fixing of the following Monday (16 October 2006) first teasing that it should be low. [employee of non-addressee] then explains that he has a large trade settling the following Monday and proposes that [employee of non-addressee] contacts his submitters on the day of this communication and the following Monday so that they contribute a EURIBOR submission in the agreed direction. [employee of non-addressee] confirms that he has sent a message to his submitter and that he really insisted, and that he is settling an amount of EUR 6 billion the following Monday. [employee of non-addressee] explains that he expects [non-addressee] and his treasury desk to submit into the other direction. In his view, the other panel banks would submit for the 1 month tenor 3.34% or 3.36%, while [non-addressee] will only quote 3.33%. He asks [employee of non-addressee] to ask for a quote of 3.37% for the following day and to contact his submitter again. They then discuss the general willingness of different [non-addressee] submitters to accommodate their requests for favourable quotes and the potential losses [employee of non-addressee] may incur during Monday's EURIBOR fixing. On this Friday, [employee of non-addressee] contacts three [non-addressee] submitters and asks them for a high 1 month EURIBOR submission the following Monday. He then forwards the replies of two of them to [employee of non-addressee]. One of them explains to [employee of non-addressee] that she has been moved to another desk within [non-addressee] and that a colleague would take over her tasks for some time. When forwarding [employee of non-addressee]'s ([non-addressee]) message to the colleague in question, she states *"we always try and do our best to help out"*.
- (188) On **13 October 2006**,<sup>207</sup> [employee of non-addressee] and [employee of non-addressee] discuss the 1 month EURIBOR fixing of the following Monday on the telephone. [employee of non-addressee] explains his interest in a high fixing and [employee of non-addressee] observes that he has seen that [employee of non-addressee] has a *"thing"* that day. [employee of non-addressee] states that this fits him too, as he has an exposure of EUR 6 billion for the Monday fixing. Afterwards, [employee of non-addressee] explains his discussions with his treasury department [employee of non-addressee] concerning EURIBOR submissions.

---

<sup>206</sup> [...].  
<sup>207</sup> [...].

- (189) On the following Monday, **16 October 2006**<sup>208</sup> a series of bilateral online chats between [non-addressee], [non-addressee], [non-addressee] and Crédit Agricole take place. At 5.57 am, [employee of non-addressee] and [employee of non-addressee] discuss the 1 month EURIBOR fixing of the day. After exchanging views where the rate may fix, [employee of non-addressee] states that he will be fighting for a high submission of at least 3.36%. At 6.20 am, [employee of non-addressee] asks [employee of non-addressee] for a high 1 month EURIBOR submission. [employee of non-addressee] agrees to the request. At 6.43 am, [employee of non-addressee] forwards a string of communications with his submitter to [employee of non-addressee]. In that communication, [employee of non-addressee] asks his submitter for a high 1 month EURIBOR submission. The submitter confirms to support him and explains his view of the situation of the market. [employee of non-addressee] sends a message to [Employee of Crédit Agricole] asking whether he has access to his treasury desk to ask for high or low submissions. [employee of non-addressee] explains that he has a big 1 month trade settling and would like a high submission. If possible, [employee of Credit Agricole] should "*put a word*" to his treasury.<sup>209</sup> [employee of Credit Agricole] replies that this is possible but questions what would be the benefit for him. [employee of non-addressee] replies: "*What you want. The right to ask me for fixings where you want and when you need it.*" [Employee Crédit Agricole] replies that [employee of non-addressee] has still half an hour to make a better offer. Finally, [employee of non-addressee] convinces [Employee of Crédit Agricole] with the promise of a dinner and [employee of Credit Agricole] at 7.33 am states that he agrees to talk to his submitters asking for a submission of 3.36% ("*I will tell them to try 3.36*"). They then discuss the volume of [employee of non-addressee]'s ([non-addressee]) trades settling on this day and [employee of Credit Agricole] later at 7.46 am reports that his submitters have confirmed that they will submit 3.36%. Then, [employee of Credit Agricole] asks how things are going ("*is it ok are you managing? After all, it is a bit low*") and [employee of non-addressee] thanks him stating that thanks to the high submissions of several banks he has counterbalanced low submissions of other ones ("*anyway thanks. If certain friends were not there, I have at least 4 banks against me*").<sup>210</sup> In parallel, at 7.31 am

---

208 [...]

209 [...] French original: "*si cest possible est ce que tu peux leur glisser un mot si ca arrange ton book bien sur*" [...].

210 The full French conversation is : [employee of non-addressee] [...] "*salut [employee of Credit Agricole] ca va? dis moi est ce que des fois tu dis a ta treso de contribuer haut ou pas haut selon tes ficings? jai une tres grosse taille de 1m.. jaimerais bien quii soit haut.... si cest possible est ce que tu peux leur glisser un mot si ca arrange ton book bien sur*"; [employee of Credit Agricole] [...] "*C'EST ENVISAGEABLE MAIS KESKE QUE JE GAGNE ?*"; [...] "*ahahah ce que tu veux, le droit de me demandser des fixings ou tu veux quand tiu en as besoin*"; [...] "*BOAF, TROUVE AUTRE CHOSE, TU AS ENCORE UNE DEMIE HEURE*"; [...] "*un diner ds un resto de ton choix avec [...]*"; [...] "*JE LEUR DIS DE TENTER LE 3.36*"; [...] "*merci bcp bcp*" "*si tu devines le montant de mon fixing en 3 chances tu auras droit a un étoile.*"; [...] "*15 YARDS*" "*DE TOUTE FACON TU AS DIS LE RESTO DE MON CHOIX, DONC LE NBRE D E TOILES DE MON CHOIX!*"; [...] "*70 yards*"; [...] "*MIIIIIIINE*"; [...] "*ok ca marche tu choisis, jai un penchant pour guy savoy., mais jattends le fixing avant de decider*" "*exactement*" "*masi nen parle pas cest exceptionnel...je depasse rarement les 10bn*"; [...] "*T'INQUIETES, JE SUIS UNE TOMBE MOI*" "; [...] "*je sais, merci.*"; [...] "*ILS VONT CONTRIBUER 3.36*"; [...] "*CA VA TU T'EN SORS ? C'EST ASSEZ BAS FINALEMENT*"; [...] "*oui mais quand meme merci. si certains potes navaient pas été la...jai au moins 4 banquies contre moi sur ce truc*" "*cest tous les mecs que jai tarte sur le oct imm...[non-addressees] sont a 33 et [non-addressees] a 34*".



[employee of non-addressee] forwards his communication with Crédit Agricole to [employee of non-addressee] and explains to him that he is putting pressure on Crédit Agricole. At 7.48 am, [employee of non-addressee] confirms to [employee of non-addressee] that [employee of Credit Agricole] has confirmed that they will submit 3.36%. [employee of non-addressee] then discloses that he expects his treasury to quote only 3.32-3.33%. Finally, after the end of the submission deadline, [employee of non-addressee] and [employee of non-addressee] discuss the 1 month EURIBOR submissions of [non-addressee] (3.36%), Crédit Agricole (3.36%), [non-addressee] (3.33%) and [non-addressee] (3.35%) and [employee of non-addressee] states "*I managed to make up for my losses*" thanks to the fixing.

- (190) Crédit Agricole claim in their Response to the SO<sup>211</sup> that, regarding his contacts with [employee of non-addressee] on 16 October 2006, there is no evidence indicating that [employee of Credit Agricole] did contact the Crédit Agricole's submitters or attempted to interfere with their submission. Crédit Agricole also claims that there are several indications showing that the Bank's contribution and the increase from the previous day was rational given the contemporaneous market circumstances.
- (191) With regard to contacts with his cash desk, [employee of Credit Agricole] did not need to call them on the phone as he was on the same trading floor only a few metres away from his cash desk.<sup>212</sup> The promise which [employee of Credit Agricole] makes to [employee of non-addressee] ("*je leur dis de tenter le 3.36*") and his subsequent confirmation that he did ("*ils vont contribuer 3.36*") clearly indicate an intention to contact the cash desk and report an outcome thereby clearly suggesting that a contact has occurred. Moreover, on 27 October 2006 [employee of Credit Agricole] reminds [employee of non-addressee] about his promise to invite him to a nice restaurant if Crédit Agricole's cash desk submitted a high fixing, to which [employee of non-addressee] agrees by stating that he will find a date soon.<sup>213</sup> This shows that at least from the point of view of the two traders the concerted action aimed at pushing the fixing higher was successfully implemented.
- (192) On **18 October 2006**<sup>214</sup> at 6.36 am, [employee of non-addressee] discloses in an online chat to [employee of non-addressee] that he would prefer a low 3 months EURIBOR fixing.<sup>215</sup> 20 minutes later, [employee of non-addressee] asks [employee of non-addressee] to ask his submitter for a low 1 month EURIBOR submission and [employee of non-addressee] confirms that he will do so. Also later during this chat they discuss their common preferences for low 1 and 3 months fixings. In another chat with [non-addressee], [employee of non-addressee] then discloses to [employee of non-addressee] his preferences for a low 1 and 3 months EURIBOR fixing. [employee of non-addressee] promises to talk to his submitters, but expresses some irritation that they do not always follow his requests. However, after the EURIBOR has been fixed on this day, he tells [employee of non-addressee] that, against his expectations, [non-addressee]'s submitters have quoted the 1 month tenor low, at

---

211 [...].

212 [...].

213 [...].

214 [...].

215 [Non-addressee] submits that it is not clear whether the reference to a low 3 months EURIBOR refers to a particular submission or to the overall EURIBOR – whether this is commenting on the existing rate or making a prediction about the future [...].

3.35%, exactly as requested by [employee of non-addressee]. [employee of non-addressee] thanks [employee of non-addressee] for his help.

- (193) On **19 October 2006**<sup>216</sup> at 5.59 am, [employee of non-addressee] reminds [employee of non-addressee] to ask for a lower submission for the 1 month EURIBOR and [employee of non-addressee] replies that he has. [employee of non-addressee] then begs [employee of non-addressee] to ask again his submitters for the submission of the day and explains that he has EUR 23 billion settling on this day. He also explains that afterwards he does not need to worry any more until November. [employee of non-addressee] confirms that he will do as requested.
- (194) On **25 October 2006**,<sup>217</sup> [employee of non-addressee] has an e-mail exchange with [employee of JPMorgan Chase] about an amendment to the documentation for an EIRD contract, to which [employee of JPMorgan Chase] agrees. [employee of non-addressee] thanks [employee of JPMorgan Chase] and concludes with an offer "*do not hesitate to ask anything u need. High fixing low fixing normal [EURIBOR] fixing*". [employee of JPMorgan Chase] replies "*ahahahahah just a little effort in below 1m*". [employee of non-addressee] agrees to the request ("*I will*").
- (195) In their observations to the SO,<sup>218</sup> JPMorgan Chase contest that the fixings mentioned by [employee of non-addressee] are EURIBOR fixings and argue that the entire conversation is explained by discussions between the two traders which took place on 25 and 28 September 2006 and an earlier discussion on 25 October 2006. In these exchanges, [employee of JPMorgan Chase] asks [employee of non-addressee] to provide him with liquidity for EIRD with maturities lower than a month. According to JPMorgan Chase, these earlier exchanges make it clear that [employee of JPMorgan Chase]'s reply only concerns a request for liquidity for EIRDs with maturities below 1 month, which is different from the 'fixings' to which [employee of non-addressee] refers – which are above 1 month.
- (196) While the Commission agrees that in his answer [employee of JPMorgan Chase] refers to liquidity for maturities below one month, this does not change the meaning of [employee of non-addressee]'s ([non-addressee]) offer and [employee of JPMorgan Chase]'s reply. [employee of non-addressee]'s offer to submit "*fixings*" refers to EURIBOR fixings. [employee of JPMorgan Chase]'s reply shows no surprise at [employee of non-addressee]'s offer to request from his submitters future EURIBOR fixings at pre-agreed levels. His reply also evidences [employee of JPMorgan Chase]'s acquiescence that [non-addressees] ([non-addressee]) have the capacity to submit fixings on wish influencing thus the EURIBOR rate.
- (197) On **26 October 2006**,<sup>219</sup> [employee of non-addressee] complains to [employee of non-addressee] about the 1 month EURIBOR fixing of the day and asks him whether he has talked to his treasury department at all about the fixing. [employee of non-addressee] apologises that he had been in a meeting and agrees with [employee of non-addressee]'s dismay at the fixing. On the same day, [employee of JPMorgan Chase] asks [employee of non-addressee] to help him calculate the price of an EIRD

---

216 [...].  
217 [...].  
218 [...].  
219 [...].

that another competitor (CDC-IXIS) is offering to him "AMIGO JUST CHECKING NOT BEEING STUFFED BY IXIR ... WHERE DO U SEE SPOT 21ST FED IMM ROLLS AGST IS" before agreeing on the trade with that competitor. [employee of non-addressee] indicates his estimate of the price and later asks at which price [employee of JPMorgan Chase] has concluded the trade with Ixis "WHERE DID HE TAKE U ?". As the floating leg of the FRA [employee of JPMorgan Chase] has just bought is payer of 1 month EURIBOR, [employee of non-addressee] adds "U KNOW WHERE UR IS FIXINGS ARE" and reiterates "U KNOW WHERE TO COME TO GET BACK SOME IS FIXINGS", to which [employee of JPMorgan Chase] replies "AHAHAHHA INDEED AMIGO BUT THIS THISE IS ARE FIXING NICE N LOW...NO POINT RUSHING TO TAKE THEM BACK".

- (198) In their observations to the SO,<sup>220</sup> JPMorgan Chase state that this is a discussion about pricing a complex swap for which [employee of non-addressee] gives [employee of JPMorgan Chase] a price because [employee of JPMorgan Chase] "is having difficulty pricing what is a non-standard swap" and argue that the whole discussion is "about a potential trade between [employee of JPMorgan Chase] and [employee of non-addressee]". With respect to [employee of non-addressee]'s statement "U KNOW WHERE UR IS FIXINGS ARE" JPMorgan Chase contend that by this statement [employee of non-addressee] is "referring to the strong correlation between 1 month FRA prices and 1 month EONIA" and state that when [employee of non-addressee] repeats this statement a bit differently "U KNOW WHERE TO COME TO GET BACK SOME IS FIXINGS" what he means is that "he would be willing to trade with [employee of JPMorgan Chase] to balance out his book".
- (199) It is clear from the outset and the context of the conversation that [employee of JPMorgan Chase] wants from [employee of non-addressee] information for a price for a trade with a third party. The counterparty to the potential trade [employee of JPMorgan Chase] is discussing is identified at the beginning of the conversation [] and when [employee of non-addressee] has indicated a price [employee of JPMorgan Chase] thanks him and inquires with some doubt whether [employee of non-addressee] actually quotes such EIRDs ("OK THAT SIU SOUNDS LIKE IT DO U QUOTE THIS STUFF?") to which [employee of non-addressee] jokingly says he would only for [employee of JPMorgan Chase] ("ONLY FOR U BABY"). [employee of non-addressee] then immediately asks at which level [employee of JPMorgan Chase] traded with Ixis ("WHERE DID HE TAKE U ?"), which is a further indication that the discussion is not about a trade between the two.
- (200) Second, with regard to [employee of non-addressee]'s statement "U KNOW WHERE UR IS FIXINGS ARE", the explanation given by JPMorgan Chase that [employee of non-addressee] would be willing to trade with [employee of JPMorgan Chase] to balance his book is not plausible because [employee of non-addressee] had the same trading interest as [employee of JPMorgan Chase] in that period (i.e. an interest for low 1 month EURIBOR fixings). This can be clearly concluded from [employee of non-addressee]'s discussions on 18, 19, 31 October and 3, 6, 7, 8, 10, 13 November 2006 with either [employee of non-addressee] or [employee of JPMorgan Chase], and in which discussions [employee of non-addressee] expresses a clear and constant

---

<sup>220</sup> [...].

interest in low 1 month EURIBOR fixings.<sup>221</sup> In addition, [employee of JPMorgan Chase]'s statement about the fact that there is no point in rushing to take them back as fixings are low further shows that the parties were not exploring the possibility of a trade.

- (201) On **31 October 2006** at 7 am,<sup>222</sup> [employee of non-addressee] proposes to [employee of non-addressee] to ask his treasury department to lower its 1 month EURIBOR submission so that they "*can put the spread at 2.5*". [employee of non-addressee] agrees to this request.
- (202) On **3 November 2006**,<sup>223</sup> [employee of non-addressee] and [employee of non-addressee] agree in an online chat that as of the following Monday they should get the "*Libors*" lowered. [employee of non-addressee] confirms [employee of non-addressee]'s request to talk every day to his submitters. [non-addressee] considers the term "*Libors*" to be shorthand for EURIBOR.
- (203) The following Monday, **6 November 2006**<sup>224</sup> at 7.01 am, [employee of non-addressee] asks [employee of non-addressee] for a low 1 and 3 months EURIBOR submission and explains that he will be able to ask [non-addressee]'s submitters for a low 3 months rate submission. [employee of non-addressee] agrees to the request. At 8.44 am, [employee of non-addressee] confirms that he has asked his submitter. At 1.07 pm, they then discuss the published submissions of [non-addressee], [non-addressee], [non-addressee] and Fortis. [employee of non-addressee] agrees that [non-addressee]' 1 month submission of 3.36% is good and it would be nice to have the same quote on the next IMM date. [employee of non-addressee] replies that he will take care of this.
- (204) On **7 November 2006**<sup>225</sup> at 7.09 am, [employee of non-addressee] requests [employee of non-addressee] to ask his submitter and [non-addressee] for low 1 and 3 months EURIBOR submissions. At the same time, [employee of non-addressee] is involved in another bilateral chat with [employee of non-addressee] who asks [non-addressee] for a high 3 months EURIBOR submission. [employee of non-addressee] agrees to this and discloses that he needs a low 1 month EURIBOR fixing. [employee of non-addressee] agrees to the request and promises to ask his submitter. At 9.27 am, [employee of non-addressee] explains to [employee of non-addressee] in their bilateral chat that he has asked his submitters for low 1 and 3 months submissions, but they only agreed to follow him on the 1 month quote. Upon [employee of non-addressee]'s request, [employee of non-addressee] confirms that he has spoken to his submitter. At 9.36 am, [employee of non-addressee] contacts his submitter asking for a low 1 month EURIBOR submission. The submitter informs [employee of non-addressee] that he will contribute at 3.35%. Then, [employee of non-addressee] forwards this communication to [employee of non-addressee]. In his chat with [employee of non-addressee], [employee of non-addressee] thanks [employee of non-addressee] who in turn explains that his submitters are reliable

---

<sup>221</sup> [...]. In this exchange of 13 October with [employee of [non-addressee]], [employee of non-addressee] states that after the October IMM 1 month fixing they should put it low again.

<sup>222</sup> [...].

<sup>223</sup> [...].

<sup>224</sup> [...].

<sup>225</sup> [...].

even though the very low submission does not really suit him. [employee of non-addressee] then explains that the most important fixing will be the one on the following Monday (13 November 2006). [employee of non-addressee] and [employee of non-addressee] also discuss the amount of their trades fixing the following Monday and that [non-addressee]'s submitters intend to contribute 3.39%. At 10.09 am, [employee of non-addressee] ([non-addressee]) and [employee of non-addressee] discuss a contact of [employee of non-addressee] with his submitter about another submission of [non-addressee] for an unspecified EURIBOR tenor at a level of 2.40% and 2.35%, respectively, from 22 December 2006 onwards.

- (205) On **8 November 2006** [employee of JPMorgan Chase] and [employee of non-addressee] have a conversation about 1 month EURIBOR fixings in which [employee of JPMorgan Chase] explains that he would be happy if they were staying low but that his cash desk is setting them high which would not happen at [non-addressee] ("*HAPPY IS STAYING LOW BUT MY CASH IS HIGH WE WERE SAYING SMTG LIKE THIS WOULD NEVER HAPPEN AT [non-addressee]*" ... "*THERE [...] KING*").<sup>226</sup> [employee of JPMorgan Chase] adds that his preference is for a low 1 month EURIBOR fixing but that JPMorgan Chase "*set them comparatively high n if I ask they explain the regulation and the law n the conflict of interest ... we were saying at [non-addressees].... there is big higher degree of flexibility so to speak*". [employee of non-addressee] tells him to put the Libors lower ("*AMIGO PUT THE LIBORS LOWER*"), to which [employee of JPMorgan Chase] responds "*U TELL MY CASH DESK*". [employee of non-addressee] then states that unfortunately the [non-addressee] Treasury want a high rate "*at the moment so unfortunately we won't get any help from them this month*".<sup>227</sup>
- (206) Even though JPMorgan Chase have repeatedly stated during the investigation that they were not in a position to provide explanations of what [employee of JPMorgan Chase] meant or understood,<sup>228</sup> in their observations to the SO<sup>229</sup> JPMorgan Chase contend that [employee of JPMorgan Chase] is only expressing his view as to where "*the submissions should be in light of market factors*". JPMorgan Chase further propose that when [employee of JPMorgan Chase] states, "*if I ask [my Treasury desk] they explain*", he would not mean that he has asked his cash desk to move the fixings but would actually mean "*if I were to ask them, I would be told' or 'if I ask them to explain the basis on which they are determining their submissions, they tell me*". Further, JPMorgan Chase claim that {employee of non-addressee}'s statement "*put the libors lower*" is not a request but merely a sarcastic comment and that when [employee of JPMorgan Chase] is talking about the flexibility of other cash desks and of [employee of non-addressee] being the "*king*" in [non-addressee], he is only joking. Finally, JPMorgan Chase interpret the statement of [employee of non-addressee] about not getting help from the [non-addressee] cash desk that month as being purely a statement about diverging views on where the market should be

---

<sup>226</sup> [...].

<sup>227</sup> [...].

<sup>228</sup> See footnote 184.

<sup>229</sup> [...]. JPMorgan Chase also argue that [employee of non-addressee] is misleading [employee of JPMorgan Chase] when he tells him that the [non-addressee] Treasury want a high rate, as he had just exercised his influence with them the previous day. However, [employee of non-addressee] had only been able to influence them as regards the one month, and not the three month rate.

between [employee of non-addressee] and [employee of JPMorgan Chase] and their respective cash desks.

- (207) First, it cannot be concluded from the conversation that [employee of JPMorgan Chase] is expressing a general view<sup>230</sup> on where 1 month EURIBOR submissions should be in light of market factors. In fact, [employee of JPMorgan Chase] does not mention market factors but instead expresses a clear personal preference "*happy 1s staying low*" and "*my preference is for 1s fixing to stay nice and low*", which is not reflected in the level of submissions of his cash desk ("*JPM set them comparatively high*"). [employee of non-addressee] who has the same interest in having low 1 month EURIBOR fixings (see his exchanges with [employee of non-addressee] on 31 October and 3, 6, 7 and 10 November in recitals (201), (202), (203), (204) and (208)) clearly understands that [employee of JPMorgan Chase] has expressed a preference when he concludes "*WE won't get help from [my cash desk] this month*". Secondly, the most plausible interpretation of [employee of JPMorgan Chase]'s statement "*if I ask they explain*" is that he has indeed had a conversation with his submitters,<sup>231</sup> in particular as he then adds "*we were saying at [non-addressees]... there is big higher degree of flexibility*" and says "*u tell my cash desk*" in response to [employee of non-addressee]'s insistent request to put the 1 month EURIBOR submission lower. In any event, irrespective of whether or not [employee of JPMorgan Chase] may have asked his submitters for a specific rate, it cannot be contested that [employee of non-addressee] and [employee of JPMorgan Chase] exchange their preferences for low 1 month EURIBOR fixings and submissions, and disclose the views of their respective cash desks. Thirdly, [employee of non-addressee]'s straightforward request to [employee of JPMorgan Chase] to "*put the libors lower*" cannot be understood as a joke in light of the context of this exchange. As mentioned above [employee of non-addressee] has been trying to lower 1 month EURIBOR fixings for more than a week (see his exchanges with [employee of non-addressee] on 31 October and 3, 6, 7, 10 November) as he has a very large trading position with a 1 month EURIBOR fixing on the next Monday 13 November<sup>232</sup> and [employee of non-addressee] already had an exchange with [employee of JPMorgan Chase] on the topic of 1 month EURIBOR on 26 October. Finally, [employee of non-

---

<sup>230</sup> The statement "*set them comparatively high n if I ask they explain the regulation and the law n the conflict of interest ... we were saying at [non-addressees].... there is big higher degree of flexibility so to speak*" indicates that both [employee of JPMorgan Chase] and [employee of non-addressee] have detailed information on the degree of flexibility of the treasury desks in [non-addressees], information which is not publicly available.

<sup>231</sup> A daily exchange of information between the JPMorgan Chase treasury and [employee of JPMorgan Chase] about upcoming EURIBOR submissions appears to have been entirely routine. For instance, in an exchange of 30 March 2007 before the day's submissions, a JPMorgan Chase trader on the EIRD desk informs the submitter that he is "*covering today whilst [...]* [i.e. [employee of JP Morgan Chase]] [and his colleague] *are away*". The submitter responds that he usually lets "*the guys* [i.e. [employee of JPMorgan Chase] and his colleague] *know about our contributions for EURIBORs*". The trader asks for the levels and states that he needs to know the EURIBORs. The submitter proceeds to give the levels of the bank's contributions for one, three, six, nine and twelve months. In view of this habitual exchange of information between the submitters and the traders, together with [employee of JPMorgan Chase]'s own words, the conclusion to draw is that [employee of JPMorgan Chase] would pass on information derived from the JPMorgan Chase submitters and further, that he would check whether or not the information received and relayed is correct [...].

<sup>232</sup> [...].

addressee]'s explanation that "*we won't get any help from them this month*" cannot be read in the context of his exchanges with other traders as purely a statement on diverging views between him and his cash desk, and from [employee of JPMorgan Chase]'s perspective, it is indicative of past exchanges that routinely were taking place between the two traders and going back to 2005 (see recitals (143) to (147)).

- (208) On **9 November 2006**<sup>233</sup> at 7.45 am, [employee of non-addressee] asks [employee of non-addressee] for a low 6 months EURIBOR submission and [employee of non-addressee] confirms that he will ask his submitters.
- (209) On **10 November 2006**<sup>234</sup> at 6.41 am, [employee of non-addressee] and [employee of non-addressee] discuss the expected 1 month EURIBOR fixing. They agree that [employee of non-addressee] will contact his submitters to obtain a submission at 3.36% to counterbalance the submission of [non-addressee]'s submitters who, as [employee of non-addressee] explains, are expected to quote high at 3.39% or 3.40%. At 3.24 pm, they discuss the submissions of JPMorgan Chase, [non-addressee], [non-addressee] and [non-addressee] of the day. While [employee of non-addressee] complains about the high EURIBOR contributions, [employee of non-addressee] promises to be helpful the following Monday (13 November 2006). At 4.24 pm, [employee of non-addressee] inquires whether [employee of non-addressee] is talking to [non-addressee] and [employee of non-addressee] confirms that he will for the 1 month EURIBOR fixing. At around 3.30 pm, [employee of non-addressee] has bilateral contacts with his submitter and [employee of non-addressee]. [employee of non-addressee] informs [employee of non-addressee] that he needs very low 1 month EURIBOR fixing the following Monday as "*we have the whole world against us*" and explains that [employee of non-addressee] will have EUR 85 billion settling and he himself EUR 15 billion. In his contact with the [non-addressee] submitter, [employee of non-addressee] asks for a 1 month EURIBOR submission on the following Monday that is as low as possible and the submitter promises to help. [employee of non-addressee] forwards this exchange to [employee of non-addressee] who requests him to tell the submitter a figure that he should submit.
- (210) On Monday, **13 November 2006**,<sup>235</sup> [employee of non-addressee] has bilateral contacts with his submitter, [employee of non-addressee], [employee of non-addressee] and [employee of Crédit Agricole]. At 6.42 am, [employee of non-addressee] and [employee of non-addressee] discuss that [employee of non-addressee] should call [non-addressee] and Crédit Agricole, but he should not mention [employee of non-addressee] as they would hate him. At 7.33 am, [employee of non-addressee] and [employee of non-addressee] discuss again that [employee of non-addressee] should contact [non-addressee] and Crédit Agricole and his submitter who [employee of non-addressee] should ask to quote 3.36%. At the same time, [employee of non-addressee] asks in an online chat [employee of Crédit Agricole] whether he could ask his submitters for a low 1 month EURIBOR submission ("*jai un petit service a te demander, si tu nas pas de fixing Im est ce que tu peux demander a ta treso de le metre en bas*"). [employee of Crédit Agricole] confirms that he does not have any exposure based on that rate on this day and agrees

---

233 [...] .  
234 [...] .  
235 [...] .

to act accordingly ("*ok pas de prob j en ai pas, je le fais*"). Right after the end of this chat, [employee of non-addressee] contacts [employee of non-addressee]. They agree that they both are in favour of a low 1 month EURIBOR fixing. [employee of non-addressee] explains that [non-addressee] and UBS have an interest in a high fixing as [employee of non-addressee] has trades settling with them of EUR 39 billion and EUR 35 billion, respectively, while [employee of non-addressee] has trades settling with them amounting to EUR 7 billion each. [employee of non-addressee] discloses that his exposure is "*only*" EUR 3 billion and confirms to ask his submitters for a submission at the same level as on Friday. A little later, but still before the EURIBOR fixing of the day, [employee of non-addressee] ([non-addressee]) contacts his submitter reminding him to submit a low quote. The submitter agrees to the proposal and confirms to quote 3.36%. [employee of non-addressee] forwards this communication to [employee of non-addressee] who thanks him for his help. [employee of non-addressee] communicates with [employee of JPMorgan Chase] on the same day and tells him that he thinks they should both stop making "*spread prices in the bookies [brokers] as it is becoming ridiculous*". [employee of JPMorgan Chase] answers that he is "*happy to just hit them rather than supporting them*" and [employee of non-addressee] repeats "*lets stop supporting spreads in the bookies*" to which [employee of JPMorgan Chase] replies "*agree amigo will not support them*".<sup>236</sup>

- (211) JPMorgan Chase argue in their observations to the SO<sup>237</sup> that there is nothing in this exchange about rate manipulation and that this is unrelated to the paragraph describing exchanges between other traders on the same day, which in JPMorgan Chase's view "*creates an erroneous impression that the JPMC communication is in some way linked to, or its interpretation be coloured by, the communications before it*". JPMorgan Chase also argue that this exchange does not relate to any infringing conduct.
- (212) Later in the discussion of the same day between [employee of non-addressee] and [employee of non-addressee],<sup>238</sup> [employee of non-addressee] reports that he has talked with "[...]" ([employee of JPMorgan Chase] of JPMorgan Chase) and that "*we [him and employee of JPMorgan Chase] do not support the spreads with the bookies*" to which [employee of non-addressee] agrees. The spread (or bid-ask spread) is an important component of the price of EIRDs (see recital (36)) and an agreement on a level of spreads is therefore subject to be an agreement on a pricing component.<sup>239</sup>
- (213) Crédit Agricole claims in their observations to the SO<sup>240</sup> that there is no evidence on file that on 13 November 2006 [employee of Crédit Agricole] contacted the bank's treasury to influence the submission and that there was only a slight rise in its 1 month EURIBOR submission from 3.38% to 3.39%. The Commission notes that such a contact if any would not change the nature of the exchange between

---

<sup>236</sup> [...].

<sup>237</sup> [...].

<sup>238</sup> [...].

<sup>239</sup> In the Swiss Franc interest rate derivatives case (Case AT.39924), it was found that an agreement between banks to set the bid-ask spread at a different level for third parties than between themselves infringes EU competition rules.

<sup>240</sup> [...].



[employee of non-addressee] and [employee of Crédit Agricole], which clearly exhibits a communication of a rate preference and about the related trading positions and an offer by [employee of Crédit Agricole] to attempt to influence the submission of Crédit Agricole, as well as information provided by [employee of non-addressee] that [non-addressees] may have been contacted to submit a low rate. Moreover, with regard to contacts with his cash desk, [employee of Crédit Agricole] did not need to call them on the phone as he was on the same trading floor only a few metres away from his cash desk.<sup>241</sup>

- (214) Still on **13 November 2006** in a phone call after the time of the EURIBOR fixing, [employee of Crédit Agricole] tells [employee of non-addressee] that he is sorry about the fixing being so high and that he had told his submitters to put it at 3.37 ("*je leur ai dit de mettre trente-sept*"). [employee of non-addressee] tells [employee of Crédit Agricole] that he did well and then comments on the submissions of two [non-addressees] which were too high and that he has made a fuss with them about this ("*je les ai un peu allumés*"), which is a clear suggestion to [employee of Crédit Agricole] that [employee of non-addressee] had also contacted [non-addressees] for a low fixing. This phone recording corroborates the contact between [non-addressee] and Crédit Agricole on 13 November 2006.<sup>242</sup>
- (215) In its reply to the Letter of Facts,<sup>243</sup> Crédit Agricole first raises doubts as to whether the person speaking in the phone call of 13 November 2006 with [employee of non-addressee] is [employee of Crédit Agricole]. Crédit Agricole further questions that the conversation could constitute evidence that [employee of Crédit Agricole] contacted his submitters and adds that if [employee of Crédit Agricole] had asked for a low fixing then Crédit Agricole's submitters should have submitted his request and not another submission (3.39) as they did.
- (216) The Commission rejects the arguments. Firstly, the voice of the person talking to [employee of non-addressee] on the phone is in all likelihood the same as that in other phone calls of [employee of Crédit Agricole] submitted by Crédit Agricole.<sup>244</sup> Besides, Crédit Agricole does not dispute that the person referred to as "[...]", who has the same voice in the phone calls of 14 February and 19 March 2007, is [employee of Crédit Agricole] talking with [employee of non-addressee].<sup>245</sup> Secondly, in the phone conversation [employee of Crédit Agricole] confirms clearly to [employee of non-addressee] that he requested his submitters to put a low submission (3.37) as agreed earlier in the day and as a result of this submission, [employee of non-addressee] praises [employee of Crédit Agricole] that he did well. As noted in paragraph (213) [employee of Crédit Agricole] did not need to call or write an email to contact his submitters as these were sitting a few metres away from each other on the same trading floor. Finally, the fact that the submission may be different from what was asked by a trader to a submitter is no evidence that no contact has taken place.

---

241 [...].

242 [...].

243 [...].

244 [...].

245 [...] Crédit Agricole was unable to provide recordings of the phone calls of [employee of Crédit Agricole] in the period from 31 May until 13 December 2006 [...].

- (217) On **16 November 2006**<sup>246</sup> at 7.51 am, [employee of non-addressee] discusses the 3 months EURIBOR fixing of the day with [employee of Crédit Agricole]. While [employee of non-addressee] favours a low fixing, [employee of Crédit Agricole] is interested in a high fixing ("*le contraire*") and explains that he has a trading exposure of EUR 2.5 billion settling and would hope for a fixing at 3.605%. [employee of non-addressee] states that he has the same trading exposure but the other way round and states that he will check. After the fixing (on this day, 3.598% for the 6 months rate), [employee of Crédit Agricole] complains to [employee of non-addressee] about the low fixing and calls him a thief, but [employee of non-addressee] claims not to have done anything and tells [employee of Crédit Agricole] to call him. This phone call could not be communicated by Crédit Agricole to the Commission.<sup>247</sup>
- (218) Crédit Agricole explains in its Response to the Statement of Objections that because [employee of non-addressee] and [employee of Crédit Agricole] had opposite interests on that day this exchange does not represent an example of anti-competitive behaviour.<sup>248</sup>
- (219) The fact that the two traders did not have a mutual interest on 16 November 2016 is revealed by both traders exchanging clear and detailed indications on their respective 3 month EURIBOR related trading positions with a view to possibly colluding to influence their submitters. In addition, nothing in [employee of Crédit Agricole]'s (Crédit Agricole) words suggests any surprise at the content and tone of the conversation and he does not distance himself from the request for a low fixing made by [employee of non-addressee]. To the contrary, his subsequent complaining and accusations against [employee of non-addressee] further reinforce the fact that he is well aware of [employee of non-addressee] frequent attempts to influence the rate together with other traders. The fact on this particular date the two traders had interests which were not aligned does not mean that they were not aware of each other's position and that they did not use or could have used this advanced knowledge in dealing with their own trades. It is an explicit exchange of sensitive information.
- (220) On **24 November 2006**,<sup>249</sup> [employee of non-addressee] asks [employee of JPMorgan Chase] for his input on a price "*amigo need your opinion say the mid is 62 on a 1x2 fra, how much wud u charge for 100bio?*". [employee of JPMorgan Chase] asks whether [employee of non-addressee] is interested in exploring a transaction "*Do you a px or an opinoin amigo?*" and [employee of non-addressee] replies that he wants an opinion. [employee of JPMorgan Chase] then obliges the request "*Amigo this sound v hypothetic as 1\*2 is more like 65.5 but if 62 is your mid and you have no posityion would ask help to [employee of non-addressee] to share some of that and then quoute minimum 1 tic spread especially as you know my view on 1m fras*". [employee of JPMorgan Chase] adds that he is giving this information on the price only for [employee of non-addressee] ("*Amigo only for u*"). Later the two traders talk about their respective positions in FRAs which go over the year end turn.

---

246 [...].  
247 [...].  
248 [...].  
249 [...].

- (221) In their observations to the SO,<sup>250</sup> JPMC argue that this is "*an hypothetical pricing discussion*" and that, with regard to the later part of the exchange, both would explore a potential trade.
- (222) With regard to the pricing discussion at the beginning, [employee of JPMorgan Chase] provides [employee of non-addressee] with precise information (including his view of the mid price and the level of spread he would charge) on the price of a specific type of product (1\*2 FRA) and size of trade (for a notional amount of EUR 100 billion), outside of the context of a discussion in view of a potential transaction. Indeed, [employee of non-addressee] states very clearly that he is not requesting a quote for a potential trade but rather specific pricing information and [employee of JPMorgan Chase] states at the end that he would give this information only to [employee of non-addressee], which implies that he would not provide this piece of information to his other competitors in the market. It is also apparent that [employee of non-addressee] acquires specific knowledge on JPMorgan Chase pricing from [employee of JPMorgan Chase] which is applicable on the market at the time of the conversation.
- (223) On **27 November 2006**,<sup>251</sup> [employee of non-addressee] informs [employee of non-addressee] that the fixing of the following day should be "*sky*" high and that [non-addressee], Crédit Agricole and [non-addressee] should all submit high quotes. [employee of non-addressee] agrees with this line.
- (224) On **5 December 2006**,<sup>252</sup> [employee of non-addressee] has bilateral contacts with his submitter, [non-addressee], [non-addressee] and Crédit Agricole. At 7.36 am, [employee of non-addressee] requests [employee of non-addressee] to ask his submitters for a high 6 months EURIBOR quote and [employee of non-addressee] agrees to the request. At 7.44 am, [employee of non-addressee] makes a similar request to [employee of non-addressee] who also agrees to the request. At 10.05 am, [employee of non-addressee] and [employee of non-addressee] congratulate each other on the 6 and 1 month EURIBOR fixings and [employee of non-addressee] discloses that he has had trades of EUR 1.7 billion settling on this day. In another parallel chat, [employee of non-addressee] also asks [employee of Crédit Agricole] to make a request to his submitters for a high 6 months EURIBOR quote. [employee of Crédit Agricole] discloses that he has a similar interest and [employee of non-addressee] confirms: "*cool me too i'll take care of it*". At 10.12 am, [employee of non-addressee] and [employee of Crédit Agricole] congratulate each other and disclose the volumes of their respective settled trades (EUR 1.7 billion and EUR 1.4 billion, respectively) to each other. In a fourth parallel chat with a [non-addressee] submitter before the end of the submission deadline, [employee of non-addressee] asks for a high 6 months EURIBOR submission. The submitter replies that they have posted 3.73%, but they can put it higher if [employee of non-addressee] wants. [employee of non-addressee] thanks his submitter stating his agreement to the proposed quote. On the same day in a Bloomberg instant chat message [employee of non-addressee] congratulates [employee of Crédit Agricole] in the following terms: "*bon fixing*".

---

250 [...] .  
251 [...] .  
252 [...] .

- (225) Crédit Agricole claims in their observations to the SO<sup>253</sup> that there is no evidence that [employee of Crédit Agricole] contacted or influenced Crédit Agricole's submitter and that the bank's submission for six month EURIBOR on that day was not atypical.
- (226) The communication between [employee of non-addressee] and [employee of Crédit Agricole], exhibits a clear exchange of rate preferences and an intent to influence the submissions of each other's bank. In addition, as noted in recital (213), [employee of Crédit Agricole] did not need to call or write an email to contact his submitters, as they were sitting a few metres from him on the same trading floor.
- (227) On **13 December 2006**<sup>254</sup> [employee of non-addressee] and [employee of Crédit Agricole] discuss market transactions on April/May FRAs. [employee of non-addressee] discloses to [employee of Crédit Agricole] that he has a large directional trading position these FRAs ("*j'ai du apr/mai taillasse ... en steepener*"). [employee of Crédit Agricole] mentions that he is cautious and later that he keeps seeing market activity on these products ("*j'ai vu qu'il y avait des calls en 4 5 IMM fras*") to which [employee of non-addressee] replies that he has significantly reduced his position in which he was "*stuck*" ("*oui comme je suis fait donne en 4/5 par jp, [non-addressee] et [non-addressee]... j'ai degage mon mai ... j'ai ganne 1bp sur la pose alors que jetais colle*"). [employee of non-addressee] ([non-addressee]) also promises to [employee of Crédit Agricole] to explain to him his new pricing model<sup>255</sup> which enables him to price correctly very fast products. At the end of the conversation [employee of non-addressee] sends twice his list of prices for eleven interest rate maturities (run), an exchange which takes place outside of the context of a discussion on a possible transaction.
- (228) In their observations to the SO,<sup>256</sup> Crédit Agricole claim that the information shared on transactions with third parties contributes to the fluidity of the market. Crédit Agricole further state that the information on [employee of non-addressee]'s trading position is useless to [employee of Crédit Agricole]. Crédit Agricole do not comment on the offer from [employee of non-addressee] to explain in detail his pricing model to [employee of Crédit Agricole]<sup>257</sup> and claim that the exchange of their respective "runs" (pricing models) at the end of the exchange on that day would be useless.<sup>258</sup>
- (229) Firstly, as mentioned in the description of the market at recitals (14) and (45), there were no publicly available transaction prices for most EIRDs in the period under consideration. In this context, when two traders share on a bilateral basis detailed information on their intended future prices (such as "runs"), or on the functioning of the very good pricing model of [employee of non-addressee] whose offer is accepted by [employee of Crédit Agricole]), as well as other specific pieces of information on

---

253 [...].

254 [...].

255 [...] [employee of non-addressee]: "*j'ai ouahed le pricer maintenant...laser chrome*" "*je peux faire un prix. en moins de 2 secondes... dans nimporte quelle condition*" "*ouahed le truc faut que je texplique*" [employee of Crédit Agricole]"*je suis preneur...*"[employee of non-addressee]: "*je tappelle tout a lheure*".

256 [...].

257 [...].

258 [...].

market prices, the two market participants gain knowledge of valuable information which is not available to other market participants and which they cannot fail to take into account. The fact that the eleven tenor runs are exchanged at the end of the day does not make them less valuable, in particular as [employee of non-addressee] states earlier (at 14:40:14) that eleven interest rate tenors are required as inputs for the pricing model he has offered to explain to his competitor ("*tu donne 1m 2m 3m et les 8 spreads et ca tourne tout seul*"). Secondly, [employee of Crédit Agricole] knows that [employee of non-addressee] is a large player in the market and that the information [employee of non-addressee] reveals about his very large trading position ("*taillasse*" means a very large position) on a specific maturity is very likely to influence his market behaviour.

- (230) On **18 December 2006**<sup>259</sup> [employee of JPMorgan Chase] asks [employee of non-addressee] whether he is happy with the 3 months EURIBOR fixing ("*happy with 3S fixing?*"). The discussion takes place after the fixing of the day. [employee of non-addressee] replies that he is and reciprocates ("*very much – you?*"). [employee of JPMorgan Chase] states that he is happy even though his trading position was small but that at least he did not have an opposite interest so he did not lose money.
- (231) In their observations to the SO,<sup>260</sup> JPMorgan Chase do not contest the Commission's reading of the conversation that this relates to the 3 months EURIBOR fixing is correct. JPMorgan Chase point to the fact that this is only an "*after-the-fact*" discussion, that there does not appear to be a link with any attempted manipulation and that the SO does not mention other communications relating to a fixing manipulation in the preceding days or week.
- (232) However, the reason why [employee of JPMorgan Chase] asks [employee of non-addressee] if he is happy in particular with the 3 month EURIBOR fixings appears to find an explanation in the discussion on the previous Friday, 15 December, of [employee of JPMorgan Chase] with his submitter [employee of JPMorgan Chase].<sup>261</sup> In this discussion, [employee of JPMorgan Chase] states that some banks have very large 1 month and 3 months EURIBOR fixings on the next Monday [December 18] and that [non-addressee] together with [non-addressees] are manipulating the EURIBOR fixings: "*WELL REALITY IS MOST PEOPLE HAVE V LARGE DFIXING IS N ESPOECIALLY 3S ON MONDAY N THEY WANT TO FORCE FIXINGS HIGHER IT IS JUST THIS GAME THEY R PLAYING MKT WILL LOOK DIFFERENT AFTER IMM ROLL. [non-addressee] HAS HAD 69 GFIXING FOR AT LEAST A WEEK IN 3S WHICH IS A JOKE/DISGRACE...TODAY COUPLE MORE SMART FELLOWSD JOIN THEM*". It should be stressed that [non-addressee] was not the only bank which contributed 3.69 for the 3 month EURIBOR on 13 and 14 December, as several [non-addressees] submitted at a similar level in that period. Furthermore, the 3 month EURIBOR fixing on 15 December was 3.686, so [non-addressee]'s contribution would not stand out as being totally off the mark. In addition, contrary to [employee of JPMorgan Chase] his submitter [employee of JPMorgan Chase] shows no surprise at the level of contribution on the 3 month EURIBOR of [non-addressee] as she states "*WELL I THINK WE MIGHT HAVE*

---

259 [...]   
260 [...]   
261 [...].

*PUT 6369 AS WELL*" (that is to say 3.63 and 3.69 for the 1 and 3 months EURIBORs – and on 15 December JPMorgan Chase's submission was 3.69 for the 3 month EURIBOR). It follows from the exchanges of [employee of JPMorgan Chase] with his submitter and with [employee of non-addressee] that [employee of JPMorgan Chase] had knowledge of [employee of non-addressee]'s trading exposure and plan to manipulate the 3 month EURIBOR on 18 December

- (233) In their reply to the Letter of Facts, JPMorgan Chase contest that the internal communication of 15 December between [employee of JPMorgan Chase] and [employee of JPMorgan Chase] proves that [employee of JPMorgan Chase] had knowledge of [non-addressee]'s ([employee of non-addressee]) plan to manipulate the 3 month EURIBOR on 18 December 2006. JPMorgan Chase claim that the SO did not make such allegation and that the aim of the conversation of 15 December was to hedge the position of the trader at the end of the trading day. Any reference to a higher fixing was purely speculative.<sup>262</sup>
- (234) The Commission rejects the argument that the reference to a higher fixing was speculative. The communications of 15 and 18 December must be analysed together. Together, they prove that [employee of JPMorgan Chase] could reasonably assume that on 18 December [non-addressee] (in particular) and possibly [non-addressees] could be colluding on the EURIBOR. The SO already mentioned that [employee of JPMorgan Chase] asked [employee of non-addressee] on 18 December if he was happy with the 3 months EURIBOR fixing, and the communication of 15 December confirms that this trader understood at that moment that *"THEY WANT TO FORCE FIXINGS HIGHER IT IS JUST THIS GAME THEY R PLAYING"* .
- (235) On **20 December 2006** [employee of non-addressee] explains to [employee of HSBC] (who reports to [employee of HSBC]) the principles of successful trading when quoting spreads via dealing platforms. [employee of non-addressee] considers that one should never ask prices nor give information to the market as remaining secret is key. [employee of HSBC] agrees and states that if they can be around ten - including JPMorgan Chase, [non-addressee], [non-addressee], and [non-addressee] - to know what the real value of EIRDs is and keep it among themselves without going through brokers, this is ideal (*"Si on arrive à être moins d'une petite dizaine (ta liste) à savoir ce que va vaut juste entre nous sans passer par les bro c cool"*).<sup>263</sup> [employee of non-addressee] adds that quoting certain spreads and prices to brokers kills the business. In addition, he considers that this would amount to giving so much information to the market that everyone would adopt that same price and no market would be left. Both also discuss the trading position of [employee of non-addressee] for February 2007 and exchange information about the price for a [...] which [employee of non-addressee] is simultaneously dealing with another market player. [employee of non-addressee] asks [employee of HSBC] view on the price of the 6/7 [...] (*"ca vo quoi 6/7 13?"*). [employee of HSBC] gives his mid price (*"pour moi 3.097"*) and [employee of non-addressee] agrees (*"oui 90.9" "on me leve a 91.3"*).<sup>264</sup>

---

<sup>262</sup> [...]  
<sup>263</sup> [...].  
<sup>264</sup> [...].

- (236) On **21 December 2006**,<sup>265</sup> [employee of non-addressee] has bilateral communications with [non-addressee] and [non-addressee]. At 8.10 am, [employee of non-addressee] recommends to [employee of non-addressee] ([non-addressee]) that he should tell his cash management (treasury department) to make a low 3 month EURIBOR submission on 29 December 2006. [employee of non-addressee] explains that he is going to do the same with his treasury department and that he is going to "use all the people [he] know[s] to get it down." [employee of non-addressee] ([non-addressee]) agrees to do the same as he had already contemplated doing so anyway. Already before this chat, at 7.21 in the morning, [employee of non-addressee] inquires with [employee of non-addressee] where his bank will set the 1 month EURIBOR. [employee of non-addressee] considers that it will remain unchanged. Later in the chat, [employee of non-addressee] forwards extracts from the above discussion with [employee of non-addressee] ([non-addressee]) to [employee of non-addressee]. [employee of non-addressee] congratulates [employee of non-addressee] for their "team work".
- (237) On **27 December 2006**<sup>266</sup> at 6.43 am, [employee of non-addressee] sends an e-mail to his assistant [employee of non-addressee] instructing him to ask on the same day for a low 3 months EURIBOR quote by the [non-addressee] submitters and to ask [employee of non-addressee] and [employee of non-addressee] to tell their submitters to put it low, too. This communication relates to the EURIBOR fixing on 29 December 2006, because [employee of non-addressee] replies to [employee of non-addressee] that there is no 3 months fixing on this day but that the big fixing is on Friday.
- (238) On **29 December 2006**,<sup>267</sup> [employee of non-addressee] contacts [non-addressee] and [non-addressee] as instructed. Just before 9.00 am, [employee of non-addressee] requests [employee of non-addressee] to ask her submitters for a low 3 months EURIBOR quote. [employee of non-addressee] agrees to this request. Just after this conversation, [employee of non-addressee] holds another bilateral contact with [employee of non-addressee] making a similar request as before to [non-addressee]. [employee of non-addressee] explains that he has no position on his side and will ask his submitters for a low contribution.
- (239) On **4 January 2007** [employee of JPMorgan Chase] asks [employee of non-addressee] whether his cash desk is "up to no good as usual" and [employee of non-addressee] replies that he got lucky on that one and asks [employee of JPMorgan Chase] "wot u think of euribors?". [employee of JPMorgan Chase] replies by stating his trading strategy for the coming months "well I am lent may short mar calls and have my usual put condor in june dv01 long what do you think?" (in other words, he has a short trading position in EIRDs with a maturity in May and a short position in EURIBOR call options fixing on the 2007 March IMM date) and adds that he is even willing to increase his short trading position with a fixing on the March IMM date. [employee of non-addressee] goes on to say that he thinks it is risky to have a short position on May ("I think it's brave to be lent may") and that he has a long

---

<sup>265</sup> [...].  
<sup>266</sup> [...].  
<sup>267</sup> [...].

position on EURIBOR futures fixing on the 2007 March IMM date (*"I bgt some yesterday"*).<sup>268</sup>

- (240) In their Response to the SO<sup>269</sup> JPMorgan Chase explain that [employee of JPMorgan Chase] and [employee of non-addressee] are just talking about the likely evolution of ECB rates and their respective trading positions in that respect. JPMorgan Chase add that the conversation reflects "*[employee of JPMorgan Chase]'s view that he thought it was likely that the ECB would raise rates in March*". JPMorgan Chase contend in conclusion that this conversation relates to trading and not rate manipulation, and that no mention is made by [employee of non-addressee] to [employee of JPMorgan Chase] on a possible collusion in relation to the March IMM fixing.
- (241) Firstly, [employee of non-addressee] and [employee of JPMorgan Chase] are exchanging information about their respective specific trading positions on EIRDs linked to the March EURIBOR and to May and share views on the risks associated with these trading positions. JPMorgan Chase do indicate in their observations that [employee of JPMorgan Chase] had at the date of 4 January 2007 a short position on options linked to the 3 month EURIBOR on the March IMM date, and thereby acknowledge that the two traders are discussing EIRDs linked to this fixing as well.<sup>270</sup> Therefore the discussion does not merely relate to the "*likely evolution of ECB rates*" as JPMorgan Chase suggest that [employee of JPMorgan Chase] would mean ("*[employee of JPMorgan Chase]'s view is that he though it was likely that the ECB would raise rates in March*"). In addition there is reference several times in this exchange to the EURIBOR, but there is no piece of information pointing explicitly to ECB rates.
- (242) Secondly, contrary to what JPMorgan Chase imply in their observations,<sup>271</sup> which is that [employee of non-addressee] would not confirm to [employee of JPMorgan Chase] that he bought March EURIBOR EIRDs, [employee of non-addressee] does so later in the conversation (*"I bgt some yesterday"*). This confirmation comes after [employee of non-addressee] has stated that he has a long position on options linked to the 3 month EURIBOR on the March IMM date ([employee of JPMorgan Chase] "*r u short here?*" - [employee of non-addressee] "*no*"). This discussion involves the disclosure of specifics about the two trader's respective trading strategies and takes place outside of the context of a potential trade. Furthermore, [employee of non-addressee] did indeed adopt the trading strategy which he disclosed to [employee of JPMorgan Chase] (in other words, long on the March IMM and long on May),<sup>272</sup> a strategy which was successful (see recitals (303) to (337)) and proved to rely on the level of EURIBOR fixings, not on ECB decisions. Finally, it should be added that during the investigation JPMorgan Chase stated that it was not in a position to

---

<sup>268</sup> [...].

<sup>269</sup> [...]. As noted above, JPMorgan Chase stated in their Response to the SO that it "*has been prepared following discussions with various current and former [...] employees, including [...]*" but have not indicated which evidence [employee of JPMorgan Chase] has directly commented on.

<sup>270</sup> [...].

<sup>271</sup> "[employee of non-addressee] *does not expressly confirm or deny that it is he who has purchased the contracts, he just jokes that March EURIBOR is "cheap as chips"*" [...].

<sup>272</sup> [...].



provide explanations of what [employee of JPMorgan Chase] meant or understood.<sup>273</sup>

- (243) On **8 January 2007**<sup>274</sup> in a discussion with [employee of non-addressee] about their respective trading strategies [employee of JPMorgan Chase] states "*like it sqrd as well amigo maybe just little lent May eonia and short little june/sep euribor...*" to which [employee of non-addressee] answers "*am long march eonia. At least the downside is limited*".
- (244) JPMorgan Chase claim in their observations to the SO<sup>275</sup> that the exchange of information on the trader's respective trading positions is very generic and that the information exchanged is "*high level comments about the market in light of their uncertainty about when the ECB will next hike its rates*".
- (245) [employee of JPMorgan Chase] and [employee of non-addressee] repeat their discussions about their respective specific March and May trading positions and their assessment of the risks associated with them, as they did on 4 January and will again on 6 February. In addition, statements such as "*like it sqrd*" (squared) and "*am long march eonia*" explicitly refer to trading positions of the respective competitors and disclose likely behaviour in the market, and are not just "*high level comments*".
- (246) On **11 January 2007**,<sup>276</sup> [employee of non-addressee] sends his prices for all tenors (run) to [employee of Crédit Agricole] outside of the context of a discussion on a possible transaction.
- (247) In their observations to the SO,<sup>277</sup> Crédit Agricole claim the information exchanged "*is not a run which could be used to price a transaction*", but that this constitutes "*a forward rate yield curve of market mids with four decimals*", which according to Crédit Agricole is purely theoretical as market prices would normally be given with less precision. Second, Crédit Agricole argue that the Commission would not have established that this exchange takes place outside of the context of a transaction.
- (248) Firstly, the fact that [employee of non-addressee] would share pricing information with [employee of Crédit Agricole] with more precise figures than those used to quote prices in the market does not make it less valuable to [employee of Crédit Agricole], as the latter can round these pricing figures to the level needed in the market. Secondly, the degree of precision makes it more likely that the run sent by [employee of non-addressee] was his own real estimate of prices, which he would normally not share with other market players. As already explained in section 2.2.4.1 each trader would calculate his own price estimates. Thirdly, the contention that two traders would spend time sending to each other theoretical prices is not credible. Finally, there is nothing in the exchange which points to an approach by either trader to engage in a transaction, and Crédit Agricole has not provided any piece of evidence which would point to the contrary.

---

<sup>273</sup> See footnote 184.

<sup>274</sup> [...]. For other earlier/later pieces of the conversation on this day between [employee of non-addressee] and [employee of JPMorgan Chase] see in chronological order [...].

<sup>275</sup> [...].

<sup>276</sup> [...].

<sup>277</sup> [...].

- (249) On **11 January 2007**<sup>278</sup> at 7.34 am, [employee of non-addressee] and [employee of non-addressee] discuss their banks' submissions for the 1 month EURIBOR. According to [non-addressee], [non-addressee] and [non-addressee] enter into a EUR 2.5 billion trade to adjust [employee of non-addressee]'s exposure so that he would have an interest to request a high 1 month submission from his submitter. At 8.36 am, [employee of non-addressee] forwards an online chat with his submitter to [employee of non-addressee]. In that chat, [employee of non-addressee] asked his submitter for a high 1 month EURIBOR submission and the submitter agrees to the request. After the end of the deadline to submit quotes, [employee of non-addressee] and [employee of non-addressee] discuss the successful high fixing of the 1 month tenor ("*Im to the sky*").
- (250) On **12 January 2007**<sup>279</sup> at 7.57 am, [employee of non-addressee] asks [employee of non-addressee] for his preference for the 1 month EURIBOR fixing during the following days. When [employee of non-addressee] explains that he has no special preferences, [employee of non-addressee] discloses that he wants it low all the time at the moment. [employee of non-addressee] agrees to ask his submitters, but states that his submitters are not always that helpful. Before the setting of the rate, [employee of non-addressee] also contacts his submitter and asks for a low 1 month EURIBOR in the coming days. The [non-addressee] submitter ([employee of non-addressee]) confirms that he will act as requested. After the setting of the rate, [employee of non-addressee] and [employee of non-addressee] congratulate each other on the "*beautiful fixing*" and their "*team work*".
- (251) On **15 January 2007**,<sup>280</sup> [non-addressee] is involved in two bilateral online chats with [non-addressee] and [non-addressee] where the 1 month EURIBOR fixing is discussed. At 7.23 am, [employee of non-addressee] reminds [employee of non-addressee] of the 1 month fixing. [employee of non-addressee] confirms that this is no problem as they are in the same sense. [employee of non-addressee] expresses his preference for a spread of zero between the 1 month EURIBOR and another unspecified benchmark. After discussing a forthcoming team building event in Moscow to which [employee of non-addressee] will go, he announces to call [non-addressee] and, a little later, confirms that they will submit a low quote. After the setting of the EURIBOR, [employee of non-addressee] and [employee of non-addressee] congratulate each other on the 1 month EURIBOR fixing and their "*team work*". Indeed, in an online chat with [employee of non-addressee] that takes place simultaneously with the one with [non-addressee], [employee of non-addressee] asks [non-addressee] for a low 1 month EURIBOR submission. [employee of non-addressee] agrees to the request, but explains that he will only contact his submitters 30 minutes before the fixing time so that they do not forget. [employee of non-addressee] approves this strategy.
- (252) On **17 January 2007**<sup>281</sup> [employee of non-addressee] informs [employee of HSBC] that he has a large trading position on March/April ("*j'ai du mar/apr pour taillasse*" "*ca va s'inverser*"). [employee of HSBC] reciprocates and states that he sells May

---

278 [...].  
279 [...].  
280 [...].  
281 [...].

contracts to which [employee of non-addressee] agrees ("*c'est cher hein? Oui may urs. Tas raison*") and that he intends to sell September[...]. [employee of HSBC] indicates that he does it already and that his price for the September [...] is "4.045" shortly before leaving the chatroom.

- (253) HSBC has not commented on this exchange in its Response to the SO.
- (254) On **19 January 2007**<sup>282</sup> [employee of non-addressee] and [employee of HSBC] discuss their respective trading positions for June and their dealings in that respect with the same unnamed client. [employee of HSBC] then states that [employee of non-addressee] has been discreet since the beginning of the year, to which [employee of non-addressee] replies by giving details about [employee of non-addressee]'s bonus for 2006. [employee of non-addressee] asks [employee of HSBC] about his pricing for a specific EIRD and inquires about the real price ("*real mid*"). [employee of HSBC] replies "4.025" on which [employee of non-addressee] agrees ("*impec[cable]*") before leaving the chatroom.
- (255) HSBC has not commented on this exchange in its Response to the SO.
- (256) On **1 February 2007**<sup>283</sup> from 7.10 am onwards, [employee of non-addressee] asks [employee of non-addressee] in an online chat several times to ask for a low 1 month EURIBOR submission. [employee of non-addressee] agrees to the request and sends, at 8.51 am, a message to his submitter in which he asks for a low 1 month EURIBOR submission. The submitter agrees to the request.
- (257) Later that day, [employee of non-addressee] informs [employee of non-addressee] in another bilateral chat of a planned scheme developed by [employee of non-addressee] to manipulate the 3 month EURIBOR on the IMM date on March 2007 (namely the EURIBOR submissions on 19 March 2007).<sup>284</sup> [employee of non-addressee] starts with ascertaining [employee of non-addressee]'s ([non-addressee]) preference for the spread (basis) between "*3 months fix*" and "*3 months EONIA*" on the March IMM date and whether [employee of non-addressee] will be interested in a widening or narrowing of this spread. According to [non-addressee], the reference to "*3 months fix*" and "*3 months EONIA*" relates to the difference of the rates for forward rate agreements linked to the 3 months EURIBOR and 3 months EONIA swaps. [employee of non-addressee] explains that he does not have a big position and that he would be interested in a narrow spread which he is expecting to be around 6 basis points. At this point, [employee of non-addressee] warns [employee of non-addressee] that he should be careful as [employee of non-addressee] has proposed a scheme involving the treasury departments of [non-addressee] and [non-addressee]. They plan to bring the spread to 3 basis points by lending 3 months cash and "*stupid*" EURIBOR submissions. [employee of non-addressee] asks [employee of non-addressee] to treat this information as confidential. [employee of non-addressee] approves this idea and reminds [employee of non-addressee] that he has a preference for a narrowing spread 10 days before the IMM date due to a EURIBOR-linked position of EUR 5 billion. [employee of non-addressee] promises to at least ask his submitters to make very low submissions, but states that he cannot help for the

---

282 [...].  
283 [...].  
284 [...].

moment. [employee of non-addressee] states that he does not intend to share the information received from [employee of non-addressee] with anyone within [non-addressee].

- (258) While it is not known when exactly [employee of non-addressee] presented his plan to manipulate the EURIBOR on the March IMM date to [employee of non-addressee], the case file contains indications that ideas for a similar plan for December 2006 had been ventilated within [non-addressee] as early as at the beginning of September 2006. On 7 September 2006,<sup>285</sup> in parallel to his discussions with [non-addressee] regarding the rate fixing of the day (see recital (153)), [employee of non-addressee] has a discussion with his treasury desk in which the submitter ([employee of non-addressee]) explains that he would like to discuss a "concerted action" later that day. [employee of non-addressee] replies that he "loves these concerted actions". In another communication that day, [employee of non-addressee] and [employee of non-addressee] discuss the possibility to set up the plan for influencing the EURIBOR in December 2006. One of them (possibly [employee of non-addressee]) states that in his view they would get a lot of support from [non-addressees]. He notes that the "December 3 month" is currently at 6.8 and asks the other one where he thinks they could bring it. He also notes that the "1 month" is around 6.5. In response, the other person (possibly the submitter) states that it is difficult to say, but that the target width should be 8-9 basis points. The other person then suggests a strategy which could result in a profit of up to 2 millions on a position of 100 billion. First, positions in the market would be collected and an average taken. The initiator of the conversation would then give the other party a portion of those positions. The other person would then bid cash for 1-3 month possibly "through EURIBOR", starting at the beginning of December and hold that position. The other party would then push brokers and [non-addressees] to put in "high fixings". [non-addressee] explains that it is not in a position to determine which of the two participants is [employee of non-addressee] and which his submitter.
- (259) On **5 February 2007**<sup>286</sup> [employee of HSBC] asks [employee of non-addressee] how much [non-addressee] pay in broker fees and indicates to [employee of non-addressee] the level to which he intends to lower them.
- (260) HSBC has not commented on this exchange in its Response to the SO.
- (261) On **6 February 2007**<sup>287</sup> [employee of non-addressee] asks [employee of non-addressee] twice for a confirmation of whether he still plans to obtain a very low 3 month EURIBOR tenor on the March IMM date and [employee of non-addressee] confirms this. [employee of non-addressee] then explains that he intends to put pressure on his submitters to submit a low rate. [employee of non-addressee] confirms that he is interested in a very low fixing as each basis point difference in the 3 months EURIBOR will result in a gain or loss of EUR 750 000 on his trading positions.

---

285 [...] .  
286 [...] .  
287 [...] .

- (262) Still on **6 February 2007**<sup>288</sup> [employee of non-addressee] and [employee of JPMorgan Chase] discuss trading strategies and [employee of JPMorgan Chase] inquires "*Amigo what r u up 2 in May?*". [employee of non-addressee] replies "*they are cheap amigo trust me for once*", which is an indication about his perception of the level of risk for contracts maturing in May. [employee of JPMorgan Chase] then inquires "*where will mar go out?*" to which [employee of non-addressee] replies "9", which is an indication of where he sees the price of the futures for the March IMM on that date, to which [employee of JPMorgan Chase] agrees "*think I give u that as well*". As on 4 January, both traders are again discussing specifics about some of their trading strategies for March and May 2007, outside of the context of a potential trade.
- (263) In their observations to the SO,<sup>289</sup> JPMorgan Chase make the connection between this conversation and one between the two traders on 4 January 2007 (see recitals (239) to (242)), in which [employee of JPMorgan Chase] and [employee of non-addressee] discuss their trading positions for May and [employee of non-addressee] gives his view on the level of prices (low volatility) to which [employee of JPMorgan Chase] agrees ("*think more than cheap*"). JPMorgan Chase view this exchange as being limited to a discussion on the possibility that the ECB hike its rates in May. JPMorgan Chase also point to the fact that the prevailing price of the 3 month future due to fix on the 2007 March IMM date (19 March) was 96.09 on 6 February 2007. With this in mind, JPMorgan Chase argue that the exchange about where will March go out is just an informal exchange of views on current market prices ("*[employee of non-addressee] was doing no more than expressing a view which equated to the market's view on 6 February 2007 of where that contract would settle on that day*"). JPMorgan Chase also argue that when [employee of JPMorgan Chase] states "*I give u that as well*" it would mean that [employee of JPMorgan Chase] is ready to sell futures to [employee of non-addressee], in line with the meaning given in JPMorgan Chase 's textbook for the training of graduates.
- (264) First, this discussion takes place outside of the context of a potential transaction, and JPMorgan Chase are right to make the connection with the exchange of 4 January between the two traders. With regard to the exchange about the trading position on May, [employee of JPMorgan Chase]'s question to [employee of non-addressee] is not intended at asking his opinion on what the ECB is up to but rather about his trading strategy for May ("*what are you up to in May*") which, as JPMorgan Chase rightly point out, both traders have already discussed on 4 January, but also on 8 January 2007 as well (see recitals (243) to (245)). [employee of non-addressee]'s reply relates to a price level ("*theyre cheap amigo trust me for once*"). Second, the question of [employee of JPMorgan Chase] to [employee of non-addressee] clearly refers to a future price ("*where will mar go out?*") and it is not very plausible that [employee of JPMorgan Chase] would need to ask a competitor in order to know the prevailing price of the future on that day, as future contracts are exchange listed so [employee of JPMorgan Chase] clearly had this price on his computer screen. Rather, [employee of JPMorgan Chase]'s question echoes their earlier exchange in January in which [employee of non-addressee] indicated that he had bought March IMM

---

288 [...].

289 [...].

futures. Furthermore, none of the two traders mention in this conversation any potential trade, in particular as futures are exchange-traded, therefore the most likely meaning of [employee of JPMorgan Chase]'s reply to [employee of non-addressee]'s indication on the future price of March IMM futures is that he concedes that [employee of non-addressee] may be right on this. In any event, even if JPMorgan Chase's reading of "*I give u*" could mean that [employee of JPMorgan Chase] would hypothetically be ready to sell at this price ("9"), the fact remains that both traders are discussing specifics about some of their trading strategies for March and May 2007. Finally, it should be added that during the investigation JPMorgan Chase stated that it was not in a position to provide explanations of what [employee of JPMorgan Chase] meant or understood and only did so at the stage of its Response to the SO.<sup>290</sup>

- (265) On **8 February 2007**,<sup>291</sup> [employee of JPMorgan Chase] tries to convince his submitter [employee of JPMorgan Chase] to submit higher 3 month and 6 month EURIBOR fixings the next day. This conversation is not connected to a contact of [employee of JPMorgan Chase] with other market players on the same topic, but it shows that contrary to what JPMorgan Chase contend [employee of JPMorgan Chase] could have contacts with his submitters about the level of submissions for EURIBOR.<sup>292</sup>
- (266) In their reply to the Letter of Facts,<sup>293</sup> JPMorgan Chase consider this exchange an entirely proper exchange of views on the EURIBOR submission between professionals within the bank. When the trader asks the submitter to take certain action, JPMorgan Chase denies that this was an action on the EURIBOR submission. Moreover, it was nothing but a joke. JPMorgan Chase adds that this exchange is not capable of ready interpretation by those outside the financial industry.
- (267) The Commission however notes that the conversation and the explanation given by JPMorgan Chase confirms that it was not considered inappropriate within the bank for submitters to exchange views with the traders on the level of the EURIBOR submissions. JPMorgan Chase attempts to downplay a possible request from a trader to a submitter as a joke, based on the presentation of the request, but these traders knew that they were not supposed to give instructions to the submitters, and even subtle hints presented in the form of a joke may therefore demonstrate that there was a channel of communication within JPMorgan Chase between [employee of JPMorgan Chase] (the trader) and the submitters.
- (268) On Friday **9 February 2007**<sup>294</sup> [employee of non-addressee] asks [employee of non-addressee] how he is positioned on the 1 month EURIBOR fixing the next Monday (February 12<sup>th</sup>) and tells him he wants a low fixing. As [employee of non-addressee]

---

<sup>290</sup> See footnote 184.

<sup>291</sup> [...].

<sup>292</sup> [...]. Inspection documents suggest JPMorgan Chase submitters were sitting on the [...] Floor of JPMorgan Chase's [...] premises (at least as from 1 February 2007) and that [employee of JPMorgan Chase] was also on the [...] floor like his direct bosses and other colleagues dealing in EIRDs [...]. JPMorgan Chase have stated that for the whole period under consideration [employee of JPMorgan Chase] was located on the [...] floor while the EURIBOR submitters were on the [...] floor of the same building, which appears to contradict the inspection documents [...].

<sup>293</sup> [...].

<sup>294</sup> [...].

indicates that he has a small trading exposure which is the opposite to that of [employee of non-addressee], who has a much larger trading position, [employee of non-addressee] offers [employee of non-addressee] to buy back his small trading exposure. [employee of non-addressee] then explains that he has already talked to his cash desk and invites [employee of non-addressee] to do the same, and goes on to explain that he agreed with his cash desk to push the cash down on the March IMM date ("*en mars on va utiliser tout le balance sheet pour prêter du 3 mois cash*") so as to reduce the spread between the 3 month EURIBOR and 3 month EONIA ("*Ben pareil, tu dis, écoute, la base est large, est-ce que tu penses que c'est possible que, en mars on la fasse resserrer bien euh, de un bp? En poussant le trois mois cash?*"). [employee of non-addressee] adds that he expects one can make a profit of at least one basis point on 80 000 futures. [employee of non-addressee] agrees to try to convince his cash desk about getting involved in this scheme for the 2007 March IMM date.

- (269) Crédit Agricole state in their observations to the Letter of Facts<sup>295</sup> ("LOF") that this conversation shows that the March IMM scheme was to be limited to a joint intervention of the cash desks of [non-addressee] and [non-addressee] on the cash market, with a view to influence the 3 months EURIBOR. Crédit Agricole further state that this also shows that the manipulation of the EURIBOR fixing of 19 March 2007 would not be considered essential for the success of the scheme. In support of this argument, Crédit Agricole also refer to a communication of 21 December between [employee of non-addressee] and [employee of non-addressee] about a deal (unrelated to the March scheme) and in which they plan to involve their respective cash desks in a low fixing, and a conversation between [employee of non-addressee] and [employee of Crédit Agricole] on 19 March 2007 in which [employee of non-addressee] said in the course of the discussion "*I don't care about the fixing*".<sup>296</sup>
- (270) First, the evidence on file shows that the March IMM scheme was not limited to a manipulation of the cash market (see for instance recitals (257), (302) to (304), (316) to (319), (322) to (328)). Second, in Annex 1 of their observations to the Letter of Facts<sup>297</sup> Crédit Agricole indicate that market players could benefit from a manipulation of the cash market on the March IMM date by having purchased 3 month EURIBOR futures contracts (so-called "erh7"). These EIRDs are indexed on the 3 months EURIBOR. Whilst Crédit Agricole argue that a joint move by two cash desks aimed at pushing down the cash market would have a downward effect on the EURIBOR rates, it cannot be concluded from this, as Crédit Agricole seems to imply, either that a manipulation of the 3 month EURIBOR on the March IMM date cannot equally lower the 3 months EURIBOR, nor that such a manipulation did not take place. In fact, a manipulation of the cash market does not exclude a parallel manipulation of the EURIBOR on the fixing date of the products which are used to benefit from such manipulations (such as the erh7 in the case of the 2007 March IMM scheme).

---

<sup>295</sup> [...].  
<sup>296</sup> [...].  
<sup>297</sup> [...].

- (271) On 12 February 2007<sup>298</sup> [employee of non-addressee] explains to [employee of HSBC] the 2007 March IMM scheme, after having mentioned the March/April inversion they discussed on 17 January 2007 and the positive outcome. [employee of non-addressee] first inquires about [employee of HSBC]'s expected trading position on the March IMM date asking whether he wants a wide or a narrow spread between the 3 months EURIBOR and the 3 months EONIA. [employee of non-addressee] also inquires whether [employee of HSBC] will be short or long of the [...] on that date. [employee of HSBC] responds that he gets it and has only a small exposure ("*g compris... pour l'instant je suis immunise-là-dessus...g pas grabd chose*") and that in his view the spread should be around 6 basis points, but that this is unpredictable and therefore it would be stupid to keep the risk all the way to the end. [employee of non-addressee] agrees with this assessment "*unless you have a scheme*", reminding him of the "*stupid*" fixing in December. [employee of non-addressee] continues stating that he will bring [employee of HSBC] in it if he can keep a secret ("*si tu sais garder un secret je te mets ds le coup*"). [employee of non-addressee] explains that "*we*" are trying to bring the spread between 3 months EURIBOR and 3 months EONIA on the March IMM date to 4 basis points. [employee of HSBC] inquires who is meant by "*we*" but [employee of non-addressee] declines to disclose this information. According to [employee of non-addressee], the plan is to push cash down on the IMM day. [employee of HSBC] doubts that this is possible unless they have already managed to achieve such a thing and asks whether [employee of non-addressee] knows half of the EURIBOR submitters (which seems in his view necessary for such a plan). [employee of non-addressee] responds that he knows the firepower of his treasury, that will push cash downwards, and that [non-addressee] is not the only bank involved ("*et je ne suis pas tout seul*"). [employee of HSBC] replies that he is aware of that and that he will closely watch over the events ("*oui je sais... je surveillerai ca d'un oeil attentif/..*"). [employee of non-addressee] also explains that he will build up a huge position of 80 000 contracts and has already 40 000, expecting a profit of EUR 2 million on the March IMM date. [employee of non-addressee] warns [employee of HSBC] to be careful and not to have a position in the other direction. During the conversation, [employee of non-addressee] and [employee of HSBC] remind one another several times to keep the content of the conversation secret and both promise not to disclose the information received.
- (272) In their observations to the SO,<sup>299</sup> HSBC argue that [employee of non-addressee] "*does not refer to any earlier attempted manipulations*", that he "*did not provide [employee of HSBC] with any detail of the wider scheme on 12 February 2007*", and that "[employee of HSBC] *clearly did not understand the functioning of the intended scheme*". HSBC further argue that in this exchange [employee of HSBC] "*remains cautious, passive and non-committal*" and this exchange does not contain "*any competitively sensitive information on 'trading positions' or 'trading prices'*".
- (273) The Commission rejects the arguments. First, [employee of non-addressee] does refer to earlier manipulations in order to convince [employee of HSBC] that he is talking seriously. [employee of non-addressee] mentions a recent manipulation ("*tu te rappelles du fixing debile en decembre*"), which [employee of HSBC] appears to

---

<sup>298</sup> [...].

<sup>299</sup> [...].



remember ("*le truc vaut 6 (...) et ca peut fixer n'importe ou le jour du fixing*"), and mentions later another one ("*ben tu te rappelles 30.5 31 taille par taillet et ca fixe 70*" "*ben la ce sera paril mais ds lautre sens*") in reply to [employee of HSBC] sceptical remark ("*sauf si vous y etes deja parvenu*").

- (274) Second, [employee of non-addressee] does provide details of the March IMM scheme to [employee of HSBC]: that a group of banks will push the cash lower on the date of the March IMM ("*on va pousser le cash a la baisse le jour de l'imm*"), that the spread between the 3 months EONIA and the EURIBOR should go from normally 6 to around 4 ("*genre la base vaudra 4*") and that the EURIBOR fixing is likely to be manipulated as well ("*tu sera long [...]ou short [...] le jour du roll*", i.e. will you be long or short of the [...] on the 3month EURIBOR on the IMM date) . [employee of HSBC] understands this (he states "*tu connais la moitie des mecs qui font les fixing?*") and [employee of non-addressee] says "*et je ne suis pas tout seul*" and states he will buy 80000 futures with a fixing on the March IMM date ("*je vais en mettre 80 000 lots*").
- (275) Third, it is implausible that [employee of HSBC] as a short term trader with many years of experience would not understand the mechanism of the scheme which [employee of non-addressee] describes to him. Even though [employee of HSBC] is sceptical that the scheme can work as well as [employee of non-addressee] is picturing it, it cannot be claimed that he is "*passive*" or "*non-committal*": he keeps asking questions in order to better assess how [employee of non-addressee] plans to achieve what he is explaining to him. The exchange of the next day (13 February 2007) between the traders which HSBC quote at paragraph 103 of their observations, suggests that [employee of HSBC] has well understood what [employee of non-addressee] has explained to him,<sup>300</sup> contrary to what HSBC claim. This should be read in connection to a discussion two weeks later –and even in connection to all the subsequent contacts between the two traders—, when [employee of non-addressee] draws [employee of HSBC]'s attention to the fact that the base is narrowing (see recitals (289) to (291)), and when [employee of HSBC] quickly picks up the hint. Yet another exchange of 7 March 2007<sup>301</sup> between the two traders further weakens HSBC's claim that [employee of HSBC] "*does not clearly understand*" the scheme. In this exchange, [employee of non-addressee] points to the movements in the spread between the 3 months EONIA and the 3 months EURIBOR ("*alors la base?*") to which [employee of HSBC] replies that the move starts a bit early ("*ne me dis pas que tu t'y prends dix jours à l'avance!*") and adds that some market players are likely to be hit hard on the day of the IMM ("*ca va etre une boucherie*" "*le jours du sttlement du 3 mois*") to which [employee of non-addressee] agrees ("*yen aura pas pour tout le monde*").

---

<sup>300</sup> [...]. This exchange of 13 February starts with [employee of non-addressee] asking if [employee of HSBC] has an interest in selling March and April EIRDs. [employee of HSBC] replies that this is not coherent with the plan which [employee of non-addressee] has just explained to him the day before ("*tu donnes mars tu donne april et tu me dis que tu payes l'eonie contre contrat euribor mars: comprends pas*") to which [employee of non-addressee] replies that he is just cleaning his book but that the plan is for real. Later in the conversation [employee of non-addressee] reveals the details of several transactions to [employee of HSBC] in order to reassure him about the plan.

<sup>301</sup> [...].

- (276) Finally, contrary to HSBC's assertion, in the conversation [employee of HSBC] and [employee of non-addressee] do exchange details about their respective trading strategies ("*inversion du marapr*", "*j'ai envie de mettre du sepdec flattener*" "*g sep7 sep 8 flatener*") and [employee of non-addressee] discloses the trading position he intends to have for the March IMM date and which he indeed had (see recital (339)).
- (277) On **14 February 2007**<sup>302</sup> at 10.09 am, [employee of non-addressee] explains to [employee of non-addressee] that [non-addressee] is "*working on*" the fixing of the 1 month EURIBOR. [employee of non-addressee] affirms that he is interested in a low fixing, too, and that he has already spoken to his submitters to submit a low rate. [employee of non-addressee] states that [non-addressee] is offering cash in the market indicating, according to [non-addressee], the price of borrowing would fall. On the same day, [employee of non-addressee] is also having an exchange of messages with his submitter ([employee of non-addressee]). In this conversation, [employee of non-addressee] thanks the submitter for the great 1 month EURIBOR submission. The submitter thanks [employee of non-addressee] and informs him that they are and will keep showing a low 1 month submission. [employee of non-addressee] should inform him when he is "*done*". [employee of non-addressee] asks the submitter whether he thinks that they can do "*that*" on the March EURIBOR (according to [non-addressee] a possible reference to the March IMM date) to get a 9.5 fixing. The submitter responds that this seems possible should the ECB be less likely to increase its interest rates in May or June and [non-addressee] keep offering low 3 month cash.
- (278) Still on **14 February 2007**,<sup>303</sup> [employee of non-addressee] asks [employee of Crédit Agricole] in a phone call about his trading position on futures for the 2007 March IMM date ("*t'es short de futurs mar- ou long de futurs sur la- sur la- sur l'IMM*"). [employee of Crédit Agricole] states his position ("*Moi j'ai onze mille futurs quand même*") and [employee of non-addressee] indicates that he has the same position but much larger ("*moi-je-j'en ai beaucoup quoi, tu vois*" and "*j'en fais près de huit cent mille Euros le bp*") and that [employee of non-addressee] has an even larger trading position ("*[employee of non-addressee] lui il a deux millions le bp*") with the same interest, and that [employee of Crédit Agricole] should keep for himself the information which [employee of non-addressee] is giving him. [employee of non-addressee] then informs [employee of Crédit Agricole] that "*the base will be narrow*" "*spread at four*" (namely, that the spread between the 3 months EONIA and the 3 months EURIBOR will narrow to four basis points) and also that "*They are going to push the cash, uh, ... On the day of the IMM, they're going to push the cash down, like mad men. They're going to give the cash. The treasury from [non-addressee], they're in on it, they are going to push the cash down to death.*" [employee of Crédit Agricole] asks "*Yeah?*" and when [employee of non-addressee] confirms the plan [employee of Crédit Agricole] exclaims "*Me, that works out for me!*" Later in the same exchange [employee of non-addressee] explains that "*if we manage to get four- five treasuries in on it, you see?*" and "*..you pay some EONIA and – you buys some futures, uh..on the IMM, and there you go. The day of the IMM you push the cash down...if there are four people-five people who do it...*". [employee of Crédit

---

<sup>302</sup> [...].

<sup>303</sup> [...].

Agricole] expresses some doubts as to whether manipulating the EURIBOR fixing via the cash market can work and wonders if he really manipulated it in December but [employee of non-addressee] reiterates that it is worth a try, as the risk of losing money on such a move is very limited in his view. [employee of Crédit Agricole] agrees and states that in any case *"it's worth trying, I think"*.

- (279) Crédit Agricole asserts<sup>304</sup> that this conversation does not relate to an exchange linked with the objections and involving Crédit Agricole on this date. Crédit Agricole further asserts this exchange is not about manipulation of the submission of the EURIBOR but concerns *"exclusively"* a scheme about the intervention of several cash desks in the interbank market, arguing that this is confirmed by [employee of non-addressee]'s comment at one stage that *"this is not about contribution"* and [employee of Crédit Agricole]'s doubts as to whether such a plan can succeed. Crédit Agricole further argues that another phone call between [employee of Crédit Agricole] and [employee of non-addressee] later on 14 February and not mentioned in the Letter of Facts corroborates their interpretation of the facts insofar as [employee of Crédit Agricole] would reiterate his concerns as to the difficulty of manipulating the cash market on the date of the IMM in March.
- (280) The Commission rejects the arguments. Firstly, the discussion between [employee of Crédit Agricole] and [employee of non-addressee] involves the advance information of - and a proposal to participate in - a concerted intervention on the March IMM date by the cash desks of four or five banks including at least [non-addressee] and [non-addressee], with a view to lower the EURIBOR on that date thanks to – but not exclusively - a lower cash market. [employee of Crédit Agricole] does not distance himself from [employee of non-addressee]'s ([non-addressee]) proposal, on the contrary he shows an interest even though he initially doubts whether it can work. Indeed, at some point of the conversation [employee of Crédit Agricole] remarks *"Still, I have eleven thousand futures"* and [employee of non-addressee] points to the potential profit which [employee of Crédit Agricole] can make out of the projected manipulation, which [employee of Crédit Agricole] acknowledges would be nice.
- (281) Secondly, the EIRD through which a profit is expected to be achieved through the scheme is the 3 month EURIBOR futures (erh7) fixing on the March IMM date. A plan to manipulate the 3 month EURIBOR contributions in parallel to the move to lower the cash market was perfectly possible on the same date (see recitals (316) to (333)) even though it is not referred to explicitly in the conversation. The possibility is hinted at when [employee of non-addressee] refers to a manipulation of the fixing in December 2006 and states that in the present case (for the upcoming March IMM date) his cash desk *"is squeezing the other way round"* as he has involved them in his plan. In addition, the conclusion which Crédit Agricole draws from [employee of non-addressee]'s ([non-addressee]) remark that *"this is not about contribution"* is incorrect and takes the quote outside of its context. At this stage in the conversation [employee of non-addressee] and [employee of Crédit Agricole] are talking about the possibility to move the EURIBOR by manipulating the cash market. In fact,

---

<sup>304</sup> [...] *"La présente conversation se rapporte exclusivement à une pratique d'une toute autre nature à savoir une intervention de plusieurs trésoreries sur le marché interbancaire"* (Crédit Agricole Response to the Letter of Facts).

[employee of Crédit Agricole] replies to this statement of [employee of non-addressee] that indeed *"it's a question of dealing the cash"*.

- (282) Thirdly, in the later conversation of 14 February mentioned in Crédit Agricole's observations,<sup>305</sup> [employee of non-addressee] discusses further with [employee of Crédit Agricole] the possible manipulation of the cash market on the March IMM date. [employee of non-addressee] claims that for example *"today we have pushed the 1 m cash downward"* with the result that the spread between EONIA and EURIBOR is unusually narrow (*"the base at three, it is rare"*) and [employee of Crédit Agricole] agrees. Even though [employee of Crédit Agricole] expresses doubts that this can be replicated on the March IMM date, at no point does he either distance himself from the proposal nor claims that it is not worth trying –on the contrary, he expressly states that *"it's worth trying"*. Lastly, contrary to what Crédit Agricole claim in their observations to the LOF, neither the LOF nor the SO suggest that Crédit Agricole would have been involved in a manipulation of the cash market on 14 February.
- (283) Still on **14 February 2007**<sup>306</sup> [employee of HSBC] tells [employee of non-addressee] that his best friend (*"ton meilleur ami"*) [employee of non-addressee] publishes some of his prices on his Bloomberg screen. [employee of non-addressee] explains to [employee of HSBC] that [non-addressee]'s screen is only indicative and has contained unreliable data for the past three years to influence the pricing of hedge funds. [employee of non-addressee] then inquires just about [employee of HSBC]'s exact price for August (*"aug tas quoi mid"*). [employee of HSBC] obliges and replies *"4.012"* and that he has been offered 4.005-4.015 on this in the market shortly before leaving the chat.
- (284) In their observations to the SO<sup>307</sup> HSBC argue that this exchange is not included in the objections stated in the SO as it gives only contextual information and is *"entirely unrelated to any information exchange that occurred during HSBC's alleged infringement period"*.
- (285) Such a conclusion cannot be accepted. This exchange primarily illustrates that [employee of HSBC] was aware of the close relationship between [employee of non-addressee] and [employee of non-addressee],<sup>308</sup> which HSBC do not comment on. However in the same discussion [employee of non-addressee] asks [employee of HSBC] for a precise pricing information outside of the context of a potential transaction, a request which [employee of HSBC] satisfies and at which he does not seem surprised, thereby suggesting it is not the first time [employee of non-addressee] makes such a request.
- (286) On **16 February 2007**<sup>309</sup> [employee of HSBC] and [employee of non-addressee] disclose to each other their respective mid prices on an EONIA [...] (*"tas quoi 10/11 [...] eonia?"*) and a [...] (*"et sur le 10/11 [...] [...]?"*). [employee of HSBC] is not sure about his price on the EONIA [...] (*"je dois etre a la rue ...4.06?" "g 4.0625 en*

---

305 [...]

306 [...].

307 [...].

308 Statement of Objections, recital (356).

309 [...].

*mid*") but [employee of non-addressee] reassures him ("*non ca va*") and then reveals the deal prices and that he has gained on the FRA from trades with two other market players who had different prices for the same contract.

- (287) In their observations to the SO,<sup>310</sup> HSBC argue that this exchange "*is restricted to assumptions as to where the traders see the mid and reveals nothing about the bid/offer spread that the traders will charge to clients around this mid*" and that it is "*unlikely to restrict competition*" as the mid price is not a pricing component. HSBC also observe that "[*employee of HSBC*] and [*employee of non-addressee*] discuss trading positions on asset [...] and one month Eonia [...] due to start on the March and May ECB date. [*employee of HSBC*] also reveals that he has a curve positions on [...]" and claim that the information exchanged "*concerns past deals or constitutes vague statements on trading positions*".
- (288) First, as described in recital (14) the mid price is the main pricing component when concluding of a transaction on most EIRDs (FRAs and IRSs) and the detailed information on current pricing intentions which [employee of non-addressee] is revealing following the request of [employee of HSBC] is not connected to a potential trade between the two. The fact that the traders do not exchange about the bid/ask does not make the pricing information less valuable, on the contrary it is a more precise information on where the traders see the real price. Second, the [...] trades with two other market players which [employee of non-addressee] discusses with [employee of HSBC] show just how one can benefit from accurate pricing information in this market. In addition, there are further exchanges in the same chat between [employee of HSBC] and [employee of non-addressee] regarding positions and strategies, as well as prices. For example, [employee of HSBC] informs [employee of non-addressee] of his trading position on March and May contracts ("*g donne du mai fond...tjrs super long de mars*"). On the second point, prices of EIRDs were not public in the period under consideration and the information exchanged relates to not only current and future trading positions and strategies but also recent changes in trading positions and prices such as the price of the day before for the 10/11 [...], which were not available to other competitors.
- (289) On **28 February 2007**<sup>311</sup> [employee of non-addressee] brings to the attention of [employee of HSBC] that the spread between the 3 month EONIA and 3 month EURIBOR on the March IMM is narrowing ("*rtas vu la babase elle commence a se resserer...*") and that he gives him only valuable information. [employee of HSBC] mentions he has seen the spread narrowing ("*g vu (..) t un vrai ami*") and thanks him on this but adds that he has no trading position on this spread, and that he has been careful not to have the opposite trading position ("*g juste veillé à ne pas etre potentiellement a l'envers*"). [employee of non-addressee] tells him that this is essential and leaves the chatroom.
- (290) In their observations to the SO,<sup>312</sup> HSBC claim that the exchange they could identify in this discussion is at the beginning of this two-pages exchange about another market player identified as "*le gros*".

---

<sup>310</sup> [...].

<sup>311</sup> [...].

<sup>312</sup> [...].

- (291) While it is true that the discussion at the beginning could in some way be connected to a potential interest of [employee of HSBC] to trade with [employee of non-addressee], it is not the case with the exchange on the 3 month EONIA and 3 month EURIBOR spread on the March IMM date which is narrowing, as [employee of non-addressee] points to [employee of HSBC] in a clear allusion to their conversation of 12 February (see recital (271)).
- (292) On **1 March 2007**<sup>313</sup> at 7.48 am, [employee of non-addressee] requests [employee of non-addressee] for a low 1 month EURIBOR submission and [employee of non-addressee] agrees to this request. On the same day before the submission deadline,<sup>314</sup> [employee of Crédit Agricole] calls [employee of non-addressee] at 9:43 and asks: "*t'as du fixing 6 mois toi aujourd'hui?*" [employee of non-addressee] replies "*Euhh non, pourquoi?*" [employee of Crédit Agricole] indicates that "*j'ai intérêt à ce qu'il monte haut*" to what [employee of non-addressee] states "*d'accord, je vais leur dire*" (i.e. to his submitters). [employee of Crédit Agricole] thanks [employee of non-addressee] for his support.
- (293) In their observations to the SO<sup>315</sup> Crédit Agricole acknowledge that [employee of Crédit Agricole] is asking [employee of non-addressee] for a EURIBOR submission in his interest, but claim that the discussion does not mention any contact between [employee of non-addressee] and [employee of Crédit Agricole] and their respective cash desks.
- (294) [employee of non-addressee] does agree upon [employee of Crédit Agricole]'s (Crédit Agricole) request and states that he will ask his cash desk to put a high fixing. In addition, as noted in paragraph (213), [employee of Crédit Agricole] did not need to call or write an email to contact his submitters, as they were sitting a few metres from him on the same trading floor.
- (295) On **9 March 2007**<sup>316</sup> [employee of HSBC] informs [employee of non-addressee] about his trading positions including "*.j'ai fait la patte 5 ans...je suis en flattener a des niveaux imbattable!..et je reste short du court euro*". To which [employee of non-addressee] responds "*bravo bien joue*". In their observations to the SO<sup>317</sup> HSBC claim that this information is merely "*high-level information*" about [employee of HSBC]'s trading orientations. However, the information relates to specific trading positions of important market players and the information exchange takes place outside of the context of a potential transaction.<sup>318</sup> During the same chat, [employee of HSBC] namely specifies "*flattener euro maintenant 2-5 ans short de juin et sep 7 euribor*" (i.e. he anticipates a decrease in the spread between the prices of EIRDs with a maturity between 2 and 5 years and has a short trading position on June and September 2007 [...]). [employee of non-addressee] responds, "*t cho*" (i.e. "*tu es chaud*", you are bullish) and adds "*moi jai pas de h8 et de 2y!*" (i.e. I have no March 2008 futures nor EIRDs with 2 years maturity).

---

313 [...].  
 314 [...].  
 315 [...].  
 316 [...].  
 317 [...].  
 318 [...].

- (296) On **14 March 2007**<sup>319</sup> [employee of non-addressee] explains to [employee of HSBC] his trading strategy for the spread 1 month EONIA versus 1 month EURIBOR, on which [employee of HSBC] has just lost money. [employee of non-addressee] explains in detail how to play the next spread and states that he has taken large trading positions on those dates in particular for June ("*c etait evident que le spread allait etre serre .... Quand le roll down entre 2 jours consecutifs sur le 1m eonia est superieur a 2bp... le 1m fix monte de 60pct du roll down.... Jai le book rempli sur toutes les dates ... ou le roll down est sup a 2 bp.... Chui un ami quand meme... ca va etre la meme histoire en juin*"). [employee of HSBC] replies that [employee of non-addressee] must have made a lot of money on this trade this month ("*t'as du te gaver ce mois ci ma vache*"). [employee of non-addressee] asks him to keep this information secret ("*ten parle a personne steple c une astuce beton ca*") and [employee of HSBC] agrees ("*j'en parle pas*")."
- (297) In their observations to the SO<sup>320</sup>, HSBC contend that the discussion does not contain "*any strategic information*" and that [employee of non-addressee] merely explains to [employee of HSBC] a "*rule of thumb*" about the spread between the 1 month EONIA and the 1 month EURIBOR, and that the exchange with [employee of HSBC] "*does not reveal the volume [employee of non-addressee] would seek to trade to build these apparent positions*". HSBC further state that the exchange does not contain any information on prices (such as mids) or prices to other market players and that the exchange of the sizes of their respective trading positions only relates to historic data which is useless.
- (298) [employee of non-addressee] explains to [employee of HSBC] in detail how he manages to gain up to several basis points on his trading positions several times a year, and indicates the size of his trading position on the date they are just discussing and thus how much weight he himself puts on this piece of advice. The trading strategy [employee of non-addressee] discloses to [employee of HSBC] is not information normally shared between competitors and cannot be characterized as a simple "*rule of thumb*", as [employee of HSBC] who is an experienced trader has just lost some money on this and he promises to [employee of non-addressee] not to talk about this to anybody.<sup>321</sup>
- (299) On **14 March 2007**<sup>322</sup> [employee of non-addressee] asks [employee of JPMorgan Chase] in an online chat "*what bro rate are you at?*" to which [employee of JPMorgan Chase] indicates that he is at "*0.45 but I think the intention is to rediscuss*". Still on the topic of the level of commissions paid to brokers, [employee of non-addressee] goes on asking if [non-addressee] is still at "*0.25bps*" (basis points) to which [employee of JPMorgan Chase] indicates that "[non-addressee] *think they are at 0.06*" like [non-addressee], which [employee of non-addressee] confirms.

---

<sup>319</sup> [...].

<sup>320</sup> [...].

<sup>321</sup> See also a similar conversation between [employee of non-addressee] and [employee of HSBC] on keeping the content of the conversation secret in recital (271).

<sup>322</sup> [...].

- (300) In their reply to the Statement of Objections,<sup>323</sup> JPMorgan Chase state that broker fees are "*not a factor or input that traders consider when pricing a trade*" and that in any event brokerage rates are negotiated between banks and brokers across the board, without any input from traders.
- (301) There is no need for [employee of non-addressee] or [employee of JPMorgan Chase] to ask a competitor about the margin they pay to brokers, let alone the margin [non-addressee] pays to brokers, for them to make a price to counterparties in the market. When [employee of non-addressee] and [employee of JPMorgan Chase] discuss broker fees, it is plausible to assume that the discussion aims at reducing the levels of such margins. Indeed, [employee of JPMorgan Chase] indicates an intention from his bank to "*rediscuss*" this margin (most probably to pay less). Furthermore, this exchange takes place in the context of a previous exchange between the two traders and one between [employee of non-addressee] and [employee of non-addressee] (see recitals (210) to (212)), in which they agree not to support "spreads" (an intrinsic price element, over which traders have influence) with brokers. Another discussion between [employee of non-addressee] and [employee of HSBC] (recital (235)) provides further contextual information on such exchanges on broker fees.
- (302) On **15 March 2007**<sup>324</sup> in the afternoon, [employee of non-addressee] asks [employee of non-addressee] for a "*tight basis on Monday*" which, according to [non-addressee], means that he wants the [non-addressee] submitters to submit a low 3 months EURIBOR quote on 19 March 2007. [employee of non-addressee] requests that [non-addressee] should contribute to an unspecified EURIBOR tenor at a level of 3.90% and [employee of non-addressee] agrees to the request. [employee of non-addressee] goes on to explain that he would want a spread (basis) not wider than 5 basis points as this would make up for his losses previously incurred.
- (303) In preparation for their activities on the following Monday, 19 March 2007, [employee of non-addressee] discusses bilaterally on Friday, **16 March 2007**,<sup>325</sup> with both [non-addressee] and [non-addressee]. At 10.24 am, [employee of non-addressee] thanks [employee of non-addressee] for the fixing of the day and [employee of non-addressee] replies that he is "*working for you[,]* dear". At 11.51 am, [employee of non-addressee] inquires whether [employee of non-addressee] has talked to an unspecified person and [employee of non-addressee] confirms that he has done so. According to [non-addressee], this is a reference to a communication between [employee of non-addressee] and his submitter. [employee of non-addressee] then also explains that that person is going to submit a very low rate. [employee of non-addressee] asks whether they are "*going to push cash a bit low*" which, according to [non-addressee], means lending cash to the market to bring the EURIBOR down. Shortly afterwards, [employee of non-addressee] reports that he went back and talked to his submitters again confirming that the submitters also have a preference for a low submission. [employee of non-addressee] then complains about [non-addressee]'s high 3 months EURIBOR submission (3.90%) of the day, but [employee of non-addressee] reassures him that [non-addressee] is "*already in the cash market*". At 2.15 pm, [employee of non-addressee] inquires whether

---

323 [...].

324 [...].

325 [...].



[employee of non-addressee] has contacted [non-addressee] and recommends seeing what their interest is. [employee of non-addressee] explains that he has already talked to Crédit Agricole who want a low rate, too, and promises to contact [non-addressee]. At 2.26 pm, [employee of non-addressee] confirms that he called the treasury department and [non-addressee] also want a low rate. Finally, he discloses to [employee of non-addressee] the information he has received from [non-addressee] on their trading position on the following trading day. This report to [non-addressee] reproduces the outcome of a bilateral chat between [employee of non-addressee] and [employee of non-addressee] that takes place in parallel to the chat with [non-addressee]. In [non-addressee]' chat with [non-addressee], [employee of non-addressee] first inquires at 2.20 pm about [non-addressee]'s trading position on the March IMM date. [employee of non-addressee] explains that they have a short position of ca 2 000 lots. [employee of non-addressee] then discloses that he needs a very low fixing (of the 3 month EURIBOR). [employee of non-addressee] wants to know whether there is a chance that the 1 month tenor will remain high which [employee of non-addressee] confirms. [employee of non-addressee] confirms that he talked to the submitters of [non-addressee] and, less than 2 minutes later, announces that [non-addressee] is interested in a lower level, too. [employee of non-addressee] requests to tell the submitters to give it a "good push". After discussing that [non-addressee]'s submitters at occasions do not follow the requests of the traders, [employee of non-addressee] recommends to "declare war on them on [M]onday" explaining also that he has a huge trading position of 80 000 lots in his portfolio "against eonia". [employee of non-addressee] confirms that he was following [employee of non-addressee]'s trading activities and congratulates him for them.

- (304) In parallel on **16 March 2007**<sup>326</sup> at 11:33 [employee of Crédit Agricole] calls [employee of non-addressee] who draws his attention to the 3 months EURIBOR fixing of the day which is low as he had told him it would be ("*T'as vu le fixing aujourd'hui?*" "*C'est la base. Ce que je t'avais dit. D'accord?*"). [employee of non-addressee] then tells [employee of Crédit Agricole] that the next Monday (19 March) the fixing will be the same ("*lundi... le fixing il vaut pareil, d'accord?*") and advises him to buy some futures at 10 if he can. [employee of Crédit Agricole] agrees and states that he has already a position in futures in the right direction ("*D'accord. Nous on est long de toute façon sur le truc*"). [employee of non-addressee] then tells [employee of Crédit Agricole] that they will push the cash downwards ("*nous on va pousser le cash à la baisse*"). Later at 12:05 [employee of non-addressee] calls [employee of Crédit Agricole] to remind him to tell his cash desk to submit a low fixing on the next Monday ("*[...]. Dis a ta treso qu'ils mettent un fixing bas*" "*lundi*"). [employee of Crédit Agricole] agrees without hesitation adding that "yes, we all have an interest in it being low" and indicates his trading position on the March IMM futures ("*here we have twenty thousand*" (which is up from what he stated he had on 14 February - see recital (278)) and jokes about his bank putting the fixing even lower. Both laugh and [employee of non-addressee] adds that they should "*bust the guys*" to which [employee of Crédit Agricole] agrees "(...) *yeah we have a serious interest too*". Right afterwards in an online chat [employee of non-addressee]

---

<sup>326</sup>

[...].

reminds [employee of Crédit Agricole] to try to buy the future at 10 ("*et mets toi au bid a 10*"). [employee of Crédit Agricole] replies that he already has a large trading position on these ("*je suis deja pas mal long ca fait 3 jours que je ne couvre pas mes fixings 3m ou j etais emprunteur du fra*") and that he remembers a discussion they had before in which they estimated "*that it should fix at around 10.5*". They go on to comment on competitors with whom they have traded recently and who are about to lose from the March IMM scheme, and [employee of Crédit Agricole] states that his colleague [employee of Credit Agricole] has been active in such trading recently. [employee of non-addressee] then tells [employee of Crédit Agricole] to ask his cash desk whether they have "*good offers on cash*" on the "3m" and that the cash desk of [non-addressee] is starting to offer cash on the market ("*je vroids qu'ils ont commence a donner*").

- (305) In parallel, [employee of Crédit Agricole] calls his cash desk at 13:06 and asks [employee of Crédit Agricole] (Crédit Agricole) where she sees the fixing on the next Monday and she states that it should remain between 3.90 and 3.895 (ten and ten and a half). Shortly thereafter at 14:06, [employee of Crédit Agricole] calls back [employee of non-addressee] and reports that "*she*" (probably his submitter [employee of Crédit Agricole] from Crédit Agricole) foresees a similar fixing on Monday "*ninety at the maximum*" (i.e. 3.90) and that he told her that "*we have an interest in lower, she said ok agree I take note*".
- (306) In their Response to the SO,<sup>327</sup> Crédit Agricole claim that there was no contact between [employee of Crédit Agricole] and the submitters of Crédit Agricole related to the exchanges between [employee of Crédit Agricole] and [employee of non-addressee], and that the proof thereof are the phone conversations in February and March 2007, and take as example the phone call on 16 March at 14:06 between [employee of Crédit Agricole] and [employee of Crédit Agricole]. According to Crédit Agricole, [employee of Crédit Agricole] was only giving her views on what could be the outcome of the fixing, and not the rate she intended to submit on behalf of the bank and [employee of Crédit Agricole] was lying to [employee of non-addressee] when he reported to him that he had mentioned to [employee of Crédit Agricole] his interest in a lower submission.
- (307) First, it cannot be concluded from the phone conversation of 16 March between [employee of Crédit Agricole] and [employee of Crédit Agricole] (Crédit Agricole) that no submitter or other employee of Crédit Agricole was ever made aware of the contacts between [employee of Crédit Agricole] and [employee of non-addressee] on that day. As previously noted, [employee of Crédit Agricole] did not need to talk to his submitters on the phone as he was on the same trading floor only a few metres away from his cash desk.<sup>328</sup> Second, as to the extent of the contacts between [employee of Crédit Agricole] (Crédit Agricole) and what [employee of Crédit Agricole] may or may not have told her (and would in Crédit Agricole's view be lying to [employee of non-addressee]), an equally plausible explanation to that of Crédit Agricole for the discrepancy between what [employee of Crédit Agricole] reports to [employee of non-addressee] and the content of the phone call submitted by Crédit Agricole is that either the excerpt of the phone recording provided by

---

<sup>327</sup> [...].

<sup>328</sup> [...].

Crédit Agricole is not complete or that another contact took place. In any event, the fact remains that [employee of Crédit Agricole] gains knowledge of, is willing to benefit from and agrees to cooperate with [employee of non-addressee] for the March IMM scheme.

- (308) In parallel, on **16 March 2007**<sup>329</sup> at 11:44 am [employee of non-addressee] asks [employee of JPMorgan Chase] if he still has March IMM futures to sell him ("*u still have these march at 9 for me amigo?*") (i.e. do you still have March IMM futures to sell at the price of 96.09). [employee of JPMorgan Chase] replies that he has listened to [employee of non-addressee] and adjusted his trading position accordingly and is now long March IMM futures ("*LUCKILY LISTENED TO U N SHIPPED SOME IN MYSLEF LITTLE LONG HERE I HEAR N LISTEN HERE*"). [employee of non-addressee] replies that [employee of JPMorgan Chase] should just let him know when he wants some "*free money*". [employee of JPMorgan Chase] then asks [employee of non-addressee] ([non-addressee]) to give him more information of this kind ("*AMIGO PLS GIMME MPORE OF THIS CLUE WHERE JUN7 OUT?*"). [employee of non-addressee] replies "*81.4*".
- (309) Even though JPMorgan Chase have repeatedly stated during the investigation that it was not in a position to provide explanations of what [employee of JPMorgan Chase] meant or understood,<sup>330</sup> JPMorgan Chase in their reply to the SO<sup>331</sup> contend that this discussion does not relate to the traders' respective trading strategies. Firstly, JPMorgan Chase argue that as 2007 March IMM futures quoted 96.100 on 16 March, which is one basis point from the price [employee of non-addressee] quoted on 6 February (96.09), [employee of non-addressee] is only "*teasing [employee of JPMorgan Chase] about his mistaken prediction*". Secondly, by answering "*SHIPPED SOME IN*" [employee of JPMorgan Chase] is only trying to save his face about his mistaken prediction and that he "*had decided to buy rather than sell March future contracts*", and at the time of this discussion "*there was no need for [employee of JPMorgan Chase] to follow any advice from {employee of non-addressee}*". Thirdly, [employee of JPMorgan Chase] changed his trading position "*having seen the level at which March futures were trading*", and not because he listened to [employee of non-addressee] which he only tries to flatter when he states ("*LUCKILY LISTENED TO U*"). Finally, when [employee of JPMorgan Chase] asks "*WHERE JUN7 OUT?*", that is to say where will June IMM futures trade, he is only asking [employee of non-addressee] about his views about a likely ECB rate increase in August and June (i.e. a double rate hike).
- (310) The Commission rejects the arguments. Firstly, JPMorgan Chase are correct in making a connection between this conversation and the reference to "*march at 9*" and an earlier discussion of 6 February. However, as discussed in recitals (262) to (264), on that date [employee of non-addressee] and [employee of JPMorgan Chase] exchange information about trading strategies. Both have discussed the same topics on 4 January 2007 as well (see recitals (239) to (242)), and the most plausible reading of these earlier exchanges is that [employee of non-addressee] shares information with [employee of JPMorgan Chase] on his trading strategy with regard

---

<sup>329</sup> [...].

<sup>330</sup> See footnote 184.

<sup>331</sup> [...].

to EIRDs linked to the March IMM date, rather than speculating about when and how the ECB is likely to raise its rates as JPMorgan Chase suggest.

- (311) Secondly, at the time of this discussion [employee of JPMorgan Chase] is merely stating that he has taken into account information which [employee of non-addressee] has disclosed to him previously about his trading strategy. The fact that [employee of JPMorgan Chase] may have taken other elements into consideration when trading on the market or that he may as well try to save face does not preclude him from having taken into account information exchanged by [employee of non-addressee] in their previous discussions. Furthermore, according to documents submitted by JPMorgan Chase, at the time of the present exchange [employee of JPMorgan Chase] has already significantly reduced his short position on the March IMM futures compared to what it was at the time of his exchange of 6 February with [employee of non-addressee].<sup>332</sup>
- (312) Thirdly, even in the event that [employee of JPMorgan Chase] is also flattering [employee of non-addressee] by stating "*LUCKILY LISTENED TO U N SHIPPED SOME IN MYSLEF*", he is clearly making a link between [employee of non-addressee]'s statement and their earlier discussions which he does remember well. In fact, [employee of JPMorgan Chase] will confirm again his "long" position the next Monday 19 March (see recital (332)) and thank again ("*tku amigo for the advice on that one*") [employee of non-addressee] for the valuable information he shared with him.
- (313) Fourthly, [employee of JPMorgan Chase]'s question ("*PLS GIMME MPORE OF THIS CLUE WHERE JUN7 OUT*") in reply to [employee of non-addressee]'s statement ("*just lemme know when u want some free money*") makes reference to the June IMM date, and implicitly to EIRDs with a fixing on that date, in echo to their earlier exchange about what is just happening on the March IMM date. This first question has little to do with an ECB rate rise. [employee of JPMorgan Chase]'s later reply to [employee of non-addressee]'s statement "81.4" makes indeed reference to a possible action of the ECB. However this does not change the meaning of the first part, which is that both traders exchange information on the outcome of [employee of non-addressee]'s trading strategy for the March IMM date. Fifth, this conversation makes it abundantly clear that [employee of JPMorgan Chase] and [employee of non-addressee] are fully aware of each other's trading positions, gains, strategies referring to this period.
- (314) In their reply to the SO<sup>333</sup> JPMorgan Chase further contend that a discussion taking place at 8:42 on the morning of **16 March 2007** between [employee of JPMorgan Chase] and his submitter [employee of JPMorgan Chase] provides "*evidence that [employee of JPMorgan Chase] was not aware and did not participate in the March IMM conduct*". In this exchange,<sup>334</sup> [employee of JPMorgan Chase] and [employee of JP Morgan Chase] discuss the level at which [employee of JPMorgan Chase] intends to make the EURIBOR submissions on behalf of JPMorgan Chase, with the 3 month EURIBOR going up, and the link between these figures and prices for EIRDs

---

<sup>332</sup> [...].

<sup>333</sup> [...].

<sup>334</sup> [...].

priced by reference to the EONIA, which seem to go in the opposite direction. [employee of JPMorgan Chase] states that his explanation for this is "*THINK PEOPLE HAVE MAR FUTURE ROOLL N WANT TO SPOOF IT FOR A HIGER 3S FIXING*", i.e. that some market players have trading positions with a fixing on the 3 month EURIBOR on the March IMM date and want to manipulate the fixing (Spoofing is normally used to describe the practice of placing fake orders, i.e. bidding or offering with intent to cancel before execution).<sup>335</sup> [employee of JPMorgan Chase] adds "*BUT THAT IS NONESSENSE 3S EONIA V WELL OFFERED*", i.e. that the prices he sees in the market suggest the 3 month EURIBOR should go down and not up. JPMorgan Chase contend that [employee of JPMorgan Chase]'s speculative assumption (that the 3 month EURIBOR fixing will be pushed higher by some banks) is inconsistent with the scheme planned by [employee of non-addressee] and [employee of non-addressee] (who pushed for a lower 3 month EURIBOR fixing).

- (315) Contrary to what JPMorgan Chase contend, this exchange is consistent with earlier discussions between [employee of JPMorgan Chase] and [employee of non-addressee] in particular those about their respective trading strategies on 4 January, 8 January, 6 February (see recital (310)) and with the exchanges between [employee of non-addressee] and [employee of JPMorgan Chase] on 16 and 19 March 2007. On the basis of the information shared by [employee of non-addressee], [employee of JPMorgan Chase] can reasonably assume that [employee of non-addressee] has a meaningful trading position with a fixing on the March IMM date, which [employee of non-addressee] is likely to manipulate. While it is true as JPMorgan Chase argue that [employee of JPMorgan Chase] makes a wrong assumption about the direction of the manipulation of the fixing, he has nevertheless been made aware by [employee of non-addressee] of a risk on the March IMM date and has been and is in a position to modify his trading positions ahead of the March IMM fixing, thereby avoiding a significant loss.
- (316) On **19 March 2007**, a whole series of bilateral contacts between the traders of [non-addressee], [non-addressee], [non-addressee], Crédit Agricole, JPMorgan Chase and HSBC takes place. In a first bilateral exchange, [employee of non-addressee] reminds [employee of non-addressee] to put pressure on "*erh7*" (EURIBOR future contracts maturing on the 2007 March IMM date and traded on Liffe). After joking ("*3m sky high*"), [employee of non-addressee] confirms that "*I put pressure*", indicating that he intends to make a request to [non-addressee] submitters to make a low 3 month EURIBOR submission. [employee of non-addressee] and [employee of non-addressee] then indicate their preferences for a rate of "*89.5*" (3.895%) or "*89*" (3.89%). Then [employee of non-addressee] asks [employee of non-addressee] for his preference for the 1 month EURIBOR fixing. [employee of non-addressee] explains that he has no particular preference in either direction and that he has a position of EUR 1.5 billion. [employee of non-addressee] states that he intends to request the [non-addressee] submitters for a high submission for the 1 month EURIBOR as he has a position of EUR 10 billion settling on the fixing. [employee of

---

<sup>335</sup> "*Spoofing*" is for instance defined in the Dodd-Frank Act as a prohibited transaction (Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376, 1913 (codified at 12 U.S.C. § 5301(2012))).

non-addressee] again reminds [employee of non-addressee] of his preference for 3 month EURIBOR at 3.89%. [employee of non-addressee] also complains about his submitter who asks him to be informed if he continues to hear that [non-addressee] is borrowing in the market (see recital (317)). At 08.23 am, [employee of non-addressee] tells [employee of non-addressee] to call [non-addressee] and [employee of non-addressee] agrees. At 09.12, [employee of non-addressee] indicates that HSBC also intends to contribute a low submission. Later, after the deadline for submissions has passed, [non-addressee] and [non-addressee] discuss the EURIBOR fixing and congratulate each other on the outcome (3.892% for the 3 months EURIBOR). At 2.02 pm, [employee of non-addressee] again expresses his gratitude to [employee of non-addressee] for the perceived success of the strategy which [employee of non-addressee] says enabled him to recoup his previous trading losses. [employee of non-addressee] tells [employee of non-addressee] that on the previous Friday he has added 8 000 lots on his trading position at a price of "10". [employee of non-addressee] also says that he had listened to [employee of non-addressee] "to the letter". [employee of non-addressee] discloses that some traders at [non-addressee] would have lost money as a result of the level of the 3 months EURIBOR fixing, even though he had warned his other colleagues to hedge their positions – the same way he had done it – on the previous Friday (16 March 2007).<sup>336</sup>

- (317) In a parallel e-mail exchange before the end of the deadline for EURIBOR submissions,<sup>337</sup> [employee of non-addressee] contacts his submitter ([employee of non-addressee]) requesting that [non-addressee] submits a low rate for 3 months and a high rate for 1 month EURIBOR. The submitter promises to do her best. [employee of non-addressee] also inquires about the submitter's perception of the market for 3 month cash. [employee of non-addressee] explains that he is hearing that [non-addressee] is "*bidding the cash*" (this is to say borrowing) and reiterates his preference for a low 3 month EURIBOR fixing. When the submitter asks who says that [non-addressee] is borrowing, [employee of non-addressee] replies "*a friend of mine in a French bank*". The submitter asks to be informed if [employee of non-addressee] continues to hear that [non-addressee] is borrowing in the market. [employee of non-addressee] confirms that he will and suggests that they work "*hand in hand*".
- (318) Moreover, [employee of non-addressee] has a bilateral chat with [employee of non-addressee] requesting [non-addressee] at 8.23 am to contribute a very low submission for 3 months EURIBOR. At 10.22 am, [employee of non-addressee] reminds [employee of non-addressee] not to say anything about his earlier request.<sup>338</sup>
- (319) Still on **19 March 2007**<sup>339</sup> at 8.24 in the morning [employee of non-addressee] reminds [employee of Crédit Agricole] in another bilateral chat "*the 3m you push [...]*", suggesting to ask the submitters of Crédit Agricole to contribute a low 3 months EURIBOR quote. At 8:28 [employee of Crédit Agricole] calls [employee of non-addressee] to ask him about a price of a product without discussing a

---

<sup>336</sup> [...].

<sup>337</sup> [...].

<sup>338</sup> [...].

<sup>339</sup> [...] French original [employee of non-addressee] "*dis-moi, n'en parle pas trop a[...] de ces histoires*" [employee of Crédit Agricole] "*Moi j'ai rien dit de tout moi!*".

transaction, and [employee of non-addressee] adds *"come on you push"* to which [employee of Crédit Agricole] agrees. At 09.31 am in a phone call [employee of non-addressee] adds that he has bought an extra 10 000 March IMM futures the previous Friday at 10, and that if the fixing is at 11 it will be like in December the other way round (*"si ça fixe à 11 ca va nous faire le coup de décembre dans l'autre sens"*) and that he stands to win a lot. In parallel [employee of non-addressee] states in the bilateral chat he thinks that the rate will fix at 3.89%. Later, after the deadline for submissions has passed, the two traders congratulate one another by phone on the gains on their respective trading positions that day. [employee of non-addressee] suggests that next time [employee of Crédit Agricole] should follow him for *"80 000 lots"* and would stand to make EUR 2 million profit. [employee of Crédit Agricole] says that he made EUR 156 000 *"thanks to that and it's already cool"*. [employee of non-addressee] also shares his concerns about others finding out about the traders' communications and asks [employee of Crédit Agricole] not to make any noise. [employee of Crédit Agricole] replies that *"everyone is happy here"* and [employee of non-addressee] thanks [employee of Crédit Agricole] *"for the help [...] Team work"*. [employee of Crédit Agricole] complains that his submitters did not want to submit lower than 3.90%, but [employee of non-addressee] states that this is no *"big deal"* since the most important thing is not to have *"raised the cash"*. [employee of non-addressee] adds *"you can be the best trader in the world... if you do not have the info"*. In a phone conversation later in the day [employee of Crédit Agricole] says *"they wanted to put it at 91 so I told them lower lower and they told me we will see what we can do and they put it at 90"* and he agrees with [employee of non-addressee] that it was *"a hold up"* and [employee of Crédit Agricole] states that *"a spread at 4.6 has never been seen"* (Crédit Agricole did submit at 3.90 that day.) They go on to discuss how much [non-addressees] who paid 6.1 for the spread have lost and [employee of Crédit Agricole] concludes *"What I have earned they have lost"* to which [employee of non-addressee] replies *"of course... this shit is a zero sum game"* and adds that *"Apart from this zero, I am not making any money"* to which [employee of Crédit Agricole] replies *"me neither"*. [employee of non-addressee] also mentions that they need to prepare the next moves and mentions the next December fixing, to which [employee of Crédit Agricole] implicitly agrees. In a further telephone conversation between the pair that afternoon at 3:43, [employee of non-addressee] warns [employee of Crédit Agricole] not to talk too much to a third party about the scheme: [employee of non-addressee], *"Tell me, don't talk too much about this business to [inaudible], all right?"* and [employee of Crédit Agricole] affirms that, *"Me, I didn't say anything at all, me!"*.

- (320) In their observations to the SO,<sup>340</sup> Crédit Agricole claim that [employee of Crédit Agricole] was only lying and bluffing to [employee of non-addressee] about contacting his cash desk, which according to Crédit Agricole he never did, in view of the 16 March 2007 phone call of [employee of Crédit Agricole] to his submitter [employee of Crédit Agricole] (see recital (305)). Crédit Agricole also contend that [employee of Crédit Agricole] did not draw the profit he is claiming from the March IMM manipulation, and that Crédit Agricole never managed to calculate this profit on the basis of its accounting books.

---

<sup>340</sup> [...].

- (321) The Commission rejects the arguments. Firstly, it cannot be concluded from the fact that Crédit Agricole did not submit any phone recording between [employee of Crédit Agricole] and his submitters on 19 March 2007 that a contact between [employee of Crédit Agricole] and his submitters never took place. With regard to contacts with his cash desk, [employee of Crédit Agricole] did not need to call them on the phone as he was on the same trading floor only a few metres away from his cash desk.<sup>341</sup> As a result, it cannot be concluded from a (possibly truncated) phone conversation on 16 March with his submitter [employee of Crédit Agricole] (Crédit Agricole) that [employee of Crédit Agricole] had no contact with his cash desk on 19 March on the topics discussed with [employee of non-addressee] that day. Secondly, Crédit Agricole contests that [employee of Crédit Agricole] made a EUR 156 000 profit from the March IMM manipulation and claims that "*no trace of this sum could be found in the portfolio of the trader*" but do not contest that [employee of Crédit Agricole] had a significant position in erh7 futures in his portfolio as already indicated to [employee of non-addressee] on 14 February (see recitals (278) to (282)). Whether or not Crédit Agricole managed to calculate [employee of Crédit Agricole]'s (Crédit Agricole) profit is not at issue here. In any event, the fact remains that the contacts between [employee of non-addressee] and [employee of Crédit Agricole] show clearly that the latter gains knowledge of, is willing to benefit from and cooperates with [employee of non-addressee] for the March IMM concerted action and that they exchange on their trading positions and preferences for EURIBOR fixings.
- (322) In parallel on **19 March 2007**<sup>342</sup> at 8.56 in the morning, [employee of non-addressee] asks [employee of HSBC] (HSBC) to request HSBC submitters to contribute a very low 3 months EURIBOR quote ("*in the basement*"), if his trading position is in the right way. [employee of HSBC] states that he has a small trading position and agrees to speak to the HSBC submitters in person and explains that they are sitting at the other end of the room. [employee of non-addressee] tells [employee of HSBC] that the 3 months EURIBOR needs to fix at 3.89%. [employee of non-addressee] suggests that [employee of HSBC] should follow the same trading strategy as "*us*" at the next IMM roll date (in June 2007) and would stand to make EUR 2 million. [employee of HSBC] replies "*why not*". At 9.06 am, so before the fixing, [employee of non-addressee] asks for confirmation that [employee of HSBC] has spoken to his submitters ("*alors te alle les voir?*"). [employee of HSBC] confirms at 9.11 am that he did so ("*c fait*") and indicates that they will contribute a low EURIBOR submission ("*ils vont le mettre bas*"). [employee of non-addressee] states "*it's going to be a big hit*".
- (323) In their response to the SO,<sup>343</sup> HSBC argue that [employee of HSBC] has not received any further information from, or had any contact with, [employee of non-addressee] concerning the event of 19 March 2007" since 12 February 2007, which in HSBC's view support the conclusion that [employee of HSBC] had no clue what [employee of non-addressee] was up to. HSBC further contend that [employee of HSBC]'s actions "*do not suggest that he had gained any understanding of whether*

---

<sup>341</sup> [...].

<sup>342</sup> [...].

<sup>343</sup> [...].



*[non-addressees] are involved and precisely what will happen" and that a good illustration is that he "repeats that he did not have any strong positions".*

- (324) The Commission rejects the arguments. Firstly, it cannot be concluded from the absence of evidence in the file of exchanges about the March IMM scheme between [employee of non-addressee] and [employee of HSBC] in the period from 12 February and 19 March that no such contacts ever occurred. Secondly, it is not plausible to argue that [employee of HSBC] did not understand the plan for the March IMM date, on the basis that he only had a small trading position. [employee of HSBC] has been given already quite detailed information on 12 February (see recitals (271) to (275)), he is a senior trader and understands immediately [employee of non-addressee]'s ([non-addressee]) request on 19 March as he states that his trading position is neutral ("*j'en ai un peu*") and that he will go to his submitters ("*v aller les voir*") right after and confirms later on his action by his statement "*c fait*".
- (325) In a parallel phone call between [employee of HSBC] and his submitter employee of JSBC] on **19 March 2007**<sup>344</sup> at 9:08 am , [employee of HSBC] asks for a very low 3 month fixing for that day ("*tu peux me le coller à la cave le fixing 3 mois s'il te plaît?*" (i.e. *put it as low as possible*)) and his submitter agrees ("*ouais ok*"). The submitter agrees and proposes to put it at "88". [employee of HSBC] agrees with that proposal. HSBC's submission on the 3 month EURIBOR was 3.88.
- (326) In their observations to the SO,<sup>345</sup> HSBC state that the conversation "*does not contain any indication of a manipulation but merely describes a wish by [employee of HSBC]for a particular level of submission*" and add that "[employee of HSBC] had no awareness, nor reason to suspect, that such a request came from *annon-addressee*".
- (327) On the contrary, this conversation shows that [employee of HSBC] follows-up on his agreement with [employee of non-addressee] to request a low submission from his submitters on this date for the 3 month EURIBOR, a level which [employee of non-addressee] has indicated should be 89. In addition, as mentioned in recital (322) [employee of HSBC] will report to [employee of non-addressee] before the fixing that his submitter will put it low (i.e. at or below 89 as requested). [employee of non-addressee] reports in turn to [employee of non-addressee] at 9:12 right after [employee of HSBC] has confirmed the low submission (at 9:11) that HSBC will submit low (see recital (316)). Second, with regard to the submitter [employee of HSBC], [...] as HSBC did not state that it interviewed him, none of HSBC's contentions that "*he had no awareness, nor reason to suspect...*" can be established. Third, in any case [employee of HSBC] was in full communication with [employee of non-addressee] and full awareness of the situation surrounding these submissions.
- (328) Still on **19 March 2007**<sup>346</sup> after the deadline for submissions has passed, [employee of non-addressee] states to [employee of HSBC] that he is pleased with the outcome of the EURIBOR fixing. [employee of HSBC]asks if [employee of non-addressee] has made EUR 2 million of gains on this deal which [employee of non-addressee] confirms. After reminding [employee of HSBC] not to talk too much about what they

---

<sup>344</sup> [...].

<sup>345</sup> [...].

<sup>346</sup> [...].

did, [employee of non-addressee] tells [employee of HSBC] that preparing their strategy has taken two months and that he would tell him details when they next meet in London. A short time later (after having had the telephone conversation mentioned in recital (329)), [employee of non-addressee] explains again the trading strategy to [employee of HSBC]. This explanation is in conformity with [employee of non-addressee]'s ([non-addressee]) earlier explanations to [employee of HSBC] on 12 February (see recitals (271) to (275)), to [employee of Crédit Agricole] on 14 February (see recitals (278) to (282)) and to [employee of non-addressee] on 1 February (see recital (257)). Upon [employee of HSBC]'s question whether he plans a similar action for June 2007, [employee of non-addressee] explains "*the trick is that you must not do this type of thing by yourself*". He indicates that the treasury desks of three banks were involved in the scheme. [employee of HSBC] assumes [non-addressee], [non-addressee] and JPMorgan Chase were involved. [employee of non-addressee] indicates that he cannot say more ("*et... je peu pas dire*") and that the banks involved had combined positions amounting to 500 000 futures contracts between them and that he made the entire treasury desk of [non-addressee] buy on the previous Friday according to his strategy. The traders then discuss that such a strategy can be repeated at any IMM date "*the trick it's to have eonia in front of you.*"

- (329) HSBC have also submitted a phone record of a call on **19 March 2007**<sup>347</sup> at 11.51 in the morning between [employee of HSBC] and [employee of non-addressee]. In this call, [employee of non-addressee] confirms that he had 10 billion the right way and that preparations had been ongoing for two months. A little later in the call, [employee of non-addressee] states that, if one was not in the scheme, one was the victim even if one is the best trader in the world.<sup>348</sup> [employee of HSBC] comments his profitable trades with two market players who were in the wrong direction. At the end of the discussion, [employee of non-addressee] proposes to repeat a similar coup for the next IMM fixing and [employee of HSBC] asks to be kept in the loop ("*ben tu me tiens au courant*"). [employee of HSBC] also states that he plans to come to London and that they should discuss at this occasion.
- (330) In their observations to the SO,<sup>349</sup> HSBC state that [employee of non-addressee] is misleading [employee of HSBC] as he "*suggests that only three banks were involved*" and that [employee of HSBC]'s repeated questioning would demonstrate "*no ex ante knowledge of the scheme that [Employee of non-addressee] was implementing on 19 March 2007*".
- (331) After their discussions of the day, [employee of non-addressee] is only giving further details to [employee of HSBC]. In fact, already on 12 February 2007 [employee of non-addressee] had explained to [employee of HSBC] details of the scheme planned for the March IMM (see recitals (271) to (275)), including the fact that the EURIBOR would be manipulated, that he intended to build a large trading position (80 000 futures) and that several [non-addressees] would be involved.

---

<sup>347</sup> [...].

<sup>348</sup> "*Si t'es pas dans la partie t'était victime tu peux être le meilleur trader du monde*". [employee of non-addressee] adds that they should keep this secret ("*n'ébruitez pas je t'en prie*") to which [employee of HSBC] agrees.

<sup>349</sup> [...].

- (332) Still on **19 March 2007**,<sup>350</sup> [employee of JPMorgan Chase] in a bilateral online chat with [employee of non-addressee] states that he has listened to him and was careful to be long on the March IMM date "*v v careful this year in fact believe it or not was even small long mar7 ahahah*" (i.e. he even had a small long trading position on 2007 March IMM futures) and adds "*tku amigo for the advice on that one*". [employee of JPMorgan Chase] adds "*lukiing at ur fft contribution u must have liked it asa well*". [employee of non-addressee] asks "*what did fft contribute?*" and [employee of JPMorgan Chase] replies "*3.87 joke wasn't it?*". [employee of non-addressee] answers by referring to their previous conversation of 6 February 2007 ("*how many did u give me at 9 amigo?*" (i.e. how many did you sell to me at a price of 96.09) to which [employee of JPMorgan Chase] states that "*it was a duration d trade agst may eonia*".
- (333) In their reply to the SO,<sup>351</sup> JPMorgan Chase firstly state that [employee of JPMorgan Chase]'s statement that he was "*small long mar7*" is inconsistent with his trading position. Secondly, JPMorgan Chase argue that "*there is no evidence that {employee of non-addressee} ever gave [employee of JPMorgan Chase] any advice about the March 2007 IMM fixing*" and [employee of JPMorgan Chase] is merely "*saying this to save face*" and only thanks [employee of non-addressee] for having given his views on where March futures were likely to trade (at "9"). Thirdly, JPMorgan Chase contend that [employee of JPMorgan Chase]'s reference to [non-addressee]'s EURIBOR contribution is only a reference to how the submission "*appeared to be aligned to where {employee of non-addressee} had predicted the futures would roll-off*". Fourthly, JPMorgan Chase submit that [employee of non-addressee]'s statement ("*what did fft contribute?*") is a "*telling piece of evidence that [employee of JPMorgan Chase] was not aware of the March IMM conduct and that {employee of non-addressee} did not want [employee of JPMorgan Chase] to know about it*". Fifthly, JPMorgan Chase argue that [employee of JPMorgan Chase]'s comment that [non-addressee]'s submission is "*a joke*" only reflects the unusual level of [non-addressee]'s submission.
- (334) The Commission rejects the claims. Firstly, with regard to the argument of [employee of JPMorgan Chase]'s actual trading position, whatever it may have been does not affect the fact that [employee of JPMorgan Chase] in the present discussion remembers immediately his previous exchange with [employee of non-addressee] who disclosed to him his trading strategy. In any event, the information submitted by JPMorgan Chase with regard to [employee of JPMorgan Chase]'s trading position of EIRDs with a fixing on the 2007 March IMM date are contradictory. According to JPMorgan Chase's reply to the Commission's request for information of 16 January 2013<sup>352</sup> [employee of JPMorgan Chase] had a small overall long position on the 2007 March IMM date (swaps, FRAs, futures and options). According to this reply [employee of JPMorgan Chase] thus stood to gain in a similar way to [employee of non-addressee], which is consistent with what he states in their discussion. In their observations to the SO<sup>353</sup> JPMorgan Chase provide information which contradicts

---

<sup>350</sup> [...].

<sup>351</sup> [...].

<sup>352</sup> [...]. The reply also indicates that the short term desk which [employee of JPMorgan Chase] was part of was a little "short" (i.e. had a selling trading position).

<sup>353</sup> [...].

their reply of early 2013, and contend that [employee of JPMorgan Chase] had an overall short position (instead of long) and stood to lose from the 3 month EURIBOR fixing on the March IMM date. JPMorgan Chase explain the difference with their earlier reply on the basis that "*data reflecting his options positions was inadvertently omitted at the time*". However, the 2013 reply of JPMorgan Chase to the request for information mentioned explicitly in its table "*futures and options*"[emphasis added], which excludes the possibility that options could have been "*inadvertently omitted*". In addition, the allegedly missing options from the 2013 submission represent in the later submission a significant amount of [employee of JPMorgan Chase]'s overall trading positions on 2007 March IMM (half of the notional amount of his futures) which is enough to make a significant change in the overall balance. In any event, irrespective of the exact trading position which [employee of JPMorgan Chase] had overall on the IMM date, it cannot be denied that he significantly reduced his short position in the weeks after his discussion of 6 February with [employee of non-addressee].<sup>354</sup> With the position [employee of JPMorgan Chase] had on 6 February, he stood to lose a very significant amount (of the same size as what [employee of non-addressee] had, but in the opposite direction) on the March IMM date, which he did not eventually.

- (335) Secondly, [employee of JPMorgan Chase]'s statements on 16 and 19 March to [employee of non-addressee] about his trading position cannot plausibly be explained away as JPMorgan Chase suggests by just a face-saving exercise. Both traders have been in the market for many years and know each other as competitors well enough and for long enough not to require face-saving exercise to preserve their credibility when they make a wrong trading move.<sup>355</sup> There is nothing in the text pointing towards the direction of a '*face-saving*' exercise. On the contrary, the text conveys twice [employee of JPMorgan Chase]'s thankfulness for [employee of non-addressee]'s advice.
- (336) Thirdly, [employee of JPMorgan Chase]'s reference to the 3 month EURIBOR contribution of [non-addressee] comes right after he has thanked again [employee of non-addressee] for his advice. The fact that [employee of JPMorgan Chase] mentions that [employee of non-addressee] must have "*liked*" the contribution of [non-addressee]'s treasury desk which is a "*joke*" strongly suggests that [employee of JPMorgan Chase] assumes that [employee of non-addressee] once again planned to manipulate the fixings (i.e. that the level of submission of [non-addressee] is more than unusual). The level of [non-addressee]'s submission on March 19 for the 3 month EURIBOR was 3.88 not 3.87, and the consensus rate which came out was 3.892. In light of this, even a contribution of 3.88 from [non-addressee], down from 3.90 on the previous day (March 16), must have appeared as strikingly in the same direction as the trading interest of [employee of non-addressee], which [employee of

---

<sup>354</sup> [...].

<sup>355</sup> See for instance recitals (165) and (170) in which [employee of non-addressee] complains about his cash desk being against him, or the exchanges between the two traders in which [employee of JPMorgan Chase] openly admits to being wrong about his trading strategy or assumptions on 26/5/2005 "*am I wrong?*"[...], 18 July 2006 "*was only wrong 0.75 then*" [...], 20 September 2006 "*learned March lesson all too well*"[...], 11 December 2006 "*think u mite have been rite about this beeing rubbish*" [...], 26 September 2007 "*felt I was a muppet well getting a little indicated now amigo*" [...].

JPMorgan Chase] had been made aware of previously. There is at this stage of the conversation no mention of a "*previous view*" of [employee of non-addressee] that March futures would be trading at "9", this comes only later in the conversation when [employee of non-addressee] makes a reference to their earlier exchanges on this topic.

- (337) Fourthly, the fact that [employee of non-addressee] would ask what his cash desk contributed does not prove anything with regard to [employee of JPMorgan Chase]'s level of awareness of the trading strategy of [employee of non-addressee] and of the likelihood of a manipulation associated with it (see recitals (310), (311) and (314) to (315)). [employee of non-addressee]'s question is merely a rhetoric one insofar as he has asked his treasury desk to submit a low fixing (see recitals (302), (303) and (316)) and knows very well that this time they will follow his request. Even in the event that [employee of non-addressee] would at this stage not know the exact contribution of his treasury desk, his question cannot be interpreted as showing that he wants to conceal anything from [employee of JPMorgan Chase]. This would contradict his follow-up remark to the "March at 9" which establishes a link between the contribution of his cash desk and their earlier exchange on 6 February.
- (338) On the following day (**20 March 2007**), [employee of non-addressee] and [employee of non-addressee] have another bilateral online chat relating to the setting of the 3 months EURIBOR.<sup>356</sup> At 6.41 am, [employee of non-addressee] inquires about [employee of non-addressee]'s trading position regarding the 3 months EURIBOR. [employee of non-addressee] states that he would prefer if the rate could go up a bit. [employee of non-addressee] responds that his exposure is slightly in the wrong direction, but as he already made enough profit, he does not mind if the rate goes up a little bit. [employee of non-addressee] then states that such an increase should be done slowly to avoid drawing attention on their activities. [employee of non-addressee] considers that the rate will increase anyway on its own expecting an increase of 3 basis points that day. [employee of non-addressee] explains that this would be absolutely against his interest and they go on to discuss possible hedging measures and the potential level of the fixing of the day. [employee of non-addressee] then reminds [employee of non-addressee] at 7.54 am that he has helped [employee of non-addressee] on the previous day by pushing five banks to set the rate low. In particular, [employee of non-addressee] points out the submission of HSBC at 3.88% stating that [employee of non-addressee] and [employee of non-addressee] can count on "*him*". On the same day, a submitter of [Employee of non-addressee] asks [employee of non-addressee] whether he has still an interest in low 1 month EURIBOR fixings. [employee of non-addressee] replies that he does and would also like to have high 3 and 6 months EURIBOR submissions if possible.<sup>357</sup>

---

<sup>356</sup> The chat refers to "Libor" which, according to [non-addressee], is shorthand for EURIBOR, [...] Also [non-addressee] confirms that this term refers to EURIBOR, [...].

<sup>357</sup> [...] With regard to [employee of non-addressee] statement to have contacted several banks, [non-addressee] states that [employee of non-addressee] has explained that he does not know whether [employee of non-addressee] has actually contacted another bank. In light of the compelling body of evidence of [non-addressee]'s involvement in the illicit contacts and, in particular, [employee of non-addressee]'s activities around the IMM date in March 2007, this statement is not credible at all.

- (339) On **27 March 2007**,<sup>358</sup> [employee of non-addressee] and [employee of HSBC] discuss in an online chat about the manipulation of the IMM fixing on 19 March 2007. [employee of non-addressee] asks whether "*he liked the demonstration on the IMM*". [employee of HSBC] congratulates [employee of non-addressee] on his coup ("*j'ai adoré*"), and asks how much he made with his 80000 contracts. [employee of non-addressee] states that he made two million euros and that luckily there are 4 IMM dates a year and that he intends to prepare something for the next IMM date ("*on va soccuper du prochain*") to which [employee of HSBC] tacitly agrees or at the very least does not distance himself from.
- (340) In their observations to the SO,<sup>359</sup> HSBC state that this exchange does not demonstrate that [employee of HSBC] knew about the March IMM manipulation ("*that those events were part of similar conduct or a a wider "overall collusive strategy"*") and that the information he discusses were "*by that time public information*". HSBC state that this conversation does not alter their conclusion that [employee of HSBC] "*concealed his actions from both his superiors and colleagues at HSBC*" and that he was therefore the only employee with knowledge of the March IMM scheme.
- (341) [employee of HSBC] appears to grasp immediately what "*demonstration*" [employee of non-addressee] is referring to and to know the exact size of trading position on March IMM futures ("*80000 contracts*") which [employee of non-addressee] ([non-addressee]) had mentioned to [employee of HSBC] on 12 February. This piece of information was not public, even after 19 March 2007. Furthermore, later in the conversation [employee of HSBC] states that he liked very much the way the March IMM scheme was implemented (as a spread between the 3 months EONIA and the 3 months EURIBOR). [employee of HSBC] who was a junior trader reporting to [employee of HSBC] and working next to him on the same trading desk was most likely made aware by the latter of such non-public information.<sup>360</sup> In addition, [employee of HSBC] makes reference to two banks which were not involved in the March IMM scheme and which suffered losses as a consequence ("*j'en connais 2 qui se sont fait detruire*") which echoes [employee of HSBC]'s comment on 19 March on two profitable trades (see recital (329)).

## **5. APPLICATION OF ARTICLE 101(1) OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT**

- (342) Article 101(1) of the Treaty prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets, or share markets or sources of supply.

---

<sup>358</sup> [...].

<sup>359</sup> [...].

<sup>360</sup> [...].

- (343) Article 53(1) of the EEA Agreement is modelled on Article 101(1) of the Treaty.<sup>361</sup> References in this Decision to Article 101 of the Treaty therefore apply also to Article 53 of the EEA Agreement.
- (344) The Commission has jurisdiction to apply both Article 101 of the Treaty and, on the basis of Article 56 of the EEA Agreement, Article 53 of the EEA Agreement, since the cartel under investigation had an appreciable effect on trade between Member States/Contracting Parties (see sections 2.3 and 5.2). The restrictive arrangements described in this Decision applied to all countries in the EEA, this is to say all the Member States of the Union together with Norway, Liechtenstein and Iceland.

## **5.1. Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement**

### *5.1.1. Agreements and concerted practice*

#### 5.1.1.1. Principles

- (345) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements and concerted practices between undertakings and decisions of associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition within the internal market.
- (346) An agreement can be said to exist where the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the course of their mutual action or where they refrain from taking certain action in the market. The agreement does not have to be in writing; no formalities are necessary and no contractual penalties or enforcement measures are required. The existence of an agreement may be express or implicit in the behaviour of the parties.<sup>362</sup>
- (347) The concept of agreement in Article 101(1) of the Treaty would apply to the inchoate understandings and to partial or conditional agreements forming part of the bargaining process which lead to the definitive agreement. It is therefore not necessary for the participants to have agreed in advance upon a comprehensive common plan, in order for there to be an infringement of Article 101(1) of the Treaty. According to settled case law, in order for there to be an agreement within the meaning of Article 101 of the Treaty, it is sufficient that the undertakings have expressed their joint intention to behave on the market in a certain way.<sup>363</sup> This

---

<sup>361</sup> Only the reference of Article 101(1) to trade "between Member States" is replaced by a reference to trade "between contracting parties" and the reference to competition "within the internal market" is replaced by a reference to competition "within the territory covered by the ... [EEA] Agreement". The case law of the Court of Justice and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See Recitals 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement and Case E-1/94 of 16 December 1994, paragraphs 32-35.

<sup>362</sup> See Judgment of the General Court of 20 March 2002, *HFB v Commission*, T-9/99, ECLI:EU:T:2002:70, paragraphs 199-200; and Judgment of the Court of Justice of 21 September 2006, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, C-105/04 P, ECLI:EU:C:2006:592, paragraphs 94-100, 110-113.

<sup>363</sup> See Judgment of the General Court of 20 April 1999, *Limburgse Vinyl Maatschappij and others v Commission*, Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, ECLI:EU:T:1999:80, paragraph 715.

applies also to gentlemen's agreements which represent a faithful expression of a joint intention to restrict competition.<sup>364</sup>

- (348) Where, for instance, an undertaking is present at meetings in which the parties at the meeting agree on certain behaviour on the market, that undertaking may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed. It is also well-settled case-law that "*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings*".<sup>365</sup> The action taken by an undertaking to distance itself from the outcome of the meeting should take the form of an announcement by that undertaking, for example, that it would take no further part in the meetings (and therefore did not wish to be invited to them). In that regard, where an undertaking tacitly approves of an unlawful initiative, without publicly distancing itself from the content of that initiative or reporting it to the administrative authorities, the effect of its behaviour is to encourage the continuation of the infringement and to compromise its discovery. It thereby engages in a passive form of participation in the infringement which is therefore capable of rendering that undertaking liable in the context of a single agreement.<sup>366</sup>
- (349) Moreover, the notion of publicly distancing oneself as a means of excluding liability must be interpreted narrowly. In order to disassociate itself effectively from anti-competitive discussions, it is for the undertaking concerned to indicate to its competitors that it does not in any way wish to be regarded as a member of the cartel and to participate in anti-competitive meetings. In any event, silence by an operator in a meeting during which an unlawful anti-competitive discussion takes place cannot be regarded as an expression of firm and unambiguous disapproval of that unlawful conduct.<sup>367</sup>

---

<sup>364</sup> See Judgment of the General Court of 20 March 2002, *HFB v Commission*, T-9/99, ECLI:EU:T:2002:70, paragraph 207; Judgment of the Court of Justice of 21 September 2006, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, C-105/04 P, paragraphs 94-100, 110-113.

<sup>365</sup> See Judgment of the General Court of 14 May 1998, *Sarriò v Commission*, T-334/94, ECLI:EU:T:1998:97, paragraph 118. See Judgment of the General Court of 6 April 1995, *Tréfileurope Sales v Commission*, T-141/89, ECLI:EU:T:1995:62, paragraph 85; Judgment of the General Court of 17 December 1991, *Hercules Chemicals v Commission*, T-7/89, ECLI:EU:T:1991:75, paragraph 232; and Judgment of the General Court of 15 March 2000, *Cimenteries CBR and others v Commission*, Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, ECLI:EU:T:2000:77, paragraph 1389.

<sup>366</sup> See Judgment of the General Court of 8 July 2008, *AC-Treuhand v Commission*, T-99/04, ECLI:EU:T:2008:256, paragraph 130. See also Judgment of the Court of Justice of 25 January 2007, *Sumitomo Metal Industries, and Nippon Steel v Commission* ('Seamless steel tubes'), Joined Cases C-403/04 P and C-405/04 P, ECLI:EU:C:2007:52, paragraphs 47 and 48.

<sup>367</sup> See Judgment of the General Court of 5 December 2006, *Westfalen Gassen Nederland v Commission*, T-303/02, ECLI:EU:T:2006:374, paragraphs 103 and 124 and Judgment of the General Court of 2 February 2012, *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals v Commission*, Case T-83/08, ECLI:EU:T:2012:48, paragraph 53.



- (350) Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of "concerted practices" and "agreements between undertakings", the object is to bring within the prohibition of these 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.<sup>368</sup>
- (351) The co-ordination and co-operation criteria laid down by the case law of the Court, far from actually requiring the elaboration of an actual plan, must instead be understood in light of the concept inherent in the provisions of the Treaty relating to competition, that each economic operator must determine independently the commercial policy which he intends to adopt on the market. This requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors. However, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the conduct of an actual or potential competitor on the market or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or which they contemplate adopting on the market.<sup>369</sup>
- (352) Thus, conduct may fall within the scope of Article 101(1) of the Treaty as a concerted practice even where the parties have not explicitly subscribed to a common plan by defining their action on the market. It is sufficient that they knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour. Furthermore, the process of negotiation and preparation leading effectively to the adoption of an overall plan to regulate the market may also (depending on the circumstances) be correctly characterised as a concerted practice. The existence of a concerted practice can also be demonstrated by evidence that contacts took place between undertakings with the actual aim of reducing uncertainty as to the conduct expected from them on the market.<sup>370</sup>
- (353) The concept of a concerted practice requires not only a concertation but also a causal connection with such concertation and the conduct on the market. It may be presumed, subject to proof to the contrary, that undertakings taking part in such concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, especially when that concertation occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 101(1) of the Treaty even in the absence of actual anti-competitive effects on the market.<sup>371</sup> However, in so far as the

---

<sup>368</sup> See Judgment of the Court of Justice of 14 July 1972, *Imperial Chemical Industries v Commission*, C-48/69, ECLI:EU:C:1972:70, paragraph 64.

<sup>369</sup> See Judgment of the Court of Justice of 16 December 1975, *Suiker Unie and others v Commission*, Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, ECLI:EU:C:1975:174, paragraphs 173-174.

<sup>370</sup> See Judgment of the Court of Justice of 16 December 1975, *Suiker Unie and others v Commission*, Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, paragraphs 175 and 179 and Judgment of the General Court of 12 July 2011, *Fuji Electric v Commission*, T-132/07, ECLI:EU:T:2011:344, paragraph 88.

<sup>371</sup> See Judgment of the Court of Justice of 8 July 1999, *Hüls v Commission*, C-199/92 P, ECLI:EU:C:1999:358, paragraphs 158-166. See also Judgment of the General Court of 13 September

undertakings participating in the concerted action remains active on the market in question, there is a presumption of a causal connection between the concerted practice and the conduct of the undertakings on that market, even if the concerted action is the result of a meeting held by the participating undertakings on a single occasion.<sup>372</sup>

- (354) In addition, an undertaking, by virtue of its participation in a meeting with an anti-competitive purpose, not only pursues the aim of eliminating in advance uncertainty about the future conduct of its competitors but can not fail to take into account, directly or indirectly, the information obtained in the course of those meetings in order to determine the policy which it intended to pursue on the market.<sup>373</sup> According to the General Court, this conclusion was also valid in cases where the participation of one or more undertakings in meetings with an anti-competitive purpose was limited to the mere receipt of information concerning the future conduct of their market competitors.<sup>374</sup>
- (355) In the context of complex infringements committed over a long period of time, the Commission is not required to characterise the conduct as being exclusively as "agreement" or "concerted practice" as these concepts are fluid and may overlap. The anti-competitive behaviour may vary from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may be difficult to establish such a distinction, given that an infringement may demonstrate the characteristics of both forms of prohibited conduct simultaneously, even though certain characteristics, when considered in isolation, could accurately be described as relating to one rather than the other. It would be artificial to analytically sub-divide in separate forms of infringement what is obviously a continuing common strategy having one and the same overall objective. A cartel may therefore be an agreement and a concerted practice at the same time.<sup>375</sup>
- (356) An agreement for the purposes of Article 101(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel committed over a long period of time, the term "agreement" can be properly applied not just to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice has pointed out, Article 101(1) of the Treaty states expressly

---

2013, T-566/08, *Total Raffinage v Commission*, ECLI:EU:T:2013:423, paragraph 236 and Judgment of the General Court of 12 December 2014, *Repsol v Commission*, T-562/08, ECLI:EU:T:2014:1078, paragraph 263.

<sup>372</sup> See Judgment of the Court of Justice of 4 June 2009, *T-Mobile Netherlands and others v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, ECLI:EU:C:2009:343, paragraph 62.

<sup>373</sup> See Judgment of the General Court of 24 October 1991, *Rhône-Poulenc v Commission*, T-1/89, ECLI:EU:T:1991:56, paragraphs 122 and 123; See also Judgment of the General Court of 12 July 2001, *Tate & Lyle and others v Commission*, Joined cases T-202/98, T-204/98 and T-207/98, ECLI:EU:T:2001:185, paragraph 58.

<sup>374</sup> See Judgment of the General Court of 12 July 2001, *Tate & Lyle and others v Commission*, Joined cases T-202/98, T-204/98 and T-207/98, paragraph 58.

<sup>375</sup> See Judgment of the General Court of 17 December 1991, *Hercules Chemicals v Commission*, T-7/89, paragraph 264. See also Judgment of the General Court of 20 April 1999, *Limburgse Vinyl Maatschappij and others v Commission*, Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, paragraph 696.

that an agreement may arise not only from an isolated act but also from a series of acts or from a course of conduct.<sup>376</sup>

#### 5.1.1.2. Application in this case

- (357) The facts described in Section 4 and also set out in recital (358) demonstrate that the parties were involved in collusive activities in the EIRD sector, through a network of bilateral contacts, with the objective of coordinating and/or fixing pricing components of EIRDs.
- (358) These activities resulted in the conclusion of explicit or implicit agreements and/or adoption of concerted practices between the parties within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, in particular:
- (a) Traders, including traders of the parties that are addressees of this Decision, communicated to and/or received from each other not publicly known/available information on their preferences for an unchanged, low or high fixing of certain EURIBOR tenors of at least one of the respective banks (see recitals (160)-(164), (165)-(169), (170)-(172), (174)-(176), (183)-(186), (189)-(191), (194)-(200), (205)-(207), (210), (213)-(216), (217)-(219), (224)-(226), (230)-(234), (271)-(276), (278)-(282), (292)-(294), (304)-(307), (316), (319)-(321), (322)-(331), (338)). These preferences depended on their trading positions.
  - (b) Traders, including traders of parties that are addressees of this Decision, communicated to and/or received from each other not publicly known/available information on their trading positions (see recitals (160)-(164), (165)-(169), (170)-(172), (174)-(176), (180)-(182), (183)-(186), (189)-(191), (197)-(200), (205)-(207), (210), (213)-(216), (217)-(219), (224)-(226), (227)-(229), (230)-(234), (239)-(242), (243)-(245), (262)-(264), (271)-(276), (278)-(282), (286)-(288), (289)-(291), (292)-(294), (295), (296)-(298), (304)-(307), (308)-(315), (316), (319)-(321), (322)-(331), (332)-(337), (339)-(341)).
  - (c) Traders, including traders of parties that are addressees of this Decision, explored possibilities to align their EIRD trading positions on the basis of such information as described under (a) or (b) (see recitals (217)-(219), (289)-(291), (304)-(307), (308)-(315), (332)-(337)).
  - (d) Traders, including traders of parties that are addressees of this Decision, explored possibilities to align at least one of their banks' future EURIBOR submissions on the basis of such information as described under (a) or (b) (see recitals (165)-(169), (189)-(191), (205)-(207), (210), (213)-(216), (224)-(226), (278)-(282), (292)-(294), (304)-(307), (316), (319)-(321), (322)-(331), (338)).
  - (e) Traders, including traders of parties that are addressees of this Decision, involved in such discussions approached the respective bank's EURIBOR submitters, or stated that such an approach would be made, to request a submission to the EBF's calculation agent towards a certain direction or at a specific level (see recitals (160)-(164), (165)-(169), (189)-(191), (205)-(207),

---

<sup>376</sup> See Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, ECLI:EU:C:1999:356, paragraph 81.

(210), (213)-(216), (224)-(226), (292)-(294), (304)-(307), (316), (319)-(321), (322)-(331).

- (f) Traders, including traders of parties that are addressees of this Decision, involved in such discussions promised to report back, or reported back on the submitter's reply before the point in time when the daily EURIBOR submissions had to be submitted to the calculation agent or, in those instances where a trader had already discussed with his bank's submitter, passed on such information received from the submitter to a trader of a different party (see recitals (165)-(169), (189)-(191), (205)-(207), (316), (319)-(321), (322)-(331)).
- (g) Traders, including traders of parties that are addressees of this Decision, communicated to and/or received from each other detailed and/or not publicly known/available information on their respective pricing strategies regarding EIRDs (see recitals (194)-(200), (210)-(212), (220)-(222), (227)-(229), (246)-(248), (283)-(285), (286)-(288), (296)-(298), (299)-(301), (304)-(307)).
- (359) In addition, on occasions certain traders employed by different parties discussed the outcome of the EURIBOR rate setting, including specific banks' submissions, after the EURIBOR rates of a day had been set and published (see, for example, recitals (160), (165), (174), (189), (192), (214), (217), (224), (230), (232), (271), (303), (304), (316), (319), (328), (329), (332), (339)). This was a way to "monitor" the cartel behaviour.
- (360) By engaging in this network of bilateral contacts, the traders involved took the risk that [non-addressees] could become aware of their anti-competitive behaviour. Since they knew that these contacts were illegal, they agreed together or reminded each other on several occasions to conceal their collusive activities (see, for instance recitals (189), (194)-(199), (220), (235), (271), (278), (283), (296), (319), (328), (338)).
- (361) The evidence shows that the colluding parties entered into significant trading positions (see for example recitals (153), (155); (187); (204) ,(208)-(210); (230)-(232); (266), (271), (278), (303)-(304), (319), (328)), on some occasions even knowingly contrary to the general market trend (see recitals (189), (328)). This attitude illustrates a considerable trust between the parties, and demonstrates their conviction that their agreements would be adhered to and that their conduct would have an impact on the market. Also, as set out in recitals (397) and (404)-(408), the non-settling parties considered that they were individually and by virtue of the contacts with the other colluding banks capable of influencing the benchmark interest rate levels of EURIBOR. According to [non-addressee]' even incremental changes in a tenor due to the cartel activity had a considerable impact because of the high notional amounts of EIRD portfolios affected.<sup>377</sup>
- (362) In addition, the facts described in section 4 demonstrate instances in which the parties took the information received from another party into account in their own dealings. In particular, the cartel participants relied on each other's statements about their strategy in relation to forthcoming fixings of their trades and took this information into account in determining their own conduct on the market (see, for

---

<sup>377</sup> [...].

example, recitals (194), (236), (289), (308) and (332)). The mutual sharing of information also enabled the cartel participants to hedge<sup>378</sup> their trading positions when they held opposing trading interests (see, for example, recitals (151), (173), (308) and (316)).

- (363) During the period under consideration [...] large international banks that were perceived to be among the most important players in the market for the trading of EIRDs.<sup>379</sup> [...] members of the EURIBOR panel throughout the infringement period<sup>380</sup> (see recital (20)). [...] remained active in the EIRDs market throughout the infringement period. [...] cannot have failed to take account of the information received from competitors when determining their own conduct on the market.<sup>381</sup>
- (364) The fact that [...] occasionally did not confirm the other party's request and/or did not disclose their own trading position and/or appeared to engage in joking behaviour in their actions and conversations does not undermine the conclusion that [...] benefitted from increased transparency on prices which consequently enabled [...] to reduce normal market uncertainties for [...] own benefit (and to the detriment of other market participants not involved in the arrangements) (see for instance, recitals (153), (155), (160), (177), (187), (304), (316) and (308)). In this respect, even information provided by only one means or apparently in joking fashion had the objective of reducing price uncertainty on the market, thereby enabling [...] to monitor their competitors' actions and adjust [...] market behaviour accordingly. According to case-law, even the exchange of information in the public domain which relates to historical or purely statistical prices infringes Article 101(1) of the Treaty where it underpins another anti-competitive arrangement. This is because the circulation of price information limited to the members of an anti-competitive cartel has the effect of increasing transparency on a market where competition is already significantly reduced and facilitates the control of members complying with the cartel.<sup>382</sup> As indicated above in recitals (348) and (349), where there is no expression of a firm and unambiguous disapproval of an unlawful initiative or where the conduct is not reported to the administrative authorities, a party cannot be considered to have publicly distanced itself from the content of that initiative. The conduct effectively encourages the continuation of the infringement and compromises its discovery.
- (365) For these reasons, the complex of anticompetitive discussions between the settling and non-settling parties in this case, taken individually and in their context or collectively, presents all the characteristics of an agreement and/or concerted

---

<sup>378</sup> JPMorgan Chase describes "hedging" as "an investment position intended to offset potential losses/gains that may be incurred by a companion investment. It is used to reduce any substantial losses/gains suffered by an individual or an organisation" [...].

<sup>379</sup> For instance, according to [non-addressee] and JPMorgan Chase the group included five out of the ten major players in the Euro Short Term Interest Rates market and six out of the 12 major players in the EURO Long Term Interest Rate market [...]. See also recital (44).

<sup>380</sup> [...]

<sup>381</sup> See Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraph 121.

<sup>382</sup> See Judgment of the Court of Justice of 7 January 2004, *Aalborg Portland and others v Commission*, Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, ECLI:EU:C:2004:6, paragraph 281.

practices in the sense of Article 101(1) of the Treaty and of Article 53(1) of the EEA Agreement.

(366) The addressees of this Decision contributed, through their actions described in detail in Section 4 and in recital (358), to the anticompetitive object pursued by both the settling and non-settling parties.

#### 5.1.1.3. Arguments of the parties and assessment thereof by the Commission

(367) The addressees of this Decision deny that their individual contribution amounted to participation in an anticompetitive agreement or concerted practices. They contest that the bilateral exchanges referred to in recital (358) amounted to price fixing agreements or concerted practices, or at least assert that this was insufficiently explained in the Statement of Objections.<sup>383</sup>

(368) In relation to the allegation that the Statement of Objections failed to clearly identify and characterise the exchanges which gave rise to the collusive conduct, this argument must be rejected. The Statement of Objections clearly referred to the types of collusive behaviour involved in recital 92 and further explained in section 5.1.2. that such behaviour amounted to price-fixing, which is an infringement by object. Furthermore, the non-settling parties cannot claim that the Commission failed to provide sufficient reasons for its decision and infringed the rights of the defence. In actual fact, the non-settling parties submitted arguments in response to the Statement of Objections in relation to each anticompetitive contact and the Commission in response produced evidence proving that the parties participated in the collusive arrangements during the infringement period.<sup>384</sup>

(369) The exchanges of information set out in recital (358) are at a minimum concerted practices that have as their object to artificially affect price components of EIRDs, irrespective of whether they also led to agreements between competitors. The traders in question engaged in concerted practices which facilitated the coordination of their behaviour concerning trading positions, trading prices and strategic choices. This was carried out by giving and/or receiving from each other detailed information on their respective pricing strategies regarding EIRDs, including their preferences for an unchanged, low or high fixing of certain EURIBOR tenors or information on their trading positions, none of which was publicly known or publicly available.

(370) Therefore, on this basis and in light of the facts described in Section 4, it can be concluded that the network of bilateral contacts found in recital (358) of this Decision, present all the characteristics of explicit or implicit agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

(371) The non-settling parties also deny that these concerted practices and/or agreements are pre-pricing communications which have as their object the coordination and/or the fixing of pricing components of EIRDs. The non-settling parties argue that these arrangements, if any, were not anticompetitive because the information exchanged

---

<sup>383</sup> [...].

<sup>384</sup> HSBC chose not to comment on three exchanges which are outside of the infringement period: see recitals (252)-(253); (254)-(255); (259)-(260).

was not price sensitive and not capable of creating any effect on the market. These arguments will be addressed in Section 5.1.2.

## 5.1.2. *Restriction of competition*

### 5.1.2.1. Principles

- (372) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements and concerted practices that have as their object or effect the prevention, restriction or distortion of competition. They expressly include agreements or concerted practices as being restrictive of competition which:<sup>385</sup>
- (a) directly or indirectly fix selling prices or any other trading conditions;
  - (b) limit or control production, markets or technical development;
  - (c) share markets or sources of supply.
- (373) In that regard, according to settled case-law certain types of coordination between undertakings reveal a sufficient degree of harm to competition for the examination of their effects to be considered unnecessary.<sup>386</sup>
- (374) That case-law arises from the fact that some forms of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition.<sup>387</sup>
- (375) It is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101 of the Treaty, to prove that they have actual or potential effects on the market. Experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers.<sup>388</sup>
- (376) In order to establish the anticompetitive nature of an agreement and assess whether it reveals a sufficient degree of harm to competition that it may be considered a restriction of competition by object within the meaning of Article 101(1) of the Treaty, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part. When determining that context,

---

<sup>385</sup> This list is not exhaustive.

<sup>386</sup> See Judgment of the Court of Justice of 30 June 1966, *Société Technique Minière*, C-56/65; Judgment of the General Court of 6 July 2000, *Volkswagen v Commission*, T-62/98, paragraph 178. Judgment of the Court of Justice of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, ECLI:EU:C:2013:160, paragraph 34; Judgment of the Court of Justice of 19 March 2015 *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraph 115 and the case-law cited; Judgment of the General Court of 8 September 2016, *Lundbeck v Commission*, T-472/13, ECLI:EU:T:2016:449, paragraph 434.

<sup>387</sup> See Judgment of the Court of Justice of 19 March 2015 *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, paragraph 114 and the case-law cited; Judgment of the Court of Justice of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, paragraph 35.

<sup>388</sup> See Judgment of the Court of Justice of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13, paragraph 51. See also Judgment of the Court of Justice of 20 November 2008, *Beef Industry Develo[...]ent Society and Barry Brothers*, C-209/07, ECLI:EU:C:2008:643, paragraphs 33-34; Judgment of the General Court of 8 September 2016, *Lundbeck v Commission*, T-472/13, paragraph 341.

it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question. Intention is not a necessary factor, but it may be taken into account as well.<sup>389</sup>

- (377) Price-fixing shields cartel members from price competition and transfers wealth from consumers to the colluding undertakings. Union Courts regard price-fixing agreements as having as their object the restriction of competition for the purposes of Article 101(1) of the Treaty, so that there is no need to show that they have the effect of doing so. Previous Commission decisions have found that agreements on parts of the price (such as introduction of surcharges) infringe Article 101(1) of the Treaty<sup>390</sup> and the General Court has confirmed that price fixing agreements on surcharges or agreements which fix part of the final price are prohibited by the competition rules.<sup>391</sup> Furthermore, it is well established that exchanges of information between competitors in respect of pricing matters can only be explained by the desire to replace the risks of pricing competition with practical cooperation.<sup>392</sup>
- (378) With regard to the exchange of information between competitors, the criteria of coordination and cooperation necessary for determining the existence of a concerted practice are to be understood in the light of the notion inherent in the Treaty provisions on competition, according to which each economic operator must determine independently the policy which he intends to adopt on the internal market.<sup>393</sup>
- (379) Exchanges of information about the future intentions of competitors in relation to their market conduct are likely to enable competitors to reach a common understanding on the coordination of competitive conduct among themselves (as they remove strategic uncertainty) and consequently facilitate collusion (Horizontal guidelines, paragraphs 66, 73 and 74). Therefore exchanges of information about such future intentions are, by their very nature, harmful to the proper functioning of

---

<sup>389</sup> See Judgment of the Court of Justice of 19 March 2015 *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, paragraphs 117-118. Judgment of the Court of Justice of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, paragraphs 36-37. See also to that effect Judgment of the General Court of 8 September 2016, *Lundbeck v Commission*, T-472/13, paragraph 438: experience mentioned in *Groupement des cartes bancaires* case "does not concern the specific category of an agreement in a particular sector but rather the fact it is established that certain forms of collusion are, in general, and in view of the experience gained, so likely to have negative effects that it is not necessary to demonstrate that they had such effects in the particular case at hand. The fact that the Commission has not in the past considered that a certain type of agreement was a restriction by object does not prevent it from doing so in the future following an individual and detailed examination".

<sup>390</sup> See Commission Decision of 15 May 1974 in Case IV/400 (Agreements between manufacturers of glass containers) OJ L 160 of 17 June 1974, p. 1; Commission Decision of 15 July 1975 in Case IV/27.000 (IFTRA rules for producers of virgin aluminium) OJ L 228 of 29 .08.1975, p. 3; Case AT.39462 – Freight forwarding, upheld by the General Court in its Judgments of 29 February 2016 in Cases T-251/12; T-254/12; T-265/12 and T-267/12,

<sup>391</sup> See Judgment of the General Court of 13 December 2001, *Acerinox v Commission*, T-48/98, ECLI:EU:T:2001:289, paragraph 115; Judgment of the General Court of 21 February 1995, *SPO and others v Commission*, T-29/92, ECLI:EU:T:1995:34, paragraph 146.

<sup>392</sup> See Judgment of the General Court of 15 March 2000, *Cimenteries and others v Commission*, T-25/95, ECLI:EU:T:2000:77, paragraphs 1936-1937.

<sup>393</sup> See Judgment of the Court of Justice of 19 March 2015 *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, paragraph 119.



normal competition. Exchange of forward-looking information and price information is particularly likely to lead to a collusive outcome on the market. An exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted.<sup>394</sup>

- (380) Furthermore, it follows from the case-law that the disclosure of sensitive information reduces uncertainty as to the future conduct of a competitor and thus directly or indirectly influences the strategy of the recipient of the information.<sup>395</sup>
- (381) Article 101 of the Treaty, like the other competition rules of the Treaty, is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the structure of the market and thus competition as such.<sup>396</sup>
- (382) A concerted practice pursues an anti-competitive object for the purposes of Article 101(1) of the Treaty where, according to its content and objectives and having regard to its legal and economic context, it is capable in an individual case of resulting in the prevention, restriction or distortion of competition within the internal market. In so far as the undertaking participating in the concerted action remains active on the market in question, there is a presumption of a causal connection between the concerted practice and the conduct of the undertaking on that market. Subject to proof to the contrary, which the economic operators concerned must adduce, it must be presumed that the undertakings taking part in a concerted action and remaining active on the market take account of the information exchanged in that context with their competitors in determining their conduct on that market.<sup>397</sup>
- (383) According to the case-law, the Commission is not required to show systematically that the agreement on prices allowed the cartel participants to obtain different prices from those they would have obtained in the absence of such agreements. It is sufficient that agreed prices serve as the basis for individual negotiations as they limit the clients' margin of negotiation.<sup>398</sup> It has also been held that concerted action on indicative prices affects competition because it allows the participants in such arrangements to foresee with a reasonable degree of certainty what pricing policy will be pursued by their competitors.<sup>399</sup>

#### 5.1.2.2. Application in this case

- (384) The horizontal arrangements described in Section 4 of this Decision and referred to in recital (358) consist of collusive contacts concerning pricing components and

---

<sup>394</sup> Idem, paragraphs 120-121.

<sup>395</sup> See Judgment of the Court of Justice of 23 November 2006, *Asnef-Equifax and others v Ausbanc*, C-238/05, paragraph 51.

<sup>396</sup> See Judgment of the Court of Justice of 4 June 2009, *T-Mobile Netherlands BV and others v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, paragraph 38.

<sup>397</sup> See Judgment of the Court of Justice of 4 June 2009, *T-Mobile Netherlands BV and others v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, paragraph 62.

<sup>398</sup> See Judgment of the General Court of 14 December 2006, *Raiffeisen Zentralbank Österreich and others v Commission*, Joined Cases T-259/02 to T-264/02 and T-271/02, ECLI:EU:T:2006:396, paragraphs 285–286.

<sup>399</sup> See Judgment of the General Court of 16 September 2013, *Keramag Keramische Werke and Others v Commission*, T-379/10, ECLI:EU:T:2013:457, paragraphs 51-67.

other trading conditions of EIRDs (as described in points (a) to (g) of recital (358)). In these pre-pricing communications the parties exchanged and/or colluded on price setting factors such as EURIBOR, being factors relevant for setting the transaction prices for EIRDs. This was carried out with the objective of reducing the cash flows they would have to pay (or increase the cash flows they would receive) and thereby to increase the value of EIRDs they held in their portfolio. This behaviour operated to the detriment of the competitors who are counterparties in the EIRD transactions and who are not involved in the collusion and also distorted competition for competitors that were not counterparties at that stage. In the context of their collusion on price components of EIRDs, the parties exchanged sensitive information on their pricing intentions and trading positions or strategies, which helped to prepare the collusive actions and further reduced the degree of uncertainty as to their dealings in the EIRD market.

- (385) By virtue of these practices [...] coordinated price setting factors instead of deciding on them independently. They considered that they were directly or indirectly capable of influencing the rate levels of benchmarks such as EURIBOR to their benefit by exchanging information or agreeing on the desired rate level with their competitors. Where they could do so, they approached their submitters and gave each other feedback on this in order to effectively influence the rate level.
- (386) These collusive contacts, which concerned pricing components such as EURIBOR and trading conditions of EIRDs, have as their object the restriction and/or distortion of competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. The collusive contacts are described in detail in Section 4 of this Decision.
- (387) As will be further explained in Section 5.1.3, the horizontal arrangements in this case have to be considered as a whole and in the light of the overall circumstances despite the fact that each of the elements of the arrangements in isolation and taken in their context constitute an infringement of Article 101 (1) of the Treaty and Article 53(1) of the EEA Agreement.
- (388) As regards the context of the parties' contacts, as explained in section 2.2.2., the benchmark interest rates EURIBOR and EONIA are pricing components of EIRDs, insofar as the trading price of EIRDs is based on the estimated value of the sum of future cash flows expected from such contracts and these future cash flows are determined by reference to future levels of EURIBOR or EONIA. For the purposes of pricing the EIRDs, the applicable EURIBOR tenor which is maturing or resetting on a certain date may determine either the cash flow a bank receives from the counterparty or the cash flow a bank needs to pay to that counterparty with whom it has entered into that trade. In other words, from the bank's point of view the EURIBOR can either be the basis for the cash-flow received from such a trade or the cash-flow paid out on such a trade. In order to increase its profit, a bank may, depending on its trading position or exposure, have an interest in a high EURIBOR fixing (when it receives an amount calculated on the basis of EURIBOR), a low fixing (when it needs to pay an amount calculated on the basis of EURIBOR) or be "flat" (when it does not have a significant position in either direction). The manipulation of the EURIBOR therefore constitutes the fixing of a pricing component of EIRDs. In addition, because the manipulation of the EURIBOR influences the value of EIRDs held by market players and also their strategy relating to these contracts, such rate manipulation also constitutes the fixing of trading

conditions within the meaning of Article 101(1)(a) of the Treaty, as it affects the structure of competition.

- (389) Section 2.2.4. also described how the overwhelming majority of EIRD transactions in the period under consideration were concluded "over the counter" (OTC), that is to say directly between market players without a central clearing house or obligation to register the trades. Therefore neither the prices nor the volumes at which these transactions were concluded were visible to the rest of the market (see recital (45)), and that information, which significantly reduces market uncertainty, was not usually shared between competitors outside of the context of discussions on potential transactions (see also recitals (149), (235)<sup>400</sup> or (283)<sup>401</sup>). Equally, Section 2.2.4 also explained that trading positions or trading strategies are not to be disclosed to competitors as these are likely to reveal key information on the future behaviour of market players. There was a lack of transparency in the market<sup>402</sup> and it is highly unlikely that the information referred to in points (a) to (f) of recital (358) would be published on any means accessible to other market players. Information on future EURIBOR rate settings and trading positions in relation to EIRDs based on the EURIBOR is cash flow linked information that is commercially sensitive. It is normally not exchanged between competitors. Also for the exchanges of pricing strategies mentioned under point (g) of recital (358), it must be taken into account that information on transaction data (prices and volumes) for most OTC EIRDs was not publicly available and was commercially sensitive. Traders could make profits from transactions with other market players who did not know well how to price EIRDs, therefore there was no incentive to give accurate information on prices to competitors.
- (390) As regards the objectives of the [...] contacts, as set out in recital (131) whilst it is necessary for market liquidity and it is inherent to the operation of derivative traders to exchange information and trade with each other, the exchanges [...] took place outside the context of a discussion on a potential transaction. These communications were not necessary for market liquidity, but only for attributing competitive advantages to some market players to the detriment of others. In any event, the need to ensure market liquidity or to offset risk and hedge a particular trade or position does not require the exchange of information such as referred to in points (a) to (f) of recital (358). Furthermore, with regard to discussions on trading positions, [non-addressee] submits that each market maker carries a trading book which consists of an inventory of contracts. By sharing their trading positions, market makers are able to infer each others' demand and supply as regards these contracts and can use this information to their advantage.<sup>403</sup> This may involve them adjusting their own trading

---

<sup>400</sup> In which a [non-addressee] trader explains to an HSBC trader that one of the principles of profitable trading in the EIRD market is to keep prices secret.

<sup>401</sup> In which the same [non-addressee] trader explains to another HSBC trader that the prices mentioned on the official Bloomberg screen of the [non-addressee] trader have contained unreliable data for at least the past three years in order to influence the pricing of hedge funds.

<sup>402</sup> See Section 2.2.4.3. and Recital (416).

<sup>403</sup> [...] [employee of non-addressee] reminds [employee of non-addressee] not too communicate the shared information as it gives a competitive advantage: "*nen parle pas trop de ce truc car cest un vantage competitif quon a par rapport aux autres*". See also the exchange mentioned in recital (235) in which [employee of non-addressee] tells [employee of HSBC] that never giving information to the market is key to profitable trading.

patterns and results in them being better informed than their competitor market makers and other market participants.<sup>404</sup>

- (391) In the period under consideration the seven parties involved in the arrangements described in section 4 were large international banks that were perceived to be among the most important market players in the trading of EIRDs.<sup>405</sup> In addition, the non-settling parties were members of the EURIBOR panel throughout the infringement period<sup>406</sup> (see recital (20)). The parties to the arrangements described in section 4 remained active in the EIRD business throughout the period under consideration. [...] cannot have failed to take account of the information received from competitors when determining their conduct on the market.<sup>407</sup>
- (392) Finally, as regards the content of the parties' contacts, the bilateral pre-pricing communications set out in recital (358) between traders of the non-settling and settling parties related to:
- (a) their preference for the future rate settings for certain EURIBOR tenors (unchanged, low or high fixing – see point (a) of recital (358)) which was dependent on their respective trading positions. When, as a result of their trading positions on EIRDs the traders of one party had to pay (or receive) cash flows linked to EURIBOR on certain future dates,<sup>408</sup> they shared their interest in a low (or high) EURIBOR fixing on those dates with traders of another party. This was done in order to reduce the cash flows they would have to pay (or increase those they would receive) and which would thereby increase the value of the EIRDs they held in their portfolio, to the detriment of the counterparties to these EIRDs (namely competitors not involved in the cartel). Such exchanges thus related to pricing components of EIRDs and usually preceded attempts by one or more traders involved in the exchanges to influence the submissions of their banks;
  - (b) their respective trading positions/exposures in relation to EIRDs (see point (b) of recital (358)) on which they would have to pay (or receive) cash flows linked to certain EURIBOR tenors and/or EONIA on a future date. These exchanges had no connection with exploring potential transactions and served the same objective as those under point (a) of this recital, insofar as the were targeting at enabling traders to ensure that their commercial interests were aligned before they could take further concerted action to influence the value of EIRDs to the detriment of competitors not party to the cartel.<sup>409</sup> The exchanges on trading positions preceded or replaced those on preferred EURIBOR

---

<sup>404</sup> [...].

<sup>405</sup> For instance, according to [non-addressee] and JPMorgan Chase the group included five out of the ten major players in the Euro Short Term Interest Rates market and six out of the 12 major players in the EURO Long Term Interest Rate market [...].

<sup>406</sup> [...]

<sup>407</sup> See Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraph 121.

<sup>408</sup> And receive fixed interest payable on the same notional amount in exchange (see section 2.2.1).

<sup>409</sup> [non-addressee], for example, submits that each trader will not only enter into one trade, but hold a whole portfolio of positions, accumulated in the light of existing trades, which may be affected differently by a particular EURIBOR fixing. It is common practice for traders to seek to eliminate their exposure to movements in EURIBOR [...].

submission levels<sup>410</sup> and enabled traders to ensure that an arrangement could be found in the event of opposing interests.<sup>411</sup> As these arrangements concerned a limited number of important market players, they inevitably influenced the behaviour of the parties and significantly reduced the degree of uncertainty as to their operations on the market;

- (c) exploring the possibility of aligning their trading positions or actually aligning them on the basis of information such as described in points (a) or (b) of this recital (see point (c) of recital (358)). Through exchanges of information such as those referred to in points (a) or (b) of this recital, traders would disclose their trading strategy on certain EIRDs hours, days, weeks or months ahead of fixings (see recitals (122)-(124)). Up until the deadline for submitting the EURIBOR contributions, they had the time to adjust their trading positions on similar products to increase their profit or to reduce their risk to the detriment of competitors not involved in the cartel.<sup>412</sup> Information that was exchanged in the morning shortly before the deadline is certainly not less sensitive, it is even more sensitive given that it is more concrete;
- (d) exploring the possibility of aligning at least one of their banks' future EURIBOR submissions on the basis of information such as described in points (a) or (b) of this recital (see point (d) of recital (358)). These exchanges concerned a pricing component of EIRDs as described in section 2.2.2. and ultimately aimed to achieve the same objective as those exchanges referred to in points (a) or (b) of this recital, namely changing the value of EIRDs to the detriment of competitors not involved in the cartel;
- (e) where possible, approaching EURIBOR submitters to request high or low submissions, or submissions at a specific level, with a view to moving EURIBOR rates towards a specific level (see point (e) of recital (358)) when the interests of the parties were aligned on the basis of information exchanged under points (a) or (b) of this recital. The purpose was to influence the EURIBOR rate to their benefit (and not in a way that would reflect their ability to borrow on the interbank lending market as required by the EURIBOR rules). Such arrangements had as their objective to increase the value of EIRDs which the colluding parties had in portfolio, to the detriment of non-colluding parties;
- (f) agreements to report back on the outcome of attempts to influence the EURIBOR submissions to the EBF (see point (f) of recital (358)) before the deadline to submit the EURIBOR contributions. Such conduct allowed the parties to significantly reduce the degree of uncertainty concerning the success

---

<sup>410</sup> See for instance recitals (160)-(164); (183)-(186); (189)-(191) the exchange between Crédit Agricole and [non-addressee]; (271); (278).

<sup>411</sup> See for instance recitals (217)-(219) (in which Crédit Agricole and [non-addressee] have the same but opposite trading positions); (266) in which the [non-addressee] trader proposes to buy back the trading position of the [non-addressee] trader, which is smaller than his [...].

<sup>412</sup> See for instance recital (189) and [...] (purchase of 40 000 contracts ahead of the fixing); recitals (262),(308),(332) and [...] which shows that [employee of JPMorgan Chase]'s trading position changed from a short (or selling) trading position of 80 000 March 2007 IMM futures in early February to a neutral trading position on the IMM date; recitals (271) and (289) (announcement of plan to buy 80 000 of March 2007 IMM futures); recitals (278) and (304) (change of trading position from long 11 000 March 2007 IMM futures to 20 000 on the IMM date).

of their concerted actions concerning the EURIBOR submissions and possibly take corrective action in case the arrangements did not work as expected;<sup>413</sup>

- (g) detailed and not publicly available information on their pricing intentions and pricing strategies concerning EIRDs (such as "runs", "mids", "bases" or "spreads") (see point (g) of recital (358)), which took place before individual deals between one or several parties and non-colluding counterparties were concluded. As indicated in recital (388), neither the prices nor the volumes at which such transactions were concluded were visible to the rest of the market. Such information was not shared between competitors outside of the context of a discussion on a potential transaction.<sup>414</sup> Insofar as such information allowed the colluding parties to significantly reduce uncertainty with regard to their pricing activity, such exchanges share the same objective to reduce the cash flows they would have to pay (or increase those they would receive) to counterparties not involved in the arrangements.
- (393) In light of the above, the concerted practices and/or agreements referred to in recital (358), taken together or individually and in context, have as their object the coordination and/or fixing of pricing components and other trading conditions in the EIRD sector and are linked and complementary. These collusive practices therefore had as their object the restriction and/or distortion of the normal course of pricing components in the EIRD sector. In addition, there were instances where certain parties also monitored the actual EURIBOR submissions of the banks participating in the concerted practices to the calculation agent (see recital (359)).
- (394) By engaging in the practices referred to in recital (392), the parties restricted competition in the market for EIRDs.<sup>415</sup> When undertakings, as in this case, are in direct contact with competitors, even if they merely receive information concerning the future conduct of competitors, they can be considered to have taken part in a concerted practice since the receiving undertaking could not fail to take into account, directly or indirectly, the information obtained in order to determine the policy which they intended to pursue on the market.<sup>416</sup> In the absence of this coordination, the conduct of the parties in the market would have been different. By engaging in the practices referred to in recital (392), the parties also distorted competition insofar as the collusive behaviour resulted in an informational asymmetry between market participants, which arose from the fact that the participating cartel members were (i) better able to know in advance with a certain accuracy at what level EURIBOR would be and/or was intended to be set by their colluding competitor(s), and (ii) knew whether or not the EURIBOR on a given day was at artificial levels (and in

---

<sup>413</sup> See for instance recitals (187) or (208)-(210).

<sup>414</sup> See for instance recitals (401) and (402).

<sup>415</sup> It is well established that conduct on exchanging information is incompatible with the rules on competition if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted. See Judgment of the Court of Justice of 28 May 1998, *John Deere v Commission*, C-7/95 P, ECLI:EU:C:1998:256, paragraph 90 and Judgment of the Court of Justice of 2 October 2003, *Thyssen Stahl v Commission*, C-194/99, ECLI:EU:C:2003:527, paragraph 81. See also Judgment of the Court of Justice of 23 November 2006, *Asnef-Equifax and others v Ausbanc*, C-238/05, paragraph 51.

<sup>416</sup> See Judgment of the General Court of 12 July 2001, *Tate & Lyle and others v Commission*, Joined cases T-202/98, T-204/98 and T-207/98, paragraph 58.

some cases by how much) or whether it corresponded to market realities. Their competitors were in this respect completely unaware. During the period of the collusion, [...] possessed more information, which led to them being able to offer better terms than their competitors, who were relying on what they perceived as EURIBOR determined by legitimate market reality and were prevented from competing on equal terms with the colluding competitors.<sup>417</sup>

- (395) The exchanges regarding trading prices of EIRDs related to internal (future) pricing strategies of EIRDs that went beyond the exchange of information in the public domain and had the objective of increasing transparency between the parties and therefore significantly reducing normal market uncertainties to benefit the parties to the detriment of other market participants and customers, in a manner which neither could have achieved acting independently. Through these practices the colluding banks revealed to each other information about fundamental aspects of their market strategy and conduct on the market (see recital (358)). This reduced significantly the uncertainty inherent to a market in which risk (and uncertainty) management is one of the key parameters of competition.<sup>418</sup>
- (396) Section 2.2.2 also described how market players can engage in a transaction for an EIRD at any point in time, provided of course they find a counterparty. It follows from this that competition in the EIRD market is continuous.
- (397) The parties considered that they were capable of influencing the benchmark interest rate levels of EURIBOR both individually and by virtue of the contacts described in this Decision. They would attempt to do so where it was in their interest (see points (a), d) and (e) of recitals (358), and were aware or should have been aware of this fact.<sup>419</sup> Although the size of the EURIBOR panel might mean that it was easier to influence rate settings if several banks were involved<sup>420</sup> it is clear that the traders involved in the infringement not only maintained that even a small number had a chance to influence rates<sup>421</sup> but also understood that this ability had been demonstrated.<sup>422</sup> For instance, in an exchange of 12 February 2007 with [employee of non-addressee], [employee of HSBC] does not show any surprise that traders are talking to their submitters but rather that someone could know a sufficient number of

---

<sup>417</sup> [...] [employee of non-addressee] reminds [employee of non-addressee] not too communicate the shared information as it gives a competitive advantage: "*nen parle pas trop de ce truc car cest un avantage competitif quon a par rapport aux autres*". It should be added that due to the information asymmetry resulting from their collusion, the colluding banks were able to offer better terms (and adopt positions of greater risk) than their competitors when competing (entering into EIRDs) in the market.

<sup>418</sup> As confirmed in the Judgments of the General Court of 14 March 2013, *Dole Food Company v Commission*, T-588/08, paragraph 403 and *Fresh Del Monte Produce v Commission*, T-587/08 paragraph 369 where the General Court has held that "*Although certain information exchanged could be obtained from other sources, the exchange system established enabled the undertakings concerned to become aware of that information more simply, rapidly and directly (Tate & Lyle and Others v Commission, paragraph 368 above, paragraph 60) and to undertake an updated joint assessment of that information.*" [...].

<sup>419</sup> [...].

<sup>420</sup> See for instance recitals (145); (148); (151); (258); (183), (187) and (189) for the fixing of 16 October 2006; (205), (208), (210) for the fixing of 13 November 2006; (236), (237) and (238) for the fixing of 29 December 2006; (257), (271), (278), (303), (316) and (319) for the fixing on 19 March 2007.

<sup>421</sup> See for instance recitals (160), (165), (193), (202), (217), (266).

<sup>422</sup> See for instance recitals (147), (151), (155) (224).

banks to move the spread between 3 month EURIBOR and 3 month EONIA by up to two basis points on a day with a very large number of EIRDs fixings (on the 2007 March IMM date, see recital (271)). Several communications show that panel banks could and would submit EURIBOR and other benchmark contributions to the calculation agent that were aligned with their trading interests.<sup>423</sup> It was also held that the "firepower" of one major player alone could "push cash downwards",<sup>424</sup> or in other words move the 3 month cash market in a certain direction.

(398) Accordingly, the Commission concludes that the conduct of the parties reveals a sufficient degree of harm as it consists of collusive behaviour by object relating to pricing components and other trading conditions of EIRDs.

5.1.2.3. Arguments of the non-settling parties and assessment thereof by the Commission

#### *Arguments concerning legitimate purpose*

(399) The non-settling parties first of all contend that the exchange of information was not illegal because the information exchanged was not sensitive as it was widely available to the public and the exchange was legitimate for creating market liquidity.<sup>425</sup> JPMorgan Chase add that for instance the "mid" is "a generic value calculated using generic and publicly available data inputs".<sup>426</sup> JPMorgan Chase further claim that "*Price Discovery' plays an important and legitimate role in the context of interbank transactions and occurs constantly. Price discovery essentially involves establishing with other parties at what price a trader can offset risk when taking on risk from another trade*".<sup>427</sup>

(400) As for the argument that the information exchanged between the traders involved in the arrangements was widely available to other market players on public platforms, the evidence in the case file indicates the contrary as has already been discussed in recital (389).

(401) In relation to the public availability of price lists (mids or runs), in contrast to what Crédit Agricole suggests in quoting a [...] ("*The runs are often published on platforms such as Bloomberg and as such are widely available to market participants*"), accurate pricing information was far from widely available in the EIRD market.<sup>428</sup> There are numerous illustrations of this in the case file. For instance, some public platforms of market players contained unreliable data in order to influence the pricing of other market players such as hedge funds (see for example recitals (283) and (149)). In an exchange between the [non-addressee] trader and an HSBC trader the former explains that profitable trading in the EIRD market relies very much on keeping prices secret (see recital (235)). In an exchange between [non-addressee] and [non-addressee] the two traders laugh at a market participant who

---

<sup>423</sup> See for instance recitals (148), (151), (160), (165).

<sup>424</sup> See for instance recitals (268), (271).

<sup>425</sup> [...].

<sup>426</sup> The fact that the mid is the estimate of the price of an EIRD by a market participant at a given point in time, and is therefore neither generic nor public, is further discussed in recital (419).

<sup>427</sup> [...].

<sup>428</sup> See sections 2.2.2 and 2.2.4.



thinks that [non-addressee] publishes real quotes on its public Bloomberg page and [employee of non-addressee] adds "*we do not quote. it is always the same page*".<sup>429</sup>

(402) There are many examples in the case file in which traders state that they need the pricing information of other traders to adjust their own pricing curves or show great surprise when they learn about the actual pricing of other competitors. For instance, [employee of non-addressee] and [employee of non-addressee] would frequently help each other with pricing ("what is your mid?", "your real mid", "real run").<sup>430</sup> On many of these occasions one of the traders admits that he is completely lost or needs to check a price level ("*on the 2/8 imm I must be completely wrong*" or "*I did not know where it was*").<sup>431</sup> In another example, on 9 November 2006 [employee of non-addressee] starts an online chat in the morning by sending [employee of non-addressee] a run for "first adjustment".<sup>432</sup> On 16 January 2007,<sup>433</sup> [employee of non-addressee] and [employee of non-addressee] discuss prices for EIRDs settling in May and June. [employee of non-addressee] admits that he does not manage to adjust his price "*on this June*" and [employee of non-addressee] replies by sending a run of his May, June and July prices.

(403) As for the argument that some exchanges were legitimate exchanges, in the first instance the need to offset risk and hedge a particular trade or position does not require the exchange of information such as that referred to in points (a) to (f) of recital (358). In addition, as previously stated the information exchanged in the context of the discussions referred to in recital (358) and more specifically at point (g) of recital (358) was not publicly available and was very relevant to the pricing behaviour of the parties on the market (see also recital (417)). Finally, none of the exchanges mentioned in point (g) of recital (358) occurs in the context of a discussion on a potential transaction.<sup>434</sup> In that regard, it should be remembered that the parties acted not only as market makers<sup>435</sup> but also as traders competing with each other, who took significant positions in EIRDs. [Non-addressee] submits that, in these types of communications, traders exchanged runs to coordinate the runs and/or prices which they subsequently made available to clients. The exchanging of runs between traders, particularly between important market makers (such as most of the individuals involved in the cartel) provides a transparency around the pricing intentions of competitors (and in certain cases insight into the positions they hold) which would simply not be available without the exchange.<sup>436</sup> In that respect, such exchanges increased transparency only between [...] and therefore significantly reduced market uncertainties to their advantage (and to the detriment of other market players), in a manner which neither of them could have achieved by acting

---

429 [...].

430 [...].

431 [...].

432 [...].

433 [...].

434 See recital (390).

435 Even though they did not necessarily regard each other as market makers: According to JPMorgan Chase, [employee of JPMorgan Chase] believed that [non-addressee][non-addressee][non-addressee] was not a market maker [...]. However, during the investigation JPMorgan Chase have also explained that it was not in a position to ask [employee of JPMorgan Chase] what he understood as [employee of JPMorgan Chase] was no longer employed by JPMorgan Chase (see recital (111)).

436 [...].

independently. Such exchanges went beyond what was necessary for the legitimate negotiation of specific EIRD trades (as they were not linked to an approach for a potential transaction) or for the legitimate non-discriminatory dissemination of information to increase liquidity in the market.<sup>437</sup> In any event, even the individual assessment by a market player of information which is public and available, should not be confused with the joint evaluation by two competitors of that event, in combination, as the case may be, with other information on the state of the market, and of its impact on the development of the sector, very shortly before they take decisions affecting their pricing in the market.<sup>438</sup>

#### *Ability of the parties to influence the benchmark interest rate*

- (404) The non-settling parties also argue that the benchmark rates are set by a panel of banks, and that an individual bank could not possibly set or influence the rate on its own. JPMorgan Chase state that "*JPMC does not accept that a single bank (...) had the ability to manipulate either EURIBOR or EONIA*" and that the Commission allegedly "*provided no evidence in support of this theory (for example any mathematical modelling (...))*".<sup>439</sup>
- (405) The Commission is aware that these benchmark rates are determined on the basis of the combined submissions of various banks. The banks colluded and exchanged information on the desired or envisaged submissions for the EURIBOR.
- (406) The Commission does not agree that the fact that the EURIBOR rates are set on the basis of the submissions of a panel prevents the submission by an individual panel bank from influencing the setting of the benchmark. Section 2.2.3<sup>440</sup> describes how the EURIBOR is the average of the submissions from panel banks, of which the highest and lowest 15% submissions are eliminated, rounded to three decimals. This means that, as demonstrated by the behaviour of the colluding parties, a single bank is capable of moving the rate by changing its submission by a few basis points and by keeping it within the range of submissions used for the calculation of EURIBOR. If several banks change their submissions on the same day, the impact of a rate change increases by the same amount for each additional bank involved (twofold if two banks are involved, threefold if three banks are involved, and so on), as each bank makes one contribution for the EURIBOR (see section 2.2.3.1). Furthermore, this possibility has also been well documented by academic studies.<sup>441</sup>

---

<sup>437</sup> See Judgment of the Court of Justice of 23 November 2006, *Asnef-Equifax and others v Ausbanc*, C-238/05, ECLI:EU:C:2006:734, paragraphs 58-61.

<sup>438</sup> See Judgment of the General Court of 14 March 2013, *Fresh Del Monte Produce v Commission*, T-587/08, paragraphs 344-346.

<sup>439</sup> [...]

<sup>440</sup> See section 2.2.1. of the Statement of Objections.

<sup>441</sup> For instance, in the period under consideration in this Decision, the difference between the highest and lowest submission of the panel banks taken into account for the calculation of the EURIBOR (that is to say after elimination of the 15% highest and lowest submissions) was often 2 basis points for the tenors 1, 3, 6 and 12 months. If just one of these panel banks moved its submission by 2 basis points, it would, under the calculation methodology described in recital (22), have impacted the EURIBOR by 0.1 basis point. As the notional amounts of EIRDs fixing on a given day amount to trillions of euros, such a difference could have had a significant impact on the levels of the cash flows of EIRDs with a fixing on that day (for a notional amount of euro 100 billion referenced to the 3 months EURIBOR, a difference of 0.1 basis point in the fixing rate has an impact of euro 1 million). See also *The Manipulation*

(407) In addition, the evidence in the case file shows that in contrast to what JPMorgan Chase asserts, submissions of EURIBOR rates to the calculation agent were considered in the market as declaratory, in other words that they could be and were taking the trading interest of the bank into account.<sup>442</sup> For instance, an internal email of [non-addressee] in 2004<sup>443</sup> explained that submissions are very high above other contributors and that [non-addressee] should reposition its submissions at a level of 2 basis points above the panel so that it continues to pull the fixing upwards without there being in such an asymmetry in comparison to the other contributors. It is also explained that a lower EURIBOR level will be submitted when [non-addressee] has to pay a large fixing. Further, in April 2006<sup>444</sup> [employee of non-addressee] states in an online chat to [employee of non-addressee] that [non-addressee]' treasury desk assume that [non-addressee] is 'squeezing the cash'<sup>445</sup> to which [employee of non-addressee] replies that in his opinion there is a large position paying EONIA behind this. In two separate exchanges in June 2006 a [non-addressee] submitter explains to [employee of non-addressee] first that he is confident he can push the spread between the 3 month EONIA and the 3 month EURIBOR as tight as 5 basis points and "*if we jointly try to push*" the 3 month EURIBOR lower it can move up by 1.5 basis points.<sup>446</sup> In an email of March 2007 a [non-addressee] submitter explains to [employee of non-addressee] that he is confident he can push the EURIBOR upwards.<sup>447</sup> On 8 February 2007,<sup>448</sup> [employee of JPMorgan Chase] tries to convince his submitter to submit higher 3 month and 6 month EURIBOR fixings the next day. The submitter replies "*we have no exposure there ... will try our best*". On 29 June 2007, [employee of JPMorgan Chase] has an online chat with his submitter who explains to [employee of JPMorgan Chase] that he has "*checked all contributions yesterday and it['s] [funny] that we [are] always on the low side in all contributions apart from the 3 [months EURIBOR], I feel the three [is] artificially brought down by a few panel members*".<sup>449</sup> Furthermore, in October 2009 the European Banking Federation sent a letter to the EURIBOR panel banks reminding them of their obligations under the EURIBOR Code of Conduct.<sup>450</sup> The reason stated in this letter is that the EURIBOR contributions of certain banks had been "*significantly*" different from Euro LIBOR contributions of the same contributing banks.

---

*Potential of Libor and Euribor*, by Alexander Eisl and Rainer Jankowitsch (Vienna University of Economics and Business) and Marti G. Subrahmanyam (New York University, Stern School of Business, Department of Finance), 19 February 2015. <http://people.stern.nyu.edu/msubrahm/papers/LIBOR.pdf>. [...].

442 [...] [employee of non-addressee] explains to a colleague how the EURIBOR fixing is likely to move with the interests of submitters on IMM dates, and in particular on the June 2007 and March 2007 IMM dates. A basis point is defined as one hundredth of one percentage point.

443 [...].

444 [...].

445 [employee of non-addressee] is commenting on unusual movements in the cash market. Squeezing refers to the perceived ability of banks with large cash desks to impact the market.

446 [...].

447 [...] The chat refers to „Libor“ which, according to [non-addressee], is likely to be shorthand for EURIBOR.

448 [...].

449 [...].

450 [...].

(408) Crédit Agricole contend that the prices of EIRD contracts, "could not have been affected by an alleged manipulation"<sup>451</sup> because a) none of the parameters of EIRD contracts change after they are signed, b) EIRDs are not the object of sales and purchases and c) it is not realistic to suppose that a trader could conclude new transactions between an attempt to manipulate the rate and the fixing. None of these claims can be accepted. Firstly, the variable rate agreed to in any EIRD contract (such as EURIBOR) is a parameter which is likely to change over the period stated in the contract. Secondly, as explained in Section 2.2.1., EIRDs create positive or negative returns in the form of cash-flows received or paid by one party to the other party and can be traded. They may be traded over the counter ("OTC") or, in the case of interest rate futures, exchange traded. With regard to over the counter EIRDs, whilst recital (14) states that it is rare that such contracts are amended, it is incorrect to state that a market player<sup>452</sup> cannot enter into a new EIRD with another market player (counterparty) at any time to "sell" the obligations it has under an EIRD to this other market participant (for instance, to pay instead of receiving EURIBOR on a notional amount). Thirdly, the facts of this case prove that market players do conclude transactions between attempts to manipulate benchmarks and fixings (See recitals (189); (262), (308), (332); (271), (289); (278), (304); and footnote 412). Finally, according to contemporaneous evidence the traders were successful in profiting from the manipulation of the EURIBOR (see section 5.1.4). Therefore, Crédit Agricole's claim that the traders could not benefit from collusive activity on pricing parameters of EIRD contracts such as EURIBOR must be rejected.

***Arguments concerning the object of the arrangements***

(409) The non-settling parties all contend in their observations to the Statement of Objections that benchmark rates such as EURIBOR or EONIA are not in any sense the price of an EIRD and that therefore concerted practices on benchmark submissions cannot constitute a price fixing agreement or concerted practice that restricts competition by object or effect.<sup>453</sup>

(410) This claim should be dismissed. It not only contradicts the facts of this case, but also the non-settling parties' earlier replies to a request for information of April 2012 in which they all confirmed that EIRDs are priced in relation to benchmark rates such as EURIBOR and EONIA (see section 2.2.2.).<sup>454</sup> Benchmark interest rates such as EURIBOR and EONIA are a pricing component for EIRDs and the European Banking Federation, which sponsors the EURIBOR,<sup>455</sup> has made this very clear in its reply to a consultation by the Commission. In its reply, while referring to the benchmark rates EURIBOR and EONIA, the EBF states: "*These benchmarks are used to price financial instruments to a very great extent, since most of interest rate derivatives used for swapping fixed with floating rate are linked to Euribor by legal*

---

<sup>451</sup> [...].

<sup>452</sup> Crédit Agricole make contradictory statements: they claim here that there is no market for EIRDs but they also state in their Response to the SO that they are active in the interbank market of trading of EIRDs and that the interbank market accounts for "*the vast majority*" of EIRD transactions [...]

<sup>453</sup> [...].

<sup>454</sup> [...].

<sup>455</sup> See recital (21).

*definition. The same applies for EONIA swaps, where counterparty swaps a fixed rate against overnight rates."*<sup>456</sup>

- (411) In addition, the restriction by object and/or distortion of competition in the market for all EIRDs arises because the prices of EIRDs are determined on the basis of, amongst other factors, the EURIBOR (as already explained in Section 2.2.2), and because the parties also discussed pricing intentions and strategies concerning EIRDs. The direct relevance of EURIBOR for the variable rate of an EIRD contract which uses EURIBOR as a benchmark rate requires no further explanation as the EURIBOR is the reference interest rate of such an EIRD contract and the level of EURIBOR on the relevant date(s) will be used for calculating the cash flow(s) to be exchanged. As regards the fixed rate, the EURIBOR is also an element in the setting of the fixed rate of an EIRD, in other words it is an element of its price. While there are other elements that influence the setting of EIRDs, the fact remains that current EURIBOR rates are indirectly reflected in the pricing of an EIRD through yield curves/expected future interest rates. The prices in the EIRD market, and the so-called yield curves which are modelled upon those prices and which in turn are used for the pricing and re-evaluation of EIRDs, are a reflection of current and expected future EURIBOR levels. Therefore, conduct aimed at influencing the EURIBOR, which is an element of the price of EIRDs, constitutes an infringement of Article 101(1)(a) of the Treaty.
- (412) The non-settling parties also contend that as the process of setting benchmark rates such as EURIBOR "*was never meant to be competitive*", as concluded by a US Court in 2013,<sup>457</sup> and that therefore the conduct described in recital (358) relating to the EURIBOR cannot amount to a restriction by object. Apart from the fact that this jurisprudence is not applicable in the Union, the judgement upon which the parties rely has been overturned in 2016 by the US Court of Appeals for the second circuit,<sup>458</sup> which found inter alia that "*LIBOR forms a component of the return from various LIBOR-denominated financial instruments, and the fixing of a component of price violates the [US] antitrust laws*". As regards the arguments of the banks that the rate setting was a "cooperative endeavour" and therefore not anti-competitive, the Appeals Court noted that "*The Banks were indeed engaged in a joint process, and that endeavour was governed by rules put in place to prevent collusion. But the crucial allegation is that the Banks circumvented the LIBOR-setting rules, and that joint process thus turned into collusion.*" Furthermore, the arguments of the non-settling parties fail to recognise that the horizontal arrangements found in the present case concern pricing components of EIRDs such as EURIBOR and that market players in the EIRD market compete for positive cash flows, not for EURIBOR submissions.

---

<sup>456</sup> Contribution to the European Commission Consultation Document on the Regulation of Indices, page 4. [http://ec.europa.eu/finance/consultations/2012/benchmarks/docs/contributions/registered-organisations/euribor-ebf\\_en.pdf](http://ec.europa.eu/finance/consultations/2012/benchmarks/docs/contributions/registered-organisations/euribor-ebf_en.pdf)

<sup>457</sup> [...]. In *Re: LIBOR-based Financial Instruments Antitrust Litigation*, 935 F. Supp. 2d 666 (S.D.N.Y. 2013 pp. 688-689).

<sup>458</sup> This is the decision of the United States Court of Appeals for the Second Circuit of 23 May 2016: *Ellen Gelboim et al v Bank of America Corp. et al in Re: LIBOR-based Financial Instruments Antitrust Litigation*, Case 13-3565, Document 617, 05/23/2016, 1777516. See, in particular, pages 20 and 31.

- (413) The non-settling parties argue that the Commission has not justified why the conduct which is the subject of the investigation is *"by its very nature, harmful to the proper functioning of normal competition"* or *"reveals a sufficient degree of harm to competition"*.<sup>459</sup> HSBC contend that information in relation to cash-flow components of EIRDs is unrelated to EIRD prices.<sup>460</sup> However, it is well established that the value of EIRDs and hence their price are estimated on the basis of the cash flows which they are likely to generate (see section 2.2.2). The information exchanged in the communications referred to in recital (358) concern pricing components of EIRDs. Crédit Agricole submit that the conduct in the present case is without precedent given the characteristics of the market, which include a) market players are buyers and sellers of the same product; b) any collusion may harm one market player and benefit another; c) *"the threat of a return to a balance of "level playing field" is not a retaliatory measure"* to an undertaking deviating from the collusion.<sup>461</sup> JPMorgan Chase also submits<sup>462</sup> that there is no guidance in the case-law on how to apply Article 101 of the Treaty to the present conduct.
- (414) The Commission rejects the arguments. The application of Article 101 of the Treaty to horizontal concerted practices related to pricing components is well documented. As to the characteristics referred to by Crédit Agricole, none of them refutes the fact that the arrangements described in this Decision have as their object the restriction or distortion of competition in the EIRD market. On the contrary, as already established in recital (411), EURIBOR is an element of the price of the EIRDs. Therefore, conduct aimed at influencing or knowing in advance where competitors should or intend to set this element of price constitutes a violation of Article 101(1)a of the Treaty. Further, since the EURIBOR influences the price of EIRDs, any manipulation of EURIBOR is price fixing.
- (415) Given that manipulating the EURIBOR influences the value of EIRDs currently held by the banks and their strategy related to these contracts, it is also a fixing of trading conditions within the meaning of Article 101(1)(a) of the Treaty, affecting the structure of competition.
- (416) JPMorgan Chase and HSBC claim that the Commission has incorrectly applied the criteria referred to in Case C-8/08 T-Mobile (*"the reduction or removal of uncertainty as to the operation on the market in question"*) to the object of the arrangements found in this Decision, and that in order to do so the Commission should take the characteristics of the market and of the products into consideration<sup>463</sup>. The characteristics of the EIRD market have been fully taken into account and are described in particular in Sections 2.2. of the SO and of this Decision. In addition, recitals (385) to (398) show in detail that the object of the arrangements by the non-settling parties was to prepare to collude on the EURIBOR and to remove or reduce the degree of uncertainty as to their dealings in the EIRD market. JPMorgan Chase in that respect rightly point out in their reply to the Statement of Objections that *"the*

---

<sup>459</sup> See Judgment of the Court of Justice of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13, paragraph 58. [...]

<sup>460</sup> [...].

<sup>461</sup> [...].

<sup>462</sup> [...].

<sup>463</sup> [...].

*lack of transparency is an important feature of the EIRD sector*"<sup>464</sup>. This confirms the Commission's view<sup>465</sup> and is an important market feature to be taken into consideration when assessing the criteria established in the case-law referred to.<sup>466</sup>

- (417) The non-settling parties submit that exchanges on trading positions and trading prices are incapable of restricting competition by object and have not been shown to do so by effect.<sup>467</sup> Crédit Agricole add that the alleged restriction referred to in recital 402 of the SO is too vague and general. JPMorgan Chase also contend that traders were "*forced to reveal their trading positions in order to be able to trade*", and contest that the disclosure of trading positions such as those mentioned in the SO would reveal any commercially sensitive information. HSBC argue that trading positions are similar to volumes in classic product markets and claim that there are no indications on how traders could restrict quantities in the EIRD market. The Commission rejects the arguments. As indicated in point (b) of recital (392) exchanges on trading positions referred to in point (b) of recital (358) served the objective of checking whether the parties' commercial interests were aligned before they could take further concerted action to influence the value of EIRDs to the detriment of competitors not part of the cartel. In the context of an EIRD market which was not transparent (see for instance recitals (45), (389) and (416)) sharing such information allowed the colluding parties to be more informed than other market participants.<sup>468</sup> In contrast to what JPMorgan Chase suggest, none of the exchanges mentioned in point (b) of recital (358) took place in the context of a discussion on a potential trade (see recital (390)). In addition, as the colluding parties were perceived to be among the most important market players in the trading of EIRDs (see recital (363)) information on their trading positions could not be ignored (see recitals (390) and (403)). Further, by sharing their trading positions and therefore, being able to adjust their own trading patterns, the colluding parties could influence the value of their portfolios, which in turn influenced the trading conditions within the meaning of Article 101(1)(a) of the Treaty and therefore affect the structure of competition in the EIRD market.
- (418) JPMorgan Chase argue<sup>469</sup> that a distinction should be made between exchanges of information on rate manipulation which "*have nothing to do with competition*" and exchanges of information which were "*somehow anti-competitive*" but in JPMorgan Chase's view do not concern the coordination and/or fixing of prices in the EIRD sector. The Commission rejects the argument. The distinction which JPMorgan Chase are trying to make is artificial, since as described in particular in recital (392) the different types of exchanges of information between the colluding parties shared the same objective of reducing the cash flows they would have to pay (or increasing those they would receive) to counterparties not involved in the arrangements.

---

<sup>464</sup> [...].

<sup>465</sup> See Section 2.2.4.3.

<sup>466</sup> See to that effect recital (389).

<sup>467</sup> [...] Crédit Agricole further claim it is involved in only three exchanges with [non-addressee] on trading positions, of which one outside the infringement period, while there are actually nine instances of such exchanges, on each of which Crédit Agricole has made observations: see recitals (189)-(191); (210), (213)-(216); (217)-(219); (224)-(226); (227)-(229); (278)-(282); (292)-(294); (304)-(307); (319)-(321).

<sup>468</sup> See also to that effect[...].

<sup>469</sup> [...].

(419) HSBC submit that the "mid" is a) not a parameter of competition, b) it is merely "the aggregate market view of the price at which the expected net present value of an EIRD is zero at inception", c) disclosing the mid "reveals nothing about the bid/ask spread that the traders will charge to clients around this mid" and that d) in any event competition is limited to setting the bid-ask spread. JPMorgan Chase add that the "mid" is even "not a tradable price".<sup>470</sup> None of these claims can be accepted. The "mid" is each trader's estimate for the actual price of the EIRD. HSBC has stated itself, in its reply to the request for information of August 2012, that the mid is "*the average price of a given financial instrument as perceived by a market participant*".<sup>471</sup> The claim that the mid would be a proxy and that the actual competition would take place on the bid/offer spread does not however mean that the mid is not a parameter that is relevant for competition. HSBC stated itself in its response to the SO that traders "*often trade at the mid*".<sup>472</sup> There are as many estimates of the mid as there are market players, as the mid represents an individual perception of the price, and therefore reveals a price intention. For instance, Crédit Agricole and [non-addressee] define the mid as the average of the bid and offer prices a trader would quote to his clients.<sup>473</sup> In this respect, [non-addressee] have stated that "*the revelation by a market maker to customers (or competitors legitimately acting as customers) of the price point which the market maker is genuinely willing to trade is a key feature of the derivatives market. Market makers must however refrain from seeking the help of competitors when pricing a deal with a third party and should not respond to any request from competitors to do so*".<sup>474</sup> Section 2.2 explains that the pricing of an EIRD has a direct link with expectations of future benchmark rates, which means that traders do not have identical mid prices at any given moment. If that was the case there would be no need to exchange such information. As noted in recital (34) the exchange of information about each others' mid prices assists competitors in calculating where each others' bid and offer prices are likely to be. Even HSBC states that the 'offer' price is typically set "*slightly above the mid*" and the 'bid' price is typically set "*slightly below the mid*"<sup>475</sup> and that changes in the mid "tend to result in a parallel change of both the bid and the offer",<sup>476</sup> therefore acknowledging that the mid is a close proxy to the price. However, the fact that market players might seek and compare information on mid prices<sup>477</sup> (in the same way that customers check price information in any market) in the context of discussions on potential transactions does not render the exchange of information on mid prices (outside such discussions by those competing for customer orders) either benign or beneficial.<sup>478</sup>

### ***Arguments concerning the legal characterisation of the arrangements***

---

470 [...].  
471 [...].  
472 [...].  
473 [...].  
474 [...].  
475 [...].  
476 [...].  
477 [...].  
478 [...].



- (420) The non-settling parties also argue that the Commission should have analysed the effects of the conduct, and maintain that this implies that the Commission has failed to prove that the conduct was a restriction of competition.
- (421) HSBC contend that the Commission has failed to make an assessment of the competitive context in the absence of collusion, which is in their view necessary according to their interpretation of the judgment in *Société Technique Minière*.<sup>479</sup> HSBC has however misinterpreted that judgment insofar as it is settled case-law that the examination of a hypothetical counterfactual scenario is not required in the context of establishing the existence of a restriction of competition by object.<sup>480</sup>
- (422) Crédit Agricole also claim<sup>481</sup> that the conduct in question cannot qualify as an infringement of Article 101 of the Treaty in the absence of an effects analysis because, in Crédit Agricole's view, there is no precedent which is applicable to this case. The Commission rejects the claims. As for the lack of established precedent, although restrictions by object may occur also in atypical cases,<sup>482</sup> in any kind of sector, in this case it is established that the collusive arrangements found concern the coordination and/or fixing of prices in the EIRD sector, which is not a new form of anticompetitive conduct. As to the absence of an analysis of the effects, it has been established that the bilateral pre-pricing communications which took place between the colluding parties had as their object the coordination and/or fixing of prices in the EIRD sector (see in particular section 5.1.2.2). It is also established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101 of the Treaty, to prove that they have actual effects on the market.<sup>483</sup>
- (423) HSBC also assert that "*manipulations of Euribor submissions could only potentially affect or be expected to affect the level of Euribor at most by a very small amount*". HSBC thereby suggests that the potential harm, taken at its highest, would have no appreciable effect on competition, and Crédit Agricole and JPMorgan Chase make a very similar argument.<sup>484</sup> It is settled case-law that an agreement that may affect trade between Member States and that has an anti-competitive object constitutes an appreciable restriction on competition, independently of any concrete effect that it may have.<sup>485</sup> As indicated in recitals (384) to (396), the arrangements found in this Decision have as their object the coordination and/or fixing of prices and other

---

<sup>479</sup> [...] See Judgment of the Court of Justice of 30 June 1966, *Société Technique Minière*, C-56/65.

<sup>480</sup> See Judgment of the General Court of 12 December 2014, *Repsol v Commission*, T-562/08, paragraph 264; Judgment of the General Court of 8 September 2016, *Lundbeck v Commission*, T-472/13, paragraph 473.

<sup>481</sup> [...].

<sup>482</sup> See Judgment of the General Court of 10 December 2014, *Ordre national des pharmaciens v Commission*, T-90/11, ECLI:EU:T:2014:1049, paragraphs 304-322 and 312 in particular.

<sup>483</sup> See Judgment of the Court of Justice of 19 March 2015 *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, paragraph 115; See also Judgment of the Court of Justice of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13, paragraph 51; and Judgment of the Court of Justice of 30 January 1985, *Clair*, 123/83, ECLI:EU:C:1985:33, paragraph 22.

<sup>484</sup> [...].

<sup>485</sup> See Judgment of the Court of Justice of 13 December 2012, *Expedia Inc*, C-226/11, ECLI:EU:C:2012:795, paragraph 37.

trading conditions in the EIRD sector and are likely to have an appreciable effect upon trade between Member States and /or between Contracting Parties of the EEA agreement (see Section 5.2).

- (424) Moreover, as mentioned in recital (361), even small incremental changes in the benchmark rates resulting from the cartel activity inevitably had a considerable impact, firstly owing to the very high notional amounts of EIRD portfolios affected and secondly, because these benchmark rates serve as uniform market prices which apply to all participants in the EIRD market. In addition, the evidence in the case file shows that the collusive arrangements were implemented and had the desired effects for the parties involved (see Section 5.1.4).
- (425) Finally, the Commission finds that the parties' behaviour is harmful "by its very nature" and "reveals a sufficient degree of harm" to the extent that this behaviour involved the fixing of pricing components of EIRDs and related exchanges of information, being practices which are considered so likely to be harmful that it may be considered redundant to prove their negative effect. In addition, such conduct was also harmful to "competition as such", that is to say competition as a process.<sup>486</sup>
- (426) Crédit Agricole submit that the Commission must take into account the intentions of the parties in its assessment of the anti-competitive character of the collusive arrangements in this case.<sup>487</sup> However, it is settled case-law that the intention of the parties does not constitute a necessary factor in determining the restrictive character of an agreement and that an agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives.<sup>488</sup> Moreover, it follows from the structure of the contacts and from the subject matter of the exchanges (namely pricing components), described in section 4 and referred to in recital (358), that the parties intended to engage in anticompetitive behaviour as they, amongst others, tried actively to align their trading positions and/or their banks' future EURIBOR submissions and to monitor the results of their actions. It should be added that it is rarely the case that an undertaking's representative engages in collusive behaviour with a mandate to commit an infringement.<sup>489</sup>
- (427) The non-settling parties submit that the Commission has failed to show that the "alleged conspiracy" was implemented, and that in their view no statement to that effect should be included in any decision in this matter.<sup>490</sup> Even though there is clear

---

<sup>486</sup> Judgment of the Court of Justice of 19 March 2015 *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraph 125; Judgment of the Court of Justice of 4 June 2009, *T-Mobile Netherlands and others v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, ECLI:EU:C:2009:343, paragraph 38.

<sup>487</sup> [...] Crédit Agricole make reference to the Judgment of the Court of Justice of 8 November 1983, *NV IAZ International Belgium and others v Commission*, Joined cases 96-102, 104, 105, 108 and 110/82, ECLI:EU:C:1983:310, paragraphs 23-25.

<sup>488</sup> See Judgment of the Court of Justice of 6 October 2009, *GlaxoSmithKline Services e.a. v Commission*, Joint Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, ECLI:EU:C:2009:610, paragraph 58; See also Judgment of the Court of Justice of 20 November 2008, *Beef Industry Develo[...]ent Society and Barry Brothers*, C-209/07, paragraph 21.

<sup>489</sup> See Judgment of the Court of Justice of 7 February 2013, *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, C-68/12, ECLI:EU:C:2013:71, paragraphs 26-28.

<sup>490</sup> [...].

evidence of implementation (see section 5.1.4), this is not required to qualify the arrangements concerned with this Decision as being anticompetitive by object.

### *Arguments concerning the legal and economic context*

- (428) As another argument for contending that the arrangements described do not amount to price fixing practices that restrict competition, HSBC and Crédit Agricole claim that competition between market players only takes place with regard to the bid-ask spread.<sup>491</sup> However, as already explained in section 2.2 and in recital (419), a key pricing component for over the counter EIRDs in market transactions is the "mid" which defines for each trader their estimate of the value of an EIRD. The bid/ask trading price which traders quote is defined by reference to the "mid". As EIRDs are bespoke and prices in these markets change constantly, there is no single manner in which a "mid" is calculated and there are as many estimates of the mid as there are market players (see recital (402)) in an over the counter EIRD market that is far from transparent.<sup>492</sup> It follows that competition between market players does not only take place with regard to how wide the bid-ask spread (expressed in basis points of interest rate) may be but also with regard to the level of the "mid" on the basis of which the bid/ask quote is defined.
- (429) The non-settling parties further state that the collusive exchanges of information could not be used by the traders involved either because: a) over the counter EIRDs "are not the object of any future transaction on a market"; or b) a manipulation of the EURIBOR allows traders to benefit from enhanced cash-flows but only "after competition had taken place"; or c) information exchanges on prices could not even give them "a sense of whether prices might fluctuate".<sup>493</sup> None of these claims can be sustained. Firstly, as already stated in recitals (14) and (408) a trader can at any time enter into a new over the counter EIRD trade with another market player (counterparty) to sell part or all of the obligations that the trader has under an EIRD to this other market participant (for instance, the obligation to pay instead of receiving EURIBOR on a specific notional amount).<sup>494</sup> Secondly, the argument that competition for EIRDs only takes place at certain moments in time and that "competition does not take place at the stage of determining the floating interest rate",<sup>495</sup> is unfounded. Traders in the EIRD market compete for positive cash-flows which are determined by the level of the applicable benchmark rate. Such competition takes place at any point in time and as recalled in recital (408) the facts of this case prove that market players did conclude transactions between attempts to manipulate benchmarks and/or their awareness of those attempts and the time of the actual fixing. Thirdly, concerning the relative value of the information exchanges referred to in point (g) of recital (358), it has been explained in greater detail in recitals (401)-(402) that in the context of a non-transparent over the counter market which all parties agree on (see recital (46)) exchanges on pricing intentions outside

---

<sup>491</sup> [...].

<sup>492</sup> See Section 2.2.4.3. and Recital (416).

<sup>493</sup> [...].

<sup>494</sup> Crédit Agricole make contradictory statements: they claim that there is no market for OTC EIRDs but they also state that they are active in the EIRD interbank market (i.e. OTC) and that the interbank market accounts for "the vast majority" of EIRD transactions [...].

<sup>495</sup> [...].

of the scope of approaches for potential transactions were valuable to traders (see also recital (395)). The exchange of sensitive information that characterised the infringement was between a subset of highly significant players in the over the counter EIRD market and can be viewed as being able to reduce competition in the sector. Furthermore, as [non-addressee] have stated<sup>496</sup> *"If information exchanges are limited to a sub-group of market makers, their actions would still have the potential to reduce competition. Pricing in OTC derivatives is bespoke. At each point in time, for every order, a price is determined. There are a certain number of market makers in each market and customers typically request quotes from a subset"*.

- (430) JPMorgan Chase further submits that the SO fails to identify properly which benchmark rates are said to be the subject of the infringement.<sup>497</sup> However, the SO states clearly that the collusive arrangements *"concern the coordination and/or the fixing of prices in the EIRD sector"*, not just a benchmark rate in particular, and the practices concerned by this Decision affected all EIRDs priced by reference to EURIBOR and/or EONIA. Isolating particular tenors would be a serious underestimation of the affected product scope. In addition, JPMorgan Chase did not point to any potential market segmentation of EIRDs by benchmark tenor in its Response to the SO nor in any of its replies to requests for information by the Commission.<sup>498</sup> Furthermore, JPMorgan Chase and other parties have confirmed that changes in the level of EURIBOR fixings of a specific tenor (for example 3 months) are likely to impact the level of other tenors (for example 6 months)<sup>499</sup> and that the yield curves used by traders for the pricing of EIRDs are generally based on the EURIBOR fixings for the short end. Therefore, any EURIBOR tenor is a price component of any EURIBOR-based EIRD.<sup>500</sup>
- (431) The non-settling parties contend<sup>501</sup> that certain characteristics of the EIRD market including its *"fast-moving and transitory"* nature imply that collusion could only arise with frequent communication on specific details of individual trades, such as precise information on future individual transactions. This restates the argument that the information exchanged was too general, too old or too vague for being commercially sensitive, or, on the other hand, too specific to be characterised as sensitive to competition in a wider sense. However, as already indicated in recitals (400) to (402) the information exchanged on transaction data (prices and volumes) for most over the counter EIRDs was not publicly available and accurate pieces of information were valuable information to traders (see for example the exchange at recital (235) in which the [non-addressee] trader states that keeping prices secret is the secret to profitability). There are numerous examples in the case file in which traders state that they use the pricing information of other traders to adjust their own pricing curves or show great surprise when they learn about the actual pricing of other competitors (see in particular recitals (401) and (402)). Sharing such information on EIRD prices and volumes between a limited number of traders is thus

---

496 [...].

497 [...].

498 [...] As indicated in recital (27), the EONIA can be seen as a "1 day EURIBOR rate.

499 [...].

500 [...] *"Les taux des fixings Euribor 3 mois et Euribor 6 mois sont des inputs pour le pricing des swaps 2 ans et au-delà"*.

501 [...].

sensitive from the point of view of competition. The exchange of such information aims at and has the potential to reduce competition.

#### 5.1.2.4. Conclusion

(432) For these reasons, the conduct described in recital (358) qualifies as price-fixing with the object to restrict and/or distort competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

#### 5.1.3. *Single and continuous infringement*

##### 5.1.3.1. Principles

(433) An infringement of Article 101 of the Treaty may result not only from an isolated act but also from a series of acts or from a continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves and taken in isolation an infringement of Article 101 of the Treaty.<sup>502</sup>

(434) According to settled case-law, the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by several undertakings, which are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged.<sup>503</sup>

(435) When the different actions form part of an overall plan, because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.<sup>504</sup>

(436) 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.<sup>505</sup>

(437) An undertaking which has participated in a single and complex infringement through its own conduct, which met the definition of an agreement or concerted practice

---

<sup>502</sup> See Judgment of the Court of Justice of 7 January 2004, *Aalborg Portland and others v Commission*, Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, paragraph 258.

<sup>503</sup> See Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraph 79.

<sup>504</sup> See Judgment of the Court of Justice of 7 January 2004, *Aalborg Portland and others v Commission*, Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, paragraph 258. See also Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraph 81; Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, ECLI:EU:C:2012:778, paragraph 41 and Judgment of the Court of Justice of 24 June 2015, *Del Monte v Commission*, Joined Cases C-293/13 P and C-294/13 P, ECLI:EU:C:2015:416, paragraph 156.

<sup>505</sup> See Judgment of the General Court of 17 December 1991, *Enichem Anic v Commission*, T-6/89, ECLI:EU:T:1991:74, paragraph 204, which was upheld in the Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraph 82.

having an anti-competitive object within the meaning of Article 101(1) of the Treaty and was intended to help bring about the infringement as a whole, may also be responsible for the conduct of other undertakings followed in the context of the same infringement throughout the period of its participation in the infringement.<sup>506</sup> That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk.<sup>507</sup>

- (438) An undertaking may thus have participated directly in all the forms of anti-competitive conduct comprising the single and continuous infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole.<sup>508</sup>
- (439) Equally, the undertaking may have participated directly in only some of the forms of anti-competitive conduct comprising the single and continuous infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such cases, the Commission is also entitled to attribute liability to that undertaking in relation to all the forms of anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole.<sup>509</sup>
- (440) The fact that the undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it of responsibility for the infringement of Article 101(1) of the Treaty. Although a cartel is a joint enterprise, each participant in the arrangement may play its own particular role. Internal conflicts, rivalries or even cheating may occur, but will not, however, prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 101 of the Treaty where there is a single common and continuing objective. Such a circumstance may nevertheless be taken into account when assessing the seriousness of the infringement which it is found to have committed.
- (441) Such a conclusion is not at odds with the principle that responsibility for such infringements is personal in nature, nor does it neglect individual analysis of the

---

<sup>506</sup> See Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraph 203.

<sup>507</sup> See Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraphs 87 and 203, and Judgment of the Court of Justice of 7 January 2004, *Aalborg Portland and Others v Commission*, paragraph 83; Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, ECLI:EU:C:2012:778, paragraph 42; and Judgment of the Court of Justice of 24 June 2015, *Del Monte v Commission*, Joined Cases C-293/13 P and C-294/13 P, ECLI:EU:C:2015:416, paragraph 157.

<sup>508</sup> Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens*, , C-441/11 P, paragraph 43; and Judgment of the Court of Justice of 24 June 2015, *Del Monte v Commission*, Joined Cases C-293/13 P and C-294/13 P, paragraph 158.

<sup>509</sup> Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens*, , C-441/11 P, paragraph 43; and Judgment of the Court of Justice of 24 June 2015, *Del Monte v Commission*, Joined Cases C-293/13 P and C-294/13 P, paragraph 158.

evidence adduced, in disregard of the applicable rules of evidence, or infringe the rights of defence of the undertakings involved.<sup>510</sup>

#### 5.1.3.2. Application to this case

- (442) On the basis of the facts described in Section 4 and referred to in recital (392), any one of the aspects of the conduct or each set of bilateral contacts has as its object the restriction of competition and therefore constitutes an infringement of Article 101(1) of the Treaty (see also Sections 5.1.1 and 5.1.2). However, the facts described in Section 4 and referred to in recital (392) also constitute a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement for which all the non-settling parties are responsible given a) the overall plan in pursuit of a single anti-competitive aim of the participants, b) the fact that the non-settling parties intentionally or negligently contributed to that single aim and c) the parties were aware of the unlawful conduct planned or put into effect by other undertakings in pursuit of that same objective or that they could reasonably have foreseen it and that they were prepared to take the risk.<sup>511</sup>
- (443) Whilst each of the practices referred to in recital (358), taken individually and in context, concern the coordination and/or fixing of pricing components in the EIRD sector (see recital (393)), when they are taken together they constitute a coherent set of measures which are complementary in nature, whose purpose is to implement a single objective shared by all addressees combining their individual efforts to restrict or distort competition for EIRDs. There has been continuity of that same objective and of the cartel's key features throughout the entire period of the infringement. Through their interactions, the parties' conduct contributed to the realisation of the set of anti-competitive results intended by them, within the framework of the overall plan having a single aim.<sup>512</sup> 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.<sup>513</sup> It is apparent from the evidence in the case file (see recital (358)) and from the fact that the group of colluding traders was stable during the period of their involvement and from the overlapping topics of the exchanges (see recital (456)) that their participation in the scheme was continuous. In addition, it follows from the structure

---

<sup>510</sup> See Judgment of the General Court of 12 December 2007, *BASF and UCB v Commission*, Joined Cases T-101/05 and T-111/05, ECLI:EU:T:2007:380, paragraph 160; See also Judgment of the General Court of 15 July 2015, *Siderurgica Latina Martin SpA and others vs Commission*, T-389/10 and T 419/10, ECLI:EU:T:2015:513, paragraph 299; and Judgment of the General Court of 2 February 2012, *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals GmbH v Commission*, Case T-83/08, paragraphs 247-248.

<sup>511</sup> See Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens NV*, C-441/11 P, paragraph 44; Judgment of the Court of Justice of 4 July 2013, *Commission v Aalberts Industries and Others*, C-287/11 P, ECLI:EU:C:2013:445, paragraph 65; Judgment of the General Court of 10 October 2014, *Soliver v Commission*, T-68/09, ECLI:EU:T:2014:867, paragraphs 108-112.

<sup>512</sup> See Judgment of the General Court of 12 December 2007, *BASF and UCB v Commission*, Joined Cases T-101/05 and T-111/05, paragraphs 179 to 181.

<sup>513</sup> See Judgment of the General Court of 24 October 1991, *Rhône-Poulenc v Commission*, T-1/89, paragraphs 125-126; Judgment of the General Court of 17 December 1991, *Enichem Anic v Commission*, T-6/89, paragraph 204, as upheld by the Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraph 82.

of the contacts and of the subject matter of the exchanges (pricing components) that the non-settling parties intended to contribute to the collusive scheme.<sup>514</sup> Finally, in view of the evidence in the case file and of the intrinsic features of the collusive arrangements (in particular the fact that the degree of success of the collusive arrangements on future EURIBOR submissions increased with the number of banks involved on a specific day (see recitals (406) and (457) to (462)), the individuals involved, active and experienced traders, were aware of the other unlawful conduct either planned or put into effect by the other participants in the cartel in pursuit of that aim, or at the very least should have been aware and were prepared to take the risk.

(a) *Single economic aim*

- (444) The non-settling parties engaged frequently (see recital (358)) with the settling parties in contacts that pursued an identical anti-competitive aim and that were linked and complementary.<sup>515</sup> They were linked to each other by their subject-matter and timing (such as the fixing of a high 6 month EURIBOR on 5 December 2006 and the trader's trading positions, see recital (224)), through explicit or implicit references to each other (such as the fact that [non-addressees] were also contacted for the 2007 March IMM scheme, see recitals (271) ,(278)) or by the transmission of information received (such as the stance of the banks' submitters on the 1 month Euribor on 8, 10 and 13 November 2006 - see recitals (205), (209), (210)). The links materialised on the same day or over a longer period of time (see for instance the exchanges on 27 September, 4, 10, 13 and 16 October 2006 which all related to the fixing of the 3 months EURIBOR on the October IMM date).<sup>516</sup>
- (445) Regarding the single economic aim, the parties engaged in different types of exchanges of information described in recital (358) which all shared the same objective to reduce the cash flows they would have to pay (or increase those they would receive) and thereby to increase the value of the EIRDs they had in their portfolio, to the detriment of the counterparties to these EIRDs. As it is the difference between the fixed rate and the floating rate that determines if a profit or loss is made on an EIRD contract, competition can be restricted or distorted by colluding on one or both components of the price. As explained in recitals (392) to (393) and (444) the various types of information exchanged were linked and complementary and ultimately concerned price setting factors such as EURIBOR, which is one of the components that is relevant for the setting of trading prices for EIRDs. The colluding parties thereby aimed to reduce uncertainty that would otherwise have prevailed in the EIRD market.
- (446) The parties clearly adhered to a common strategy which limited their individual commercial conduct by determining the course of their mutual action or abstention from action in the market. The cartel participants therefore knowingly replaced

---

<sup>514</sup> See Judgment of the Court of Justice of 7 February 2013, *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, C-68/12, ECLI:EU:C:2013:71, paragraphs 26-28.

<sup>515</sup> See Judgment of the General Court of 14 March 2013, *Fresh Del Monte Produce v Commission*, T-587/08, paragraph 593. See in particular recital (392) for the links between the different pieces of information exchanged.

<sup>516</sup> Recitals (160), (177), (183), (187), (188), (189). See also recitals (122)- (124) on the length of some exchanges over the same topic.



competition between themselves with cooperation. In the absence of this coordination, the conduct of the parties in the market would have been different. Through their practices, the non-settling parties together with the settling parties revealed to each other information about fundamental aspects of their strategy and conduct on the market, hence significantly reducing the inherent uncertainty in a market where risk (and uncertainty) management is one of the key parameters of competition. As a result, they were competing for EIRD contracts armed with the knowledge of their perceived ability to influence the EURIBOR rate or quote prices to non-colluding banks, or decide on a trading strategy in accordance with their preferences, their respective strategies, trading positions/exposures. They were also aware of the same information and assumptions as to where the EURIBOR would be set or was intended to be set and the level of its artificiality at given times. This inevitably led to the restriction and/or distortion of competition in the EIRD market compared to the situation that would have prevailed in the absence of collusion.

- (447) The contacts between the cartel participants referred to in recital (358) and described in detail in section 4 were regular and repetitive, both in terms of their content and timing, which also underlines the continuous nature of the conduct and that the parties pursued a single anticompetitive objective. In particular, the link and complementarity of the contacts between the various parties is shown by the stable group of individuals employed by the parties that were involved in the anti-competitive activities, the identical or, at least, comparable patterns followed in the parties' various collusive contacts, the timing of the contacts and the overlapping content of contacts that happened in close proximity in time.<sup>517</sup>
- (448) The discussions in question related to pricing components relevant for cash-flows of EIRDs and/or to the trading prices of the EIRDs. Both are closely interdependent given that the development of pricing components of EIRDs also influences the trading conditions under which EIRDs can be traded within the meaning of Article 101(1) of the Treaty, thereby affecting the structure of competition in the EIRD market. As indicated in recitals (122) to (124), whilst on occasions the collusive contacts sought an immediate benefit, other collusive exchanges were discussed weeks or even months in advance, such as the collusive scheme on the March 2007 IMM date. This was necessary in this case as they were consciously operating a scheme against the market trends. In many other cases, the traders were having anticompetitive discussions in which they verified each other's trading positions in relation to specific benchmark tenors, while the exact composition of the trading portfolio was not disclosed. Nevertheless, knowledge about these trading positions and the numerous other bilateral discussions about rate manipulation, rate developments, trading strategies and trading prices enabled the competitors to anticipate (hedge or align) and/or coordinate their behaviour in the EIRD market (for details see section 5.1.2).
- (449) The purpose of the parties' discussions was to facilitate their trading at the expense of other market participants by reducing the uncertainty about conditions and developments in the market and reducing the colluding banks' usual market risks, and these exchanges between competitors could not be justified by a need for "*increased*

---

<sup>517</sup> See Judgment of the General Court of 14 March 2013, *Fresh Del Monte Produce v Commission*, T-587/08, paragraphs 358, 362, 367, 564, 576 or 594.

*transparency*" (see recital (131) and Section 5.1.2). For this purpose, the parties were willing to share information and/or coordinate on various topics that would reduce market risks affecting their trading positions. The Commission concludes on this basis and on the basis of the body of evidence referred to in recital (358) that during the period of the infringement the colluding individuals viewed the different types of collusive behaviour as being a global plan to improve their banks' current and future trading positions.

- (450) The single economic aim of colluding on pricing components of EIRDs was pursued by all parties and each knew or should have known in principle that other parties were also pursuing the same single economic aim. The fact that Crédit Agricole, HSBC and JPMorgan Chase pursued the single economic aim as defined above is corroborated by recitals (457) to (484).

*(b) Common pattern of behaviour*

- (451) Firstly, regarding the stable group of individuals involved in the cartel, the cartel was controlled and maintained by a trader at [non-addressee] ([employee of non-addressee]), who maintained contacts with the trader at JPMorgan Chase [...], and a trader at [non-addressee] and later at [non-addressee] ([employee of non-addressee]), who maintained contacts with a stable group of traders from [non-addressee], Crédit Agricole and HSBC. When [employee of non-addressee] changed to [non-addressee], he continued to maintain contacts with individuals at [non-addressee], his former employer. This stable group of traders involved a wider circle of employees at their respective banks. Whilst this group of traders organised the cartel, a larger circle of individuals in different banks comprising both traders and submitters contributed to the activities that comprised the cartel.
- (452) The parties followed a very similar pattern in their anti-competitive activities, although as will be described, every party participated in different instances of the collusion and the configuration of participants and the intensity of the collusive contacts varied over the period of the infringement.
- (453) The cartel contacts were often initiated by [employee of non-addressee] or by [employee of non-addressee] who regularly contacted traders at [non-addressee], Crédit Agricole, JPMorgan Chase and HSBC to see whether they could contribute to the collusive scheme. The fact that there were particular affinities which explain why some traders were (were not) in contact with others,<sup>518</sup> does not detract from the closely interwoven network of contacts, with a common goal. These contacts continued after [employee of non-addressee] had left [non-addressee] to [non-addressee] in a similar manner. Although [non-addressee] and [non-addressee] had often initiated the contacts, all the other parties engaged without any hesitation in these discussions and, on occasion, even initiated them themselves (see recitals (170), (208), (217) and (292)).
- (454) The non-settling parties regularly exchanged on several of the types of information exchanges referred to in recital (358) during the period of their respective

---

<sup>518</sup> See for instance recitals (117)-(120) and (209): [employee of non-addressee] usually contacted certain traders at [non-addressee][non-addressee][non-addressee], Crédit Agricole and HSBC because they did not like [employee of non-addressee] and [employee of non-addressee] usually called his particular "amigo" [employee of JPMorgan Chase].

involvement, and the different bilateral contacts between the non-settling parties and the settling parties often took place in parallel or in close proximity in time to each other. The non-settling parties ensured that their discussions took consistently place with a view to their upcoming EIRD fixings (see recitals (122) to (124)). The routine nature of the language used in the discussions between and within the colluding banks about the manipulations of EURIBOR rates and the discussions on trading positions/exposures, pricing intentions and individual deals with third parties demonstrates that such discussions were commonly used by the individuals participating in the cartel and nothing uncommon in their professional environment.

- (455) In addition, the parties regularly took precautions to conceal their cartel contacts. The traders involved in the cartel regularly reminded each other of the need to keep their activities secret and often promised to adhere to such a request (see recital (360)).
- (456) The various discussions between the parties covered the same, or overlapping topics and had therefore the same or almost the same content. On numerous occasions, different banks exchanged over the same period on information such as described in recital (358) and related to the same pricing components for EIRDs. For example, exchanges concerning interests in high 3 months EURIBOR fixings took place from 27 September to 2 October 2006 (see recitals (160), (165), (174) and (177)); exchanges concerning preferences for a high 1 month EURIBOR fixing on the October IMM date (16 October) took place from 4 October until 16 October 2006 (see recitals (177), (183) and (189)); exchanges relating to interests in low 1 month EURIBOR fixings took place in the period from 26 October until 8 November 2006 (see recitals (197), (201), (203), (204) and (205)); exchanges on preferences for a low 1 month EURIBOR fixing on the November IMM date (13 November) took place on 10 and 13 November 2006 (see recitals (209) and (210)); exchanges relating to the 2007 March IMM scheme took place from at least 1 February until 19 March 2007 (the March IMM date) (see recitals (257), (262) to (264), (268) to (270), (271) to (275), (278) to (282), (289) to (291), and (302) to (332)). These examples clearly show that the non-settling parties followed a very similar pattern in their anti-competitive behaviour. It is within this overall context of continuous, systematic pattern of contacts that all instances of anti-competitive conduct of the parties should be analysed and assessed and not through the prism of unrelated, *ad hoc* or isolated acts as the parties are attempting to artificially classify the behaviour which is the object of the current investigation.<sup>519</sup>

(c) *Awareness*

- (457) In the present case it is clear from the evidence in the case file that the traders participating in the anti-competitive exchanges were skilled professionals and knew

---

<sup>519</sup> See Judgment of the General Court of 17 May 2013, *Trelleborg v Commission*, joined cases T-147/09 and T-148/09, ECLI:EU:T:2013:259, paragraphs 51-52; Judgment of the Court of Justice of 7 January 2004, *Aalborg Portland and others v Commission*, Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, paragraphs 55-57; Judgment of the Court of Justice of 25 January 2007, *Sumitomo Metal Industries, and Nippon Steel v Commission*, Joined Cases C-403/04 P and C-405/04 P, paragraph 51.

or should have been aware of the general scope and the essential characteristics of the cartel as a whole.<sup>520</sup>

- (458) Firstly, the collusion between banks took place in a very specific context where the traders are recorded and controlled; the contacts are exclusively bilateral; the traders use covert language; and the same traders contact each other on a regular basis, always for the same type of operations.
- (459) Secondly, through their bilateral contacts, the traders involved in the arrangements were aware that traders in [non-addressees] were ready to engage in the same type of collusive behaviour concerning pricing components and other trading conditions of EIRDs. In the context of these exchanges, the traders were made aware of the general scope and characteristics of the scheme, and of the fact that several banks were involved as explained in recitals (460)-(464). Any lack of awareness by the parties at most extended to certain contacts between other participants, rather than a lack of awareness of the type of behaviour involved or of the aim of such collusive behaviour.
- (460) Thirdly, the evidence shows a **wide-spread general awareness** among market players in the EIRD sector of the fact that the mechanism of the benchmark rate setting (in particular the EURIBOR) was declaratory,<sup>521</sup> and therefore that the submissions were likely to be shifted by panel banks depending on their interests at the time of the submission.<sup>522</sup>
- (461) Against this background and when engaging in exchanges such as those set out in recital (358), traders of the non-settling parties could not ignore a central feature of the common plan of the collusive arrangements in the present case, which is that if more banks changed their submissions on the same day and for the same EURIBOR tenor, the potential impact on the interest benchmark rate would increase in proportion to the number of banks involved. Indeed, as also explained in recitals (22) and (406) each bank's submission has the same weight in the calculation of the benchmark.<sup>523</sup> Thus, the level of success of the collusive arrangements would depend to a great extent on the involvement of more banks in the scheme, and on the alignment of the trading interests of the banks on any specific day (their trading interests needed to be at least not opposing).<sup>524</sup> This is why, as already explained in

---

<sup>520</sup> See Judgment of the Court of Justice of 28 June 2005, *Dansk Rørindustri and others v Commission*, C-189/02, C-202/02, C-205/02 to C-208/02 and C-213/02, ECLI:EU:C:2005:408, paragraph 219.

<sup>521</sup> [...] in these internal e-mails of June 2007 it is stated "*The EURIBOR fixing is declaratory and therefore likely to be shifted depending on the interests at the stage of the submission (...) The 3 month EONIA always trades with large volumes. The 5.5 spread is a historic spread which is commonly used, it is not frozen (...) if an important market player builds up large very large trading positions on these dates (which are very liquid and therefore allow such an accumulation) it risks facing a large number of submitters who have an interest in a more favourable fixing. This is maybe what happened last time*".[...].

<sup>522</sup> As already explained in recital (406) just one bank was capable of moving the EURIBOR rate by changing its own submission by a few basis points.

<sup>523</sup> Provided of course the submission of a bank would remain within the 70% of submissions which are taken into account for the calculation of the benchmark, as explained in the recitals mentioned.

<sup>524</sup> The reaction of [employee of HSBC] on 12 February 2007 to [employee of non-addressee] claim that "we" plan to bring the spread between the 3 months EURIBOR and 3 months EONIA on 19 March 2007 from 6 to 4 basis points is in this respect quite telling. [employee of HSBC] asks if [employee of non-addressee] knows half of the EURIBOR submitters (see recital (271)).

recitals (135) and (456) some of the discussions between the traders would take place days, weeks or even months in advance, in order to allow the traders to align or adjust their trading positions. In view of the very large volumes of EIRD contracts which had a fixing on IMM dates (in particular the 2007 March IMM date), the conclusions drawn are even more relevant for the general awareness of the seasoned traders involved in the collusion.

- (462) It follows from the above that the traders of the non-settling parties were aware or at the very least should have been aware of this central feature of the common plan, which is that several banks were likely to be involved in the collusive arrangements and that these arrangements would go beyond bilateral agreements, irrespective of whether the respective traders were explicitly made aware by another cartel participant that other specific banks were also involved in the common plan. In view of the manner in which the cartel functioned, being aware of the names and the exact number of the [non-addressees] involved was not relevant.<sup>525</sup>
- (463) Fourthly, in the period under consideration the traders of the non-settling parties had been active in the EIRD sector for many years and colluded with others banks which were amongst the largest market players in the sector. Each of them engaged in various forms of anticompetitive conduct described in recital (358) and their employees did not show any surprise when they were asked by another party to act in concert. Each of the traders involved in the cartel also had a good understanding of the strength of the network behind the trader that engaged in anticompetitive discussions with them (see, for example recitals (278) and (328)).
- (464) For these reasons and the additional reasons set out below in relation to each of the non-settling parties, the Commission concludes that each of them was aware or could reasonably have foreseen that several other panel banks were involved in the collusive scheme and were prepared to accept that risk. Therefore, even if it could not be proven that a non-settling party actually participated in all aspects of the cartel, it can nevertheless be held responsible for the actual conduct engaged in, in that context, of the other undertakings as part of a single infringement in which it participated and to which it contributed.<sup>526</sup>
- (465) Finally, due to regulatory requirements and the very high sums at stake, the banking industry as a whole, and in particular any activity related to the international financial markets, is characterised by a high level of recording and supervision of individual employees which, compared to other industries, considerably facilitates the detection of illicit behaviour by its employees, if a bank so wishes. Given this context and for the purposes of Union competition law, [...] management are considered to have been aware of or at least, should have been aware of, of the essential characteristics of the collusive scheme and their employees' involvement in it. In addition, owing to the precautions which the traders would take to conceal their arrangements in this environment (the exchanges were exclusively of a bilateral nature), the Commission has to take this environment into account when establishing the existence of a single and continuous infringement.

---

<sup>525</sup> See section 2.2.3.1 and recital (406).

<sup>526</sup> See Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, paragraph 207.

- (466) A series of factors in addition to those already mentioned show that **Crédit Agricole was aware** of the general scope and essential characteristics of the infringement and was at the very least able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and it was prepared to take the risk. At least two market making traders of Crédit Agricole ([employee of Credit Agricole] and [employee of Crédit Agricole]) in the EIRD market had collusive contacts with [employee of non-addressee] of [non-addressee], who was heavily involved in the collusive practices through his contacts with various [non-addressees] (see recital (358)). The routine nature of the communications indicates that such communications between the traders were not unusual or uncommon and reveals that Crédit Agricole must have been generally aware of the anticompetitive context of the contacts. This awareness of being part of an anticompetitive scheme is also confirmed by the fact that Crédit Agricole tried to keep the discussions secret.<sup>527</sup>
- (467) Moreover, there were instances where it was pointed out explicitly to Crédit Agricole that the discussions between [non-addressee] and them were wider than bilateral. On 16 October 2006 (see recital (189)), [employee of non-addressee] sends a message to [employee of Credit Agricole] asking whether he has access to his treasury desk to ask for high or low submissions. [employee of Credit Agricole] replies that this is conceivable, but questions what would be the benefit for him. [employee of non-addressee] replies: "*What you want. The right to ask me for fixings where you want and when you need it.*" After [employee of Credit Agricole] agrees to [non-addressee]' request, [employee of non-addressee] thanks him stating that [non-addressees] were involved ("*If certain friends were not there, I have at least 4 banks against me*"). From this exchange the Crédit Agricole trader can reasonably conclude that [employee of non-addressee] is likely to ask several [non-addressees] for low or high fixings depending on their trading positions, on a regular basis, whenever he has such a need (when he has fixings). On 14 February 2007 (see recital (278)), [employee of non-addressee] explains to [employee of Crédit Agricole] that he plans to involve four to five banks in the scheme to narrow the spread between the EURIBOR and the EONIA on the March 2007 IMM date, and to reinforce his argument mentions that [employee of non-addressee] has a trading position with a fixing on that date twice the size of his own. To allay [employee of Crédit Agricole]'s concerns that the scheme may not work, [employee of non-addressee] insists that the treasury departments of several banks should be involved. [employee of non-addressee] explains in reference to the scheme planned for the March IMM date that "*The treasury from [non-addressee], they're in on it*".
- (468) These instances further show that Crédit Agricole had or should have had a precise idea of the effects that [employee of non-addressee]'s network would be able to create in the EIRD market. It should be recalled that in the telephone call between [non-addressee] and HSBC referred to in recital (328) these parties were convinced that, if a market player was not part of the March 2007 IMM collusive scheme, that market player would be a victim even if he were the best trader in the world.
- (469) Crédit Agricole claims in its Response to the Statement of Objections<sup>528</sup> that its traders were unaware of the existence of a global scheme and that no Crédit Agricole

---

<sup>527</sup> See recitals (189), (278) and (319).

<sup>528</sup> [...].

trader knew or could reasonably be expected to guess either that their discussions with [employee of non-addressee] were part of a common plan or that [employee of non-addressee] had in place a network of contacts. They state that, whilst [employee of non-addressee] knew about the exchanges between [employee of non-addressee] and the Crédit Agricole traders, for their part they were entirely unaware of the connection between [employee of non-addressee] and [employee of non-addressee] and of the existence, nature and composition of the network which they orchestrated.<sup>529</sup> However, these allegations ignore the evidence pointed to in recitals (457) to (468) which unequivocally illustrates Crédit Agricole's awareness of the general scope and essential characteristics of the infringement. In addition, the fact that for [employee of non-addressee], Crédit Agricole was a party to the collusive scheme (see for instance recital (183)), is a factor which indicates that Crédit Agricole was taking part in the same infringement.<sup>530</sup>

- (470) On the basis of the foregoing, the Commission considers that, during the period of its involvement in the infringement, Crédit Agricole was aware of the general scope and the essential characteristics of the cartel as a whole and was at the very least able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and that it was prepared to take the risk.
- (471) Several factors also show, in addition to those already mentioned in recitals (457) to (464), that **HSBC** was aware of the general scope and essential characteristics of the infringement and was at the very least able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and that it was prepared to take the risk, when engaging in the collusive contacts involving HSBC (see recital (358)). From the very beginning of its involvement in the infringement on 12 February 2007 (see recital (271)) [employee of non-addressee] explains the scheme for the March IMM date to [employee of HSBC]. [employee of HSBC] is apprised of the intended effects of the collusion in a manner which enables him to know that the plan explained by [employee of non-addressee] involves a series of panel banks and in particular the likely scale of the effects. In this exchange [employee of non-addressee] clearly points out that several market players will participate in the collusive scheme which gives [employee of HSBC] additional comfort that the scheme is likely to succeed.
- (472) The HSBC traders involved in the collusion also knew about the close relationship between [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of JPMorgan Chase]. For example, [employee of HSBC] refers in an online chat with [non-addressee] on 14 February 2007<sup>531</sup> to [non-addressee] as being [employee of non-addressee]'s best friend. On 19 January 2007,<sup>532</sup> [employee of HSBC] refers in an online chat to [employee of non-addressee] as being [employee of non-addressee]'s friend, and he could reasonably be expected to be aware that [employee of non-addressee] would be amongst the "we" referred to by [employee of non-addressee] on 12 February 2007. In addition, in an online chat on 20 December 2006 [employee of HSBC]'s desk colleague [employee

---

<sup>529</sup> [...].

<sup>530</sup> [...];

<sup>531</sup> [...].

<sup>532</sup> [...].

of HSBC] refers to [employee of non-addressee] and [employee of non-addressee] as "2 stars".<sup>533</sup> HSBC's role within the cartel is underlined by the fact that the [non-addressee] and [non-addressee] traders considered HSBC a reliable partner for the cartel (see recital (338)).

- (473) These factors further show that the HSBC traders involved in the infringement knew or, at least, should have known that their discussions with [non-addressee] were part of a network of anticompetitive contacts that comprised at least [non-addressee], [non-addressee], [non-addressee], HSBC and one or more [non-addressees] that would help bring about the anticompetitive effects intended through the collusive scheme regarding the March 2007 IMM date.
- (474) HSBC contends<sup>534</sup> that HSBC "*was never made aware of the general scope and the essential characteristics of the SCI as a whole*" and that [employee of non-addressee] only provided [employee of HSBC] with a minimum amount of information on 12 February 2007 when he brought him into the March IMM scheme. It claims therefore, that [employee of HSBC] did not receive enough information to give him sufficient awareness of the overall scheme and that his HSBC colleague, [employee of HSBC], was not aware of the scheme prior to it becoming public. HSBC claims that it cannot be held liable for a single and continuous infringement of the type that might be alleged against those who may have been involved in a continuous pattern of agreements and information exchanges over a long period, and that in contrast HSBC's involvement was ad hoc and peripheral.
- (475) Firstly, and contrary to what HSBC contend, [employee of HSBC] (HSCB) understands what [employee of non-addressee] tells him about the March IMM scheme, and is apprised of details about the planned coordinated manipulation of the EURIBOR on that date (see recitals (272) to (276)). In fact, [employee of HSBC] states a few weeks later to [employee of non-addressee] that "*it is going to be a killing*" (see recital (275)). HSBC's position also ignores the factors which are pointed to in recitals (457) to (464). Secondly, [employee of HSBC] was sitting at the same desk as [employee of HSBC] and clearly knew of several detailed elements of the scheme which were not public (see recitals (339) to (341)). Thirdly, it is apparent from the evidence in the case file that in the short period of HSBC's involvement in the collusive exchanges its participation in the scheme was continuous.<sup>535</sup>
- (476) On the basis of the above, the Commission considers that, during the period of its involvement in the infringement, HSBC was aware of the general scope and the essential characteristics of the cartel as a whole and was at the very least able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and it was prepared to take the risk.
- (477) As regards **JPMorgan Chase**, several factors in addition to those already referred to in recitals (457) to (464) indicate that the JPMorgan Chase trader was aware of the

---

<sup>533</sup> [...]. [employee of HSBC] was working on the same desk as [employee of HSBC][...].

<sup>534</sup> [...].

<sup>535</sup> See in particular recitals (271), (275), (288), (289), (456). The willingness of the HSBC traders to engage in exchanges such as those referred to in recital (358) was without interruption throughout the period of HSBC's involvement in the collusive exchanges.



general scope and essential characteristics of the infringement, and was at the very least able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and prepared to take the risk, when he was engaging in the collusive contacts referred to in recital (358).

(478) Firstly, there are direct references in the exchanges which indicate that the JPMorgan Chase trader involved ([employee of JPMorgan Chase]) was aware that information such as preference for the future rate setting of certain EURIBOR tenors, which he shared with [employee of non-addressee] in the context of their exchanges, would be shared with [employee of non-addressee]'s contacts in [non-addressees].<sup>536</sup> In an exchange on 15 December 2006 (see recitals (230) to (234)), [employee of JPMorgan Chase] indicates to his submitter that [non-addressee] and [non-addressees] ("*couple more smart fellows*") have large 3 months EURIBOR fixings on the following Monday (18 December) and that "*they want to force fixings higher*".<sup>537</sup> On 18 December 2006, [employee of JPMorgan Chase] in an exchange with [employee of non-addressee] about the outcome of the fixings on the 3 months EURIBOR states that he only had a small trading position but at least did not have the opposite trading interest on that date.

(479) Secondly, [employee of JPMorgan Chase] was well aware of [employee of non-addressee]'s close relationship with [employee of non-addressee] to which he sometimes referred to as [...], which is the Reuters Dealing code which [employee of non-addressee] used for dealing at [non-addressee] and with which [employee of JPMorgan Chase] would conclude deals with [employee of non-addressee].<sup>538</sup> For instance in an exchange on 10 October 2006<sup>539</sup> [employee of JPMorgan Chase] asks if [employee of non-addressee] is seeing "[...]" at a drinks reception; [employee of non-addressee] states he will not attend and [employee of JPMorgan Chase] answers "*F GUDS AMIGO WOULD HAVE BEEN OFFENCDED U DIDN'T DROPPED [...]WHILE DROPPING ME I M BIT JEALOUS*". This is corroborated by earlier exchanges on 13 July 2006<sup>540</sup> in which [employee of non-addressee] tells [employee of JPMorgan Chase] "[non-addressee] *are ur friends amigo*" [...], or another online chat of 19 July 2006<sup>541</sup> in which [employee of non-addressee] states "*U MISSED UR CHNACE*" and [employee of JPMorgan Chase] replies "*HOPE U DIDN'T GIVE IT TO[employee of non-addressee]...*" thereby suggesting that [employee of non-addressee] was likely to propose an interesting trade in priority to [employee of non-addressee]. On 29 November 2006<sup>542</sup> when [employee of JPMorgan Chase] tells him "*U ONLY GOOD BANK THERE IS WELL [employee of non-addressee] IS OK*" [employee of non-addressee] answers "[employee of non-addressee] *IS AMONG*

---

<sup>536</sup> See Recitals (144)-(147) [...]. It should be clear that the Commission makes no finding with regard to the nature of such contacts between [employee of JPMorgan Chase] and other EIRD market players before 27 September 2006, but can nevertheless draw conclusions with regard to his likely knowledge of how information of a certain nature could be passed on to other market players.

<sup>537</sup> It should be added that on no occasion does [employee of JPMorgan Chase] in his exchanges with [employee of non-addressee] distance himself from the collusive conduct, even when there are explicit references to others banks being involved.

<sup>538</sup> [...].

<sup>539</sup> [...].

<sup>540</sup> [...].

<sup>541</sup> [...].

<sup>542</sup> [...].

*THE LASTS*", a statement he would be very unlikely to make if he was not close to [employee of non-addressee]. Furthermore, on 23 May 2007<sup>543</sup> when [employee of non-addressee] changes bank [employee of JPMorgan Chase] inquires "*were is ur frd [employee of non-addressee] off 2?*"<sup>544</sup> and [employee of non-addressee] answers "*hell*" and [employee of JPMorgan Chase] insists "*where is [employee of non-addressee] another clearer?*" and "*so why r u so secretive about [employee of non-addressee]?*" to which [employee of non-addressee] replies "*it's not done yet*".

- (480) JPMorgan Chase contest that the evidence mentioned in recital (479) demonstrates that [employee of JPMorgan Chase] knew of the close relationship between [employee of non-addressee] and [employee of non-addressee] and rely on a statement by [employee of non-addressee] on 28 September 2006.<sup>545</sup> The Commission rejects the contention. JPMorgan Chase have misread the exchange of 28 September which they refer to and which does not contradict the conclusion that [employee of JPMorgan Chase] knew about the close relationship between [employee of non-addressee] and [employee of non-addressee].
- (481) Thirdly, there was also a direct exchange between JPMorgan Chase and [non-addressee] in which [non-addressee] offered JPMorgan Chase to make EURIBOR submissions at a level desired by JPMorgan Chase. In an exchange of 25 October 2006 (see recitals (194) to (196)), [employee of non-addressee] offers to [employee of JPMorgan Chase] to make submissions at any level on the EURIBOR fixings which he would need. In view of the fact that there is evidence on file indicating that [employee of JPMorgan Chase] was aware of the close trading relationship between the [non-addressee] and the [non-addressee] traders (see recital (479)), [employee of JPMorgan Chase] could reasonably foresee that whenever he would exchange preferences for the future rate setting of the EURIBOR with [employee of non-addressee], individuals from [non-addressees] would be involved in the arrangements, including [employee of non-addressee].
- (482) Fourthly, there are also two indirect references implicating the JPMorgan Chase trader in the collusive exchanges which make it unlikely that JPMorgan Chase was not aware or could not reasonably foresee that collusion on EURIBOR submissions involved [non-addressees] in addition to [non-addressee]. On 10 October 2006 (see recital (183)), immediately after [employee of non-addressee] and [employee of non-addressee] agree that they need a high 1 month EURIBOR fixing for the following Monday which is the October IMM date, [employee of non-addressee] states that he "*will talk to [...]*".<sup>546</sup> This means that at least in the eyes of these two traders

---

<sup>543</sup> [...].

<sup>544</sup> Mr [...] was employed by [non-addressee] until [...] (see recital (69)).

<sup>545</sup> [...]. In the exchange on 28 September 2006 [employee of non-addressee] and [employee of non-addressee] discuss a trip by [employee of non-addressee] to Madrid where he is likely to meet [employee of JPMorgan Chase] and gather information from [employee of JPMorgan Chase] ("*the good thing about [...] is that he talks a lot when he is drunk*"). In this exchange (p. 285) [employee of non-addressee] states "[...] *should not know that we know each other well*", but this is a reference to [employee of non-addressee] knowing well both [employee of non-addressee] and [employee of non-addressee], not [employee of non-addressee] being close to [employee of non-addressee] as JPMorgan Chase wrongly state.

<sup>546</sup> The plausibility of this statement by [employee of non-addressee] that [employee of JPMorgan Chase] was at this time aware of the arrangements for the 2006 October IMM date is corroborated by previous statements of [employee of non-addressee] (see recital (153)).

[employee of JPMorgan Chase] was part of their collusive arrangements. In addition, on 8 November 2006 (see recital (205)) in the context of a discussion in which he explains that his own cash desk has made a submission contrary to his trading interest, [employee of JPMorgan Chase] states to [employee of non-addressee] that such a thing would not happen at [non-addressee] and that with regards to cash desks being receptive to requests by traders for specific EURIBOR submissions "*at [non-addressees] (...) there is big higher degree of flexibility*". This statement by [employee of JPMorgan Chase] makes it clear that from his perspective, when he exchanges information on his preferences for future EURIBOR submissions with [employee of non-addressee], it is likely that [employee of non-addressee] would share this information with [non-addressees] which are more flexible.

- (483) On the basis of the above, the Commission considers that, during the period of its involvement in the infringement, when engaging in the exchanges referred to in recital (358) with [non-addressee], JPMorgan Chase was aware of the general scope and essential characteristics of the cartel as a whole and was at the very least able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and it was prepared to take the risk.

*(d) Conclusion*

- (484) On this basis, the Commission considers that the complex of collusive contacts between the parties constitutes one single and continuous infringement for which each of the non-settling parties is held responsible for its own period of involvement.
- (485) In particular, as regards Crédit Agricole's liability for the infringement, the Commission concludes that the facts described in Section 4 and referred to in recital (392), including the web of collusive contacts surrounding the main players,<sup>547</sup> the fact that the different contacts frequently took place in parallel and the awareness and involvement of the Crédit Agricole trader, signifies that this undertaking participated in the single and continuous infringement defined above. The Commission, however, finds at the same time that the bilateral contacts between Crédit Agricole and [non-addressee] Bank in their context constitute an infringement in themselves, for the following reasons:<sup>548</sup>
- (a) Crédit Agricole has engaged with [non-addressee] in a series of instances concerning the manipulation of the EURIBOR and/or EONIA rates or discussions about the trading prices of EIRDs (see recitals (189)-(191), (210), (213)-(216), (217)-(219), (224)-(226), (227)-(229), (246)-(248), (278)-(282), (292)-(294), (304)-(307), (316), (319)-(321)). These contacts between 16 October 2006 and 19 March 2007 correspond to the same facts described in Section 5 as far as Crédit Agricole is concerned;
- (b) This individual infringement has the same object as the single and continuous infringement defined in Section 5, that is to say coordinating and/or fixing prices in the EIRD sector through discussions about components relevant for future cash-flows emanating from EIRDs and about (components of) the trading prices of the EIRDs (see Section 5.1.2).

---

<sup>547</sup> In the period under consideration in this Decision the main players were [non-addressees] (see recitals (117) to (120)).

<sup>548</sup> See Statement of Objections recital 383.

- (486) As regards HSBC's liability for the infringement, the Commission concludes that the facts described in Section 4 and referred to in recital (392), including the web of collusive contacts surrounding the main players, the fact that the different contacts frequently took place in parallel and the awareness and involvement of the HSBC trader, signifies that this undertaking participated in the single and continuous infringement defined above. The Commission, however, finds at the same time that the bilateral contacts between HSBC and [non-addressee] in their context constitute an infringement in themselves, for the following reasons:<sup>549</sup>
- (a) HSBC has engaged with [non-addressee] in a series of instances pertaining to the manipulation of the EURIBOR and/or EONIA rates or discussions about the trading prices of EIRDs (see recitals (271)-(276), (283)-(285), (286)-(288), (289)-(291), (295), (296)-(298), (316), (322)-(331), (339)-(341)). These contacts between 12 February 2007 and 27 March 2007 correspond to the same facts described in Section 5 as far as HSBC is concerned;
  - (b) This individual infringement has the same object as the single and continuous infringement defined in Section 5, that is to say coordinating and/or fixing prices in the EIRD sector through discussions about components relevant for future cash-flows emanating from EIRDs and about (components of) the trading prices of the EIRDs (see Section 5.1.2).
- (487) As regards JPMorgan Chase's liability for the infringement, the Commission concludes that the facts described in Section 4 and referred to in recital (392), including the web of collusive contacts surrounding the main players, the fact that the different contacts frequently took place in parallel and the awareness and involvement of the JPMorgan Chase trader, signifies that this undertaking participated in the single and continuous infringement defined above. The Commission, however, finds at the same time that the bilateral contacts between JPMorgan Chase and [non-addressee] in their context constitute an infringement in themselves, for the following reasons:<sup>550</sup>
- (a) JPMorgan Chase has engaged with [non-addressee] in a series of instances pertaining to the manipulation of the EURIBOR and/or EONIA rates or discussions about the trading prices of EIRDs (see recitals (160)-(164), (165)-(169), (170)-(172), (174)-(176), (180)-(182), (183)-(186), (194)-(200), (205)-(207), (210)-(212), (220)-(222), (230)-(234), (239)-(242), (243)-(245), (262)-(264), (299)-(301), (308)-(315), (332)-(337)). These contacts between 27 September 2006 and 19 March 2007 correspond to the same facts described in Section 5 as far as JPMorgan Chase is concerned;
  - (b) individual infringement has the same object as the single and continuous infringement defined in Section 5, that is to say coordinating and/or fixing prices in the EIRD sector through discussions about components relevant for future cash-flows emanating from EIRDs and about (components of) the trading prices of the EIRDs (see Section 5.1.2).

---

<sup>549</sup> See Statement of Objections recital 383.

<sup>550</sup> See Statement of Objections recital 383.

### 5.1.3.3. Arguments of the parties and assessment thereof by the Commission

- (488) The non-settling parties contend that the alleged anti-competitive conduct are only a series of isolated events and that the different manifestations of the conduct are unconnected and did not share a common objective.<sup>551</sup> However, as already set out in recitals (444)-(450) the evidence in the case file demonstrates that in the period of their respective involvement in the cartel the non-settling parties were involved in contacts which shared the same anticompetitive object as other cartel members (see recitals (392) and (393)) and this object followed the same overall pattern of behaviour, remained constant and did not change over the period under consideration, nor did the products concerned nor the individuals involved.
- (489) Crédit Agricole further argue that it was involved in only few exchanges involving the alleged manipulation of the EURIBOR and that in any event its involvement should only be limited to the few days of these exchanges. The Commission disagrees with this contention. Firstly, as already set out in recital (452) the traders involved including [employee of Crédit Agricole] of Crédit Agricole engaged without any hesitation in the exchanges and sometimes even initiated them themselves (see recital (292) in which [employee of Crédit Agricole] takes the initiative). Secondly, as explained in recitals (122)-(123) and (456) the collusive arrangements were sometimes prepared weeks or months in advance. For example, Crédit Agricole was involved as early as 14 February 2006 in the preparation of the March IMM collusive scheme (see recital (278)) which took place on 19 March 2007. Thirdly, as indicated in recital (467) Crédit Agricole had or should have had precise knowledge of the effects that [non-addressee]' network of contacts would be able to create in the EIRD market.
- (490) JPMorgan Chase also claim<sup>552</sup> that there is a distinction between rate manipulation and "harmless" exchanges of information, that it was not involved in the former and that there are no links between the two forms of exchanges. The Commission disagrees with this contention. The only plausible explanation for the exchanges referred to in recital (358) relating to preferences for the future rate setting for EURIBOR tenors and/or the associated trading positions related to such preferences is that these are an attempt to manipulate the benchmark rate by [employee of JPMorgan Chase] via his contacts with [employee of non-addressee] whom he knew was capable of influencing the benchmark interest rate levels of EURIBOR. As set out in recitals (400)-(403) the exchanges of information referred to in recital (358) were not available to competitors not involved in such exchanges and took place outside the context of approaches for potential transactions. In addition, as set out in section 5.1.2.2 and recitals (444)-(450) these exchanges were linked and complementary and concerned the fixing of pricing components of EIRDs. It would therefore be artificial to split these anti-competitive practices as unrelated exchanges.
- (491) HSBC contends that it did not take part in any complex pattern of conduct and that its *"conduct constituted, at most, peripheral involvement in a marginal, isolated rate manipulation...plus a very small number of miscellaneous unrelated information*

---

<sup>551</sup> [...].

<sup>552</sup> [...].

exchanges".<sup>553</sup> However, in the period of its involvement in the infringement, HSBC shared the common objective of the cartel and was fully apprised of the details of the plan to squeeze the spread between the 3 months EURIBOR and the 3 months EONIA on 19 March 2007 through a joint action of several banks. The evidence shows that HSBC was involved in the implementation of this scheme (see recitals (325) to (327)). In addition, there are other collusive contacts between HSBC and [non-addressee] in the period from 12 February 2007 to 27 March 2007. Finally, it cannot be denied that on 27 March 2007 [employee of non-addressee] explicitly proposes to [employee of HSBC] to participate in another subsequent scheme similar to that of March IMM collusive scheme and that [employee of HSBC] tacitly approves of such a plan.

#### 5.1.3.4. Conclusion on the single and continuous infringement

(492) On this basis, and with regard to the common design of exchanges of information, the common objective of the collusive arrangements and the fact that the non-settling parties were aware or at least should have been aware of the general scope and essential characteristics of the collusive arrangements, the Commission considers that the complex of collusive contacts between the parties constitutes one single and continuous infringement for which each of the non-settling parties is held liable for its own period of involvement (see section 7).

#### 5.1.4. Implementation

(493) As the object of the behaviour under investigation in the present case was the prevention, restriction or distortion of competition within the internal market, see section 5.1.2.2, there is no need to take into account any actual effects of this behaviour.<sup>554</sup> The competition-restricting object of the arrangements in this case is sufficient to support the conclusion that Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement apply.

(494) However, insofar as the non-settling parties argue that the concerted practices, if any, were never implemented and that in any event they did not stand to benefit from such agreements, the Commission intends to address these arguments. It can be established that most of the collusive arrangements described in section 4 and referred to in recital (358) were implemented and therefore restricted or distorted competition.

(495) Firstly, as set out in recitals (406) to (408) the non-settling parties considered that they were individually and by virtue of the contacts with the other colluding banks capable of influencing the benchmark interest rate levels of EURIBOR and would aim to do so if it was in their interest. Even incremental changes in a tenor due to the

---

<sup>553</sup> [...].

<sup>554</sup> See Judgment of the Court of Justice of 30 June 1966, *Société Technique Minière*, C-56/65; Judgment of the Court of Justice of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13, paragraph 49; Judgment of the Court of Justice of 4 June 2009, *T-Mobile Netherlands and others v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, paragraph 29; Judgment of the General Court of 14 May 1998, *Cascades v Commission*, T-308/94, ECLI:EU:T:1998:90, paragraph 194. Judgment of the General Court of 6 July 2000, *Volkswagen v Commission*, T-62/98, paragraph 178

cartel activity inevitably had a considerable impact due to the high notional amounts of EIRD portfolios affected.<sup>555</sup>

- (496) Secondly, as explained in recitals (122), (123) and (456), on occasions the collusive exchanges followed on from previous exchanges concerning the same pricing components for EIRDs for periods of days, weeks or up to months, which clearly indicates a degree of implementation.
- (497) Thirdly, the exchanges referred to in points (c), (d) and (e) of recital (358) point to another degree of implementation, to the extent that such exchanges indicate the fact that some of the traders involved in the exchanges took action on the basis of the information exchanged under points (a) or (b) of recital (358).
- (498) Fourthly, the evidence also shows a series of instances where traders of the non-settling parties (and settling parties) congratulate each other as they believed that they had been successful in moving the EURIBOR rate (see for instance recitals (189), (224), (236), (249), (250), (251), (303), (308), (316), (319), (328), (332) and (339)). It should be recalled that in the telephone call involving HSBC referred to in recital (329), [employee of non-addressee] asserted that if a market player was not part of the collusive scheme regarding the March 2007 IMM date then that market player would be a victim, even if he were the best trader in the world. In certain instances, the traders of the parties believed they had either been successful or expressed their frustration about occasional lack of success and that the traders believed they could improve their positions by certain EURIBOR contributions or levels.<sup>556</sup>
- (499) Fifthly, the evidence also shows that the exchanges helped the parties at least on occasions to improve their trading positions in the market to the detriment of other market players (see for instance recitals (271), (308), (319) and (328)).<sup>557</sup>
- (500) The Commission therefore concludes that the arrangements described in Section 4 and referred to in recital (358) were actually implemented and restricted and/or distorted competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

### *Arguments of the parties concerning implementation*

- (501) In addition to or in support of the arguments that the Commission failed to prove that the conduct described could have had any effect, the non-settling parties also argue that the agreements, if any, were never implemented because there is no evidence of any active support or involvement of their submitters.
- (502) Crédit Agricole<sup>558</sup> claims that there is no evidence on file that it contributed to a manipulated submission on 19 March 2007 or on any other date (notably 16 October 2006 and 13 November 2006), and that its submissions were consistent with market conditions and previous submissions and that there is no evidence on file demonstrating that any trader of Crédit Agricole sought to influence the submitter's

---

<sup>555</sup> [...].

<sup>556</sup> [...].

<sup>557</sup> [...].

<sup>558</sup> [...].

contributions in order to affect the Euribor fixing, let alone that these submitters effectively changed their submissions as requested. The Commission disagrees with this contention. As regards Crédit Agricole's claims that there was no influence over its submissions on certain dates, the evidence on file however has already been examined in particular in recitals (189) to (191); (210), (213) to (216) and (319) to (321). It is apparent that Crédit Agricole's traders agreed with [employee of non-addressee] to approach the Crédit Agricole submitters and that they reported back – entirely accurately- the results of the approach. These submitters worked only metres away from the traders in the same trading floor<sup>559</sup> and did therefore not need to call or communicate with each other in writing. Under these circumstances, it can be deducted that the traders also effectively could have talked to their submitters. The argument that this was pure bluff is not credible and cannot in any way hide the fact that Crédit Agricole gave [non-addressee] the impression that it has spoken to its submitters and accurately reported back on the results of its approach. Moreover, the evidence also shows that Crédit Agricole was aware that the submitters of [non-addressees] were involved in collusive arrangements.<sup>560</sup>

- (503) JPMorgan Chase explain that its trader [employee of JPMorgan Chase] did not stand to benefit in particular from the manipulation on the 19 March 2007 IMM date.<sup>561</sup> The Commission disagrees with this contention. As already explained in recitals (308)-(315) and (332)-(337), the most plausible reading of the exchanges of [employee of JPMorgan Chase] with [employee of non-addressee] on 16 and 19 March 2007 is that in his own words [employee of JPMorgan Chase] took into account information which [employee of non-addressee] disclosed to him as early as 4 January and 6 February 2007 about his trading strategy for EIRDs (future contracts linked to the level of the 3 month EURIBOR on the 19 March 2007 – March IMM date). Furthermore, evidence provided by JPMorgan Chase on the trading position of [employee of JPMorgan Chase] on the same future contracts suggests that [employee of JPMorgan Chase] changed significantly his trading position from a very large short around 6 February 2007 (in other words, he had the opposite interest to that of [employee of non-addressee]'s trading position) to a neutral position on 19 March 2007. Finally, as already indicated the JPMorgan Chase trader could not fail to take into account the knowledge he received from [non-addressee] and he should have been aware that in view of [employee of non-addressee]'s statements about his trading strategy related to the March IMM date, that [employee of non-addressee] was likely to involve [non-addressees] in a manipulation on that date. It is possible to accumulate large trading positions on IMM dates, and thus a EURIBOR manipulation could be more profitable, provided several banks are involved (to increase the benefit and the level of success).

#### 5.1.5. *Conclusion*

- (504) For these reasons, the conduct described in section 4 and referred to in recital (358) qualifies as price-fixing and/or price-coordination having the object of restricting

---

<sup>559</sup> [...].

<sup>560</sup> See for example recitals (214) and (278) to (282).

<sup>561</sup> [...].



and/or distorting competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement at least in the entire EEA.<sup>562</sup>

## 5.2. Effect on trade between Member States and/or Contracting Parties

- (505) Article 101(1) of the Treaty is aimed at agreements which may harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.
- (506) The Union Courts have consistently held that, in order for an agreement between undertakings to affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.<sup>563</sup> In any event, while Article 101 of the Treaty does not require that agreements referred to in that provision have actually affected trade between Member States, it does require that it be established that the agreements are capable of having that effect.<sup>564</sup>
- (507) The application of Articles 101(1) of the Treaty and Article 53(1) of the EEA Agreement to a cartel is not, however, limited to that part of the members' trades that actually involve the transfer of goods or services from one State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.<sup>565</sup>
- (508) Agreements and practices covering or implemented in several Member States are in almost all cases by their very nature capable of affecting trade between Member States.<sup>566</sup> Practices between banks that cover international transactions are capable of affecting trade between Member States within the meaning of Article 101(1) of the Treaty, the concept of "trade" used in that Article having a wide scope which includes monetary transactions.<sup>567</sup> Cartel agreements such as those involving price

---

<sup>562</sup> The evidence in the case file suggests that the anticompetitive conduct described in this Decision had not only the object but also the actual or potential effect of preventing, restricting or distorting competition.

<sup>563</sup> See Judgment of the Court of Justice of 30 June 1966, *Société Technique Minière*, C-56/65, paragraph 7; and Judgment of the Court of Justice of 11 July 1985, *Remia and others v Commission*, C-42/84, ECLI:EU:C:1985:327, paragraph 22; and Judgment of the General Court of 15 March 2000, *Cimenteries CBR and others v Commission*, Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, paragraph 1986; and Judgment of the Court of Justice of 28 April 1998, *Javico v Yves Saint Laurent Parfums*, C-306/96, ECLI:EU:C:1998:173, paragraph 16.

<sup>564</sup> See Judgment of the Court of Justice of 17 July 1997, *Ferriere Nord SpA v Commission*, C-219/95 P, ECLI:EU:C:1997:375, paragraph 19.

<sup>565</sup> See Judgment of the General Court of 10 March 1992, *Imperial Chemical Industries v Commission*, T-13/89, ECLI:EU:T:1992:35, paragraph 304.

<sup>566</sup> Commission Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ C 101, 27.4.2004, p. 81 (the "Notice on the effect on trade"), at point 61.

<sup>567</sup> See Judgment of the Court of Justice of 14 July 1981, *Gerhard Züchner v Bayerische Vereinsbank*, 172/80, ECLI:EU:C:1981:178, paragraph 18.

fixing and market sharing covering several Member States are by their very nature capable of affecting trade between Member States.<sup>568</sup>

- (509) The EIRD sector is characterised by a substantial volume of trade between Member States and a considerable volume of trade between the Union and the EFTA countries belonging to the EEA. The parties are all major international banks that were involved in the EIRD sector through their offices in London, Frankfurt and Paris and elsewhere inside and outside the EEA. London, Frankfurt and Paris are major financial centres within the EEA. The parties have regularly entered into EIRD trades of considerable amounts amongst themselves.<sup>569</sup> In addition, various undertakings and public bodies within the EEA routinely enter into EIRD contracts. The parties entering into EIRDs are often situated in different Member States.
- (510) EURIBOR and EONIA are by far the most important Euro-based benchmark interest rates in the world for unsecured interbank lending on the basis of which many interest rate derivatives and other financial products are priced. Until 31 December 2006, the Euro has been the currency of 12 Member States (Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Luxembourg, Portugal and Spain). From 1 January 2007 onwards, the Euro has also been the currency of Slovenia. Due to its paramount importance for the Internal Market and the Union's monetary and financial systems and for the Member States' economies including anyone involved in the trade of EIRDs in these Member States, the cartel arrangements must have had and did have a substantial impact on the patterns of trade between Member States and on the EEA market. The manipulation of EURIBOR rates must have resulted, or, at the very least, there was a sufficient degree of probability that it resulted in the automatic diversion of trade patterns from the course they would otherwise have followed.<sup>570</sup>
- (511) Therefore, the cartel arrangements in this case are likely to have had an appreciable effect upon trade between EU Member States and/or between Contracting Parties of the EEA Agreement.

### **5.3. Application of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement**

- (512) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable under Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement in the case of an agreement or concerted practice which contributes to improving the production or distribution of goods or to promoting technical or 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. Under Article 2 of Regulation (EC) No 1/2003 it is for the

---

<sup>568</sup> Notice on the effect on trade, at point 64; See Judgment of the General Court of 6 April 1995, *Usines Gustave Boël v Commission*, T-142/89, ECLI:EU:T:1995:63, paragraph 102.

<sup>569</sup> [...].

<sup>570</sup> See Judgment of the Court of Justice of 29 October 1980, *Van Landewyck and others v Commission*, Joined Cases C-209/78 to 215/78 and 218/78, ECLI:EU:C:1980:248, paragraph 170.

undertakings claiming the benefit of Article 101(3) of the Treaty to prove that the conditions of that paragraph are fulfilled.

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

#### **5.4. Arguments concerning the procedure and rebuttal by the Commission**

- (514) In their responses to the Statement of Objections, Crédit Agricole, HSBC and JPMorgan Chase have made a number of claims with regard to the procedural aspects of the case.<sup>571</sup> They claim that the Commission is objectively biased in this procedure from the adoption of a decision in the settlement procedure and that this has inevitably led the Commission to violate the presumption of innocence and their rights of defence throughout these proceedings.<sup>572</sup> The Commission disagrees with these claims, which are examined in detail below.

- (515) Crédit Agricole, HSBC and JPMorgan Chase claim that the alleged violation of the presumption of innocence stems from the content of the settlement decision of 4 December 2013 and the Commission's actions thereafter in the standard procedure, such as the public statements and instructions given by the Commissioner formerly responsible for competition, the Statement of Objections of 19 May 2014 and various alleged violations of the rights of defence in the access to file procedure or at the oral hearing.

- (516) The Commission rejects these claims.

##### *5.4.1. The procedure against the non-settling parties*

- (517) The Commission considers that it is possible to continue the proceedings against parties that did not agree to settle their case, following a settlement decision, and also to fully respect the principle of the presumption of innocence. Firstly, the Commission can legally apply the settlement procedure in a staggered way, first finalising the settlement procedure and then the standard procedure. Secondly, there were only a few and carefully chosen references to the participation of the non-settling parties in the settlement decision which were necessary for the description and the foundation of the case. It should be noted that there was no legal finding with regard to the liability of the non-settling parties in that decision. Thirdly, the non-settling parties have been granted all the rights undertakings have to a fair trial in the standard procedure.

- (518) In line with the three-pronged approach referred to in recital (517), the possibility of conducting separate procedures in the case of a settlement is expressly envisaged by

---

<sup>571</sup> [...] Crédit Agricole also expressed its concerns on the staggered hybrid procedure already in an early stage by letter of 25.4.2014[...], in reply to which the Commission has already clarified its position on 19.5.2014[...].

<sup>572</sup> This procedure is often referred to as a "staggered hybrid settlement procedure": hybrid because it combines the settlement and standard procedure, staggered because the standard procedure is applied after the settlement procedure. Some parties refer to this procedure as a "twin-track" hybrid procedure. The staggered adoption of the decisions of the procedures (settlement and non-settlement) is difficult to avoid when a party withdraws from the settlement procedure at a very late stage of the process, which is what has occurred in the present case for all three non-settling parties.

Article 4 of Regulation (EC) No 622/2008 which explicitly provides that the Commission may decide at any time during the settlement procedure to discontinue settlement discussions with one or more of the parties.<sup>573</sup> When one or more parties fail to introduce a settlement submission, the Settlement Notice provides that the procedure leading to the final decision *in their regard* will follow the general provisions, instead of those regulating the settlement procedure.<sup>574</sup>

- (519) The case law clarifies that the situation in their respect is that of a 'tabula rasa', in which the liabilities are *yet to be determined* in a standard procedure.<sup>575</sup> The settlement procedure is therefore an alternative procedure to the standard administrative procedure, distinct from it, and presenting certain special features.<sup>576</sup>
- (520) The fact that the settling parties have accepted liability for their role in an infringement that has been the subject of an investigation by the Commission does not have any bearing on the status of those parties which have chosen not to settle. Nothing has prevented the non-settling parties from demonstrating that the facts set out in the Statement of Objections adopted on 19 May 2014 against them were incorrect or that the legal characterisation was unfounded in their regard, just as in any standard procedure a party or parties might demonstrate their lack of involvement in an infringement in which others participated.
- (521) A fundamental aim of the settlement procedure is to expedite administrative procedures in order to foster the timely adjudication of cases and application of sanctions as provided by the relevant Union legislation.<sup>577</sup> Those parties which have submitted a proposal for settlement can reasonably expect a relatively concise administrative procedure followed by a timely decision. They would clearly lose this advantage if parties which exercised their right to withdraw from the settlement procedure were allowed to determine the timing of all procedures relating to a particular investigation.
- (522) This is consistent with the view of the Court: "*Where the settlement does not involve all the participants in an infringement (...), the Commission adopts, on the one hand, following a simplified procedure (the settlement procedure), a decision addressed to the participants in the infringement who have decided to enter into a settlement and reflecting the commitment of each of them and, on the other hand, according to the standard procedure, a decision addressed to participants in the infringement who have decided not to enter into a settlement*".<sup>578</sup>
- (523) There is no restriction on the individual timing of each procedure or a requirement to combine both procedures again at a later stage. It is sufficient that all non-settling parties are heard with respect to the Statement of Objections addressed to them and that a decision is adopted and addressed to them individually.

---

<sup>573</sup> Commission Regulation (EC)- No 622/2008 of 30.6.2008 amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases, OJ, 1.7.2008, L171/3.

<sup>574</sup> Point 19 of the Settlement Notice.

<sup>575</sup> See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, ECLI:EU:T:2015:296, paragraph 104.

<sup>576</sup> See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, paragraph 73.

<sup>577</sup> Point 1 of the Settlement Notice and Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, paragraph 60.

<sup>578</sup> See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, paragraph 71.

- (524) The application of a standard procedure after a settlement procedure is also not new for the Commission. It has been applied in various other cases.<sup>579</sup>
- (525) The principle of equal treatment is fully observed in this hybrid settlement procedure with two decisions for different addressees in one and the same cartel. As required by the jurisprudence, the Commission has made sure that comparable situations in the decisions are not treated differently and that different situations are not treated in the same way unless such treatment is objectively justified.<sup>580</sup>
- (526) Any allegation that the Statement of Objections of 19 May 2014 demonstrates a bias on the part of the Commission must be proven by reference to the content of the document.<sup>581</sup> Claims that the presumption of innocence is inevitably breached because the Commission would be reluctant to depart from its findings in the settlement decision are merely speculative. To the extent that these claims refer to the risk of undermining the credibility of the settlement procedure, it should be noted that if there is any such risk, it is the opposite situation which would entail such a risk, in other words the postponement or termination of settlement procedures in the event that one or several parties chooses not to introduce a settlement submission.
- (527) Finally, it is noted that those same parties that accuse the Commission of an allegedly biased reluctance to depart from the settlement decision, have also accused the Commission in their responses to the Statement of Objections of having deviated in the standard procedure from the matters raised against them in the settlement procedure, allegedly to punish them for having withdrawn from the settlement procedure.<sup>582</sup>
- (528) Moreover, HSBC, which chose to exercise its right to withdraw from the settlement procedure, complains that it was not allowed to comment on the settlement decision of 4 December 2013 before its adoption, and claims that this was another violation of HSBC's rights of defence.<sup>583</sup> The Commission disagrees with this contention. HSBC did not agree to settle its case and was not directly or adversely affected by the settlement decision of 4 December 2013. This decision explicitly did not establish any liability of HSBC for any participation in an infringement of Union competition law. Furthermore, HSBC did not apply to be heard as an interested third person in accordance with Article 5(1) of Decision 2011/695/EU. HSBC refers to the *Animal*

---

<sup>579</sup> See Case AT.38866 – *Animal feed phosphates*, with settlement and a non-settlement decisions on 20.7.2010; Case AT.39861 - *Yen Interest Rate Derivatives (YIRD)*, with a settlement decision adopted on 4.12.2013 and a non-settlement decision on 4.2.2015; Case AT.39792 – *Steel abrasives* – with a settlement decision adopted on 2.4.2014 and a non-settlement decision on 25.5.2016; Case AT.39965 – *Mushrooms*, with a settlement decision adopted on 25.6.2014 and a non-settlement decision on 6.4.2016.

Similarly, the fact that several employees of the banks involved in the Libor/Euribor benchmark manipulation cases have been prosecuted and convicted individually before national courts on the basis of criminal charges, has not prevented or stopped the prosecution of others.

<sup>580</sup> See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, paragraph 72; see also Judgment of the Court of Justice of 14 September 2010, *Akzo Nobel Chemicals and Akros Chemicals v Commission*, C-550/07 P, ECLI:EU:C:2010:512, paragraph 55 and the case-law cited.

<sup>581</sup> See Judgment of the General Court of 20 March 2002, *ABB Asea Brown Boveri Ltd v Commission*, T-31/99, ECLI:EU:T:2002:77, paragraph 105.

<sup>582</sup> See Recitals (556)-(558).

<sup>583</sup> [...].

*feed phosphates* case in support of its arguments, but it should be noted that this precedent is not relevant to the present situation.

#### 5.4.2. *The settlement decision*

- (529) The settlement decision of 4 December 2013 contained two disclaimers in order not to establish any liability for the non-settling parties and respect their rights of defence : "*This Decision is based on matters of fact as accepted only by [non-addressee], [non-addressee], [non-addressee] and [non-addressee] in the settlement procedure. (...) this Decision does not establish any liability of these non-settling parties for any participation in an infringement of EU competition law in this case.*"<sup>584</sup> and "*The conduct referred to in this Decision involving the non-settling parties is exclusively used to establish liability of the settling parties for an infringement of Articles 101 of the Treaty and Article 53 of the EEA Agreement.*"<sup>585</sup> This settlement decision is not used to establish the liability of the non-settling parties in this Decision.
- (530) Despite these disclaimers, Crédit Agricole, HSBC and JPMorgan Chase claim that the settlement decision of 4 December 2013 contained more information than was necessary and has effectively held them to be a party to the infringing conduct.<sup>586</sup>
- (531) The Commission notes that a settlement decision is a document, based on the common understanding of the settling parties and the Commission concerning the scope of the objections and their legal characterisation. The description of events in the decision of 4 December 2013 limited the references to the non-settling parties to what was strictly necessary for the clear understanding of the facts of the case whilst clear disclaimers were introduced as to the liability for any participation in an infringement by the non-settling parties.<sup>587</sup> In the legal assessment no individual reference at all was made to the non-settling parties, whether individually or collectively, and it has been made clear that the various instances of collusive behaviour were agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreements in relation to the settling parties.<sup>588</sup> The settlement decision did not make any findings as to the non-settling parties. It is in the light of these disclaimers that the settlement decision must be read.
- (532) In line with the approach referred to in recital (517), the limited number of references in the settlement decision to the participation of others were necessary for the understanding of the facts and the foundation of the case. Moreover the disclaimers exclude any prejudgment by the Commission of the non-settling parties' case. The references to the non-settling parties are compatible with the presumption of innocence because an overall effective access to a fair trial was granted to these other parties (see recital (517)).

---

<sup>584</sup> Recital (3) of the Commission Decision C(2013) 8512 of 4.12.2013. See also recital (40) of that decision.

<sup>585</sup> Footnote 4 of the Commission Decision C(2013) 8512 of 4.12.2013.

<sup>586</sup> [...].

<sup>587</sup> Recitals (3), (36), (37) and (40), footnote (4) of the Commission Decision of 4.12.2013.

<sup>588</sup> Recital (45) of the Commission Decision of 4.12.2013.

- (533) The infringement as described in the settlement decision was acknowledged by the settling parties only. No conclusions could be drawn from any settlement decision as to the liability of the non-settling parties. The limited number of references in the settlement decision to the participation of others cannot lead to a conclusion in respect of the liability of the non-settling parties. In addition, Crédit Agricole, HSBC and JPMorgan Chase also acknowledged when making their claims that the settlement decision of 4 December 2013 formally assumes no liability on behalf of them.<sup>589</sup> The references to the non-settling parties were necessary for the understanding of the facts of the case and were compatible with the presumption of innocence as an overall effective access to a fair trial in the standard procedure was granted to these other parties in this case (see recital (517)).
- (534) Indeed, a Statement of Objections was adopted, the addressees made use of the opportunities to reply to the Commission's objections both in writing and orally, they have been allowed to comment on the fining methodology and on the letters of facts, and have the right to challenge this Decision in Court. The unfounded arguments that the Commission was effectively biased in the standard procedure and has violated the rights of defence of the non-settling parties in the standard procedure will be addressed further below.
- (535) The three-prong approach referred to in recital (517) is similar to the test applied by the European Court of Human Rights ("ECtHR") in the criminal proceedings *Karaman v Germany* of 27 February 2014 (application No 17103/10). The ECtHR held that "*the principle of the presumption of innocence will be violated if a judicial decision (...) concerning a person charged with a criminal offence reflects an opinion that he or she is guilty before that person has been proved guilty according to law. A fundamental distinction must be made between a statement that someone is merely suspected or having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question*" (paragraph 63). At paragraph 70 of *Karaman* the ECtHR examined the impossibility of a fair trial as the crucial test, and assessed whether the regional court had given the impression that it was pre-judging the guilt of Karaman. The ECtHR found the introductory statement by the court that "an assessment of [Karaman's] possible involvement in the crime had to be left to the main proceedings to be conducted against him" to be relevant. The ECtHR established that "*there is nothing in the judgment of the Frankfurt am Main regional court that makes it impossible for the applicant to have a fair trial in the cases in which he is involved*". The ECtHR concluded that Article 6 ECHR had not been breached.

#### 5.4.3. *Statements of the former Commissioner*

- (536) The non-settling parties, in particular Crédit Agricole and JPMorgan Chase, claim that a perception of bias, and breach of the presumption of innocence in the procedure following the adoption of the settlement decision can be proven by certain public statements made with regard to this investigation by former Commission Vice-President Almunia and/or certain Commission officials.<sup>590</sup> Crédit Agricole have

---

<sup>589</sup> [...].

<sup>590</sup> [...].

also claimed that the breach of the presumption of innocence can be proven by alleged instructions given by the former Commissioner to close the case during his mandate.<sup>591</sup>

- (537) Crédit Agricole argued that the former Commissioner and the entire case team, including the Director of the Cartels Directorate and the Deputy Director General for antitrust should have abstained from any further dealing with the case after these statements or instructions.<sup>592</sup> Crédit Agricole have further argued, to the contrary, that this alleged breach of the presumption of innocence, which requires the recusal of any official who has dealt with this case, cannot however be remedied by a new team or Commissioner but must instead result in the annulment of the entire procedure ab initio.<sup>593</sup>
- (538) The Commission rejects the proposition that statements by or instructions from the Commissioner formerly responsible for competition prove that the Commission has been prevented from dealing with the case impartially.
- (539) Firstly, few of the statements relating to the investigation of this case directly address the position of the non-settling parties.<sup>594</sup> Some of the public statements predate the settlement decision and the statements thereafter merely announced the next step of the procedure, or covered the investigations more widely, or dealt with hybrid settlement procedures in general. With five different hybrid settlement procedures conducted during that period,<sup>595</sup> there is no basis to conclude that these statements directly or exclusively targeted the addressees of this Decision.
- (540) Secondly, to the extent that some statements revealed that the Commission was preparing a Statement of Objections for the non-settling parties in this case, this was a factual statement and not a value judgment. When the Commission began its investigation, conducted inspections, initiated proceedings and considered it suitable to explore the parties' interest to engage in settlement discussions, it must have been clear for the parties involved that the Commission had serious concerns about their possible involvement in anticompetitive conduct and was envisaging the adoption of a Statement of Objections, under either the settlement procedure (which all of the parties under investigation initially chose to enter) or under the standard procedure, if necessary. The adoption of a settlement decision did not change that perspective. The Commission also never made a secret of the priority that it has given to its investigations in the financial markets as a matter of policy.<sup>596</sup>
- (541) Thirdly, these statements clarified that the settlement decision adopted in December 2013 was not the end of the Commission investigation. The adoption of a settlement decision on 4 December 2013 confirmed that various parties accepted the objections

---

<sup>591</sup> [...].

<sup>592</sup> [...].

<sup>593</sup> [...].

<sup>594</sup> The statements of 24.07.2012, 24.09.2012, 28.01.2014, 21.2.2014, 18.3.2014, 28.3.2014, 3.4.2014, 30.6.2014 and instructions given to the case team. The European Ombudsman eventually only made observations on the first three statements.

<sup>595</sup> See footnote 579.

<sup>596</sup> See Commission Decision of 5.3.2013 to initiate proceedings: "*The Commission will deal with the case as a matter of priority*" or Press Release IP 13/1208 of 4.12.2013: "*Anti-cartel enforcement is a top priority for the Commission especially in the financial sector.*"



which the Commission had raised against them in the settlement discussions, but it did not eliminate the Commission's concerns about the possible involvement of other parties which exercised their right to discontinue the settlement procedure. In the interests of transparency and legitimate expectations, any public statement made after the adoption of the settlement decision addressed to certain parties confirmed that the Commission intended to continue the investigation and, if appropriate, raise objections against other parties.

- (542) Fourthly, as to the alleged instructions of a former Commissioner to close the case during his mandate, the Court has recognised that the Commission has full discretion to set its priorities.<sup>597</sup> Such instructions did not go beyond proceeding with the investigation concerning the non-settling parties, which were within the remit of the role of the Commissioner. The facts demonstrate that such instructions, did not ultimately lead the Commission to close the case during the mandate of the former Commissioner. A new Competition Commissioner had already taken office when *Crédit Agricole* made this claim in its response to the Statement of Objections and the former Commissioner has had no role in the adoption of this Decision.
- (543) Fifthly, the statements or instructions of a Commissioner do not in itself vitiate the legality of the decision adopted by the College of Commissioners.<sup>598</sup> They may be the subjective view of a member of the institution but not the objective view of that institution.<sup>599</sup>
- (544) Sixthly, these statements or instructions do not alter the legal position of those parties that have withdrawn from the settlement. They have been followed by a procedure in which *Crédit Agricole*, *HSBC* and *JPMorgan Chase* have received all possibilities to defend themselves against the objections raised against them in their respective Statement of Objections.
- (545) Finally, even if the statements or instructions of the former Commissioner were to be qualified as irregularities (*quod non*), they would not affect the validity of this Decision, because the content of this Decision would not have been different in the absence of those statements or instructions.<sup>600</sup>
- (546) *Crédit Agricole* and *HSBC* have attempted to find support for their claims regarding the breach of the presumption of innocence with the European Ombudsman.<sup>601</sup> For this purpose, *Crédit Agricole* filed on 2 July 2014 a complaint to the European Ombudsman for alleged maladministration.

---

<sup>597</sup> See Judgment of the General Court of 18 September 1992, *Automec Srl v Commission*, T-24/90, ECLI:EU:T:1992:97, paragraph 77.

<sup>598</sup> See Judgment of the General Court of 20 March 2002, *ABB Asea Brown Boveri Ltd v Commission*, T-31/99, paragraphs 104-105; see also Judgment of the General Court of 8 July 1999, *Vlaamse Televisie Maatschappij v Commission*, T-266/97, ECLI:EU:T:1999:144, paragraph 49 and Judgment of the General Court of 11 March 1999, *Thyssenstahl AG v Commission*, T-141/94, ECLI:EU:T:1999:48, paragraph 169.

<sup>599</sup> See Judgment of the Court of Justice of 11 July 2013, *Ziegler SA v Commission*, C-439/11 P, ECLI:EU:C:2013:513, paragraphs 154-155.

<sup>600</sup> See Judgment of the General Court of 6 July 2000, *Volkswagen v Commission*, T-62/98, ECLI:EU:T:2000:180, paragraph 283 and case law cited. See also Judgment of the General Court of 30 September 2003, *Atlantic Container Line and Others v Commission*, T-191/98, ECLI:EU:T:2003:245, paragraph 414.

<sup>601</sup> [...].

- (547) The European Ombudsman however abstained from giving her opinion on the legitimacy of this hybrid settlement procedure, because the competition proceedings were still ongoing.<sup>602</sup> The European Ombudsman only examined the behaviour of the former Commissioner for competition, and more specifically some of his public statements and his alleged instructions to close the case during his mandate. The Ombudsman made it clear that her opinion on this behaviour does not necessarily call the validity of this Decision into question.<sup>603</sup>
- (548) It follows from the above that statements made by or instructions from the Commissioner formerly responsible for competition have not breached the presumption of innocence of the non-settling parties and do not prove that the Commission has been prevented from dealing with the case impartially in this hybrid procedure.

#### 5.4.4. *The Statement of Objections*

- (549) The non-settling parties claim that the breach of the presumption of innocence can be proven by the Statement of Objections of 19 May 2014.
- (550) They argue that the Commission's reluctance to deviate from the Settlement decision proves the existence of a violation of the presumption of innocence. The violation of the presumption of innocence allegedly arises from the lack of reasons grounding the Statement of Objections addressed to them under the standard procedure. At the same time, when relying on evidence from the Statement of Objections to support their claim of Commission bias, the parties tend to refer to examples where the Commission deviated in its Statement of Objections from the settlement decision.
- (551) The Commission disagrees with these claims.
- (552) According to settled case-law, the Statement of Objections must be couched in terms that, even if succinct, are sufficiently clear to enable the parties concerned to fully identify the conduct complained of by the Commission and to enable them to defend themselves properly, before the Commission adopts a final decision.<sup>604</sup> The Statement of Objections, therefore, must contain the essential elements used against any undertaking, such as the facts, the characterisation of those facts and the evidence on which the Commission relies, so that the undertaking may submit its

---

<sup>602</sup> Point 16 of the Draft recommendation of 10.3.2015 of the European Ombudsman in the inquiry into complaint 1021/2014. See also Decision of the European Ombudsman in this inquiry: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/61312/html.bookmark> <http://www.ombudsman.europa.eu/en/cases/recommendation.faces/en/59249/html.bookmark>. In any case, the Commission does not agree with the findings of maladministration by the European Ombudsman and the Court is not bound by the recommendation of the European Ombudsman (See Order of the General Court of 30 September 2009, *Ivanov v Commission*, T-166/08, ECLI:EU:T:2009:37, paragraph 74; Judgment of the General Court of 4 October 2006, *Tillack v Commission*, T-193/04, ECLI:EU:T:2006:292, paragraph 128).

<sup>603</sup> Point 18 of the Draft recommendation.

<sup>604</sup> See Judgment of the Court of Justice of 20 January 1994, *Ahlström Osakeyhtiö and Others v Commission*, C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, ECLI:EU:C:1993:120, paragraph 42; Judgment of the General Court of 19 March 2003, *CMA CGM and Others v Commission*, T-213/00, ECLI:EU:T:2003:76, paragraph 109; and Judgment of the General Court of 14 April 2011, *Visa Europe and Visa International Service v Commission*, T-461/07, ECLI:EU:T:2011:181, paragraph 56.

arguments effectively in the administrative proceedings brought against it.<sup>605</sup> However, that may be done summarily and the final decision does not necessarily have to be an exact replica of the Statement of Objections, since the statement is a preparatory document containing assessments of fact and of law which are purely provisional in nature.<sup>606</sup> With respect to the statement of reasons, the Commission must give its final assessments in the final decision, based on the results of the whole of its investigation as they stand at the time the administrative proceedings are closed.<sup>607</sup>

- (553) The Statement of Objections of 19 May 2014 complied with all requirements of the case law. It was not identical to the settlement decision. It was far more detailed, precisely to give the addressees the opportunity to defend themselves fully and properly against the objections raised in their regard under the standard procedure.
- (554) The parties clearly understood the case made out against them in their Statement of Objections of 19 May 2014, as is apparent from their responses to that Statement of Objections and/or their explanations at the oral hearing.
- (555) On this basis, it cannot be inferred that any alleged lack of reasons grounding the Statement of Objections of 19 May 2014 constitutes proof of a violation of the presumption of innocence.
- (556) Crédit Agricole and JPMorgan Chase attempt to demonstrate an alleged violation of the presumption of innocence in the Statement of Objections of 19 May 2014 by referring to certain deviations in that Statement of Objections from the objections raised against them in the settlement procedure. They suggest that the Commission deliberately deviated from the settlement in order to punish them for their withdrawal from the settlement, and claim this constitutes an abuse of the settlement procedure<sup>608</sup> and a violation of the principle of legitimate expectations.<sup>609</sup>
- (557) The Commission rejects these claims. The Settlement Notice explicitly provides that the Commission reserves the right, when there are good reasons to do so, to adopt a Statement of Objections which may not necessarily reflect what was discussed in the settlement discussions, if parties fail to introduce settlement submissions.<sup>610</sup> Recent case law has confirmed that the situation in respect to those parties that have

---

<sup>605</sup> See Judgment of the General Court of 2 February 2012, *Dow Chemical v Commission*, T-77/08, ECLI:EU:T:2012:47, paragraph 110 and the case-law cited.

<sup>606</sup> See Judgment of the General Court of 9 September 2015, *Panasonic v Commission*, T-82/13, ECLI:EU:T:2015:612, paragraph 49; Judgment of the Court of Justice of 7 June 1983, *Musique Diffusion française and Others v Commission*, Joined Cases 100/80 to 103/80, ECLI:EU:C:1983:159, paragraph 14; and Judgment of the Court of Justice of 17 November 1987, *British American Tobacco and Reynolds Industries v Commission*, Joined Cases 142/84 and 156/84, ECLI:EU:C:1987:490, paragraph 70.

<sup>607</sup> See Judgment of the Court of Justice of 17 November 1987, *British American Tobacco and Reynolds Industries v Commission*, Joined Cases 142/84 and 156/84, paragraph 70; See also Judgment of the Court of Justice of 10 July 2008, *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, ECLI:EU:C:2008:392, paragraphs 64 and 65.

<sup>608</sup> [...].

<sup>609</sup> [...].

<sup>610</sup> Commission Settlement Notice, points 18, 27 and 29.

withdrawn from settlement discussions is that of a 'tabula rasa', in which the liabilities are yet to be determined under the standard procedure.<sup>611</sup>

- (558) To the extent it can be argued that the Statement of Objections adopted under the standard procedure deviated from the objections raised in the settlement procedure, this can only reflect the continued investigation after 4 December 2013, and the evidence available, and the analysis of this information, at the time of the issuance of the Statement of Objections of 19 May 2014. Under the standard procedure, the Commission is required to review the file, define the timeframe taken into account and, where appropriate, to adjust afresh the method for the calculation of the fine.<sup>612</sup> Any deviation from the original objections is not a punishment of the non-settling parties but an illustration of the situation of a 'tabula rasa' in respect of the non-settling parties.
- (559) As regards the body of evidence at the time of the issuance of the Statement of Objections and thereafter, it should be noted that the Commission carried out a further inspection at the premises of JPMorgan Chase in February 2014. In addition, following the receipt of further evidence from [non-addressee] in February 2015 which corroborated certain facts in the Statement of Objections, the Commission gave access to this information to the addressees of the Statement of Objections by way of a Letter of Facts and allowed them to submit comments, if any, in writing and at the oral hearing in June 2015.
- (560) In order to establish the participation of the non settling parties in the infringement, the Commission relies on the evidence on file and statements of the parties and not on the settlement decision. Therefore, the non-settling parties have failed to establish that non-deviation from the decision adopted under the settlement procedure allegedly violates the presumption of innocence. None of the addressees of the Statement of Objections of 19 May 2014 have brought forward any concrete evidence that supports the general and unfounded allegations of bias.
- (561) In conclusion, it cannot be inferred from the Statement of Objections of 19 May 2014 that the Commission was biased or violated the presumption of innocence of the non-settling parties.

#### 5.4.5. *Access to file*

- (562) Crédit Agricole, HSBC and JPMorgan Chase claim that the lack of impartiality of the Commission is illustrated by alleged violations of their rights of defence concerning the access to file. JPMorgan Chase limits its complaints to the data room procedure and argues that it was insufficient that only their external counsel and economists had access.<sup>613</sup> HSBC complains primarily about the delays in the access to file procedure, which allegedly prevented HSBC from properly defending itself.<sup>614</sup> Crédit Agricole claims that access to the file was incomplete and further accuses the Commission of procedural obstruction in dealing with its claims for further access.<sup>615</sup>

---

<sup>611</sup> See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, paragraph 104.

<sup>612</sup> See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, paragraph 90.

<sup>613</sup> [...].

<sup>614</sup> [...].

<sup>615</sup> [...].

- (563) The Commission rejects the claims, most of which originate in requests for access that were not directly related to the findings of facts or legal characterisation of the participation in an infringement, but rather to documents from the settlement procedure, and in particular data used for the fines calculation.
- (564) The delays were not unreasonable given the complexity of the requests for access. The requests have been dealt with diligently, and the Commission has further accommodated the situation by giving a separate time limit for commenting on the methodology for the calculation of the fines. The delays did not in any way work to the disadvantage of the parties. On the contrary, the deadline to reply to the Statement of Objections of 19 May 2014 which was initially 3 July 2014 was extended until 14 November 2014 and an additional time period until 31 March 2015 was granted to submit updated responses concerning the fining methodology. Further comments were provided in replies to Letters of facts and new access was given when the settlement decision was amended. The non-settling parties were given in total, and after extensions, a period of over ten months for submitting their responses to the Statement of Objections which is well beyond the period of four weeks that is provided by Article 17(2) of Regulation (EC) No 773/2004. The time limit for submitting responses has also not prevented any party from continuing to send further submissions thereafter.<sup>616</sup>
- (565) Following decisions by the Hearing Officer in October 2014, data room procedures were organised in October 2014 and in June 2016 to grant access to unredacted or less-redacted versions of certain turnover-related documents. The Hearing Officer also decided that the non-settling parties should be granted access to the Commission Decision of 4 December 2013 adopted against the settling parties, as well as the respective Settlement Statement of Objections and the responses to that Settlement Statement of Objections.<sup>617</sup>
- (566) Crédit Agricole and JPMorgan Chase maintain in response to the Statement of Objections that the restricted access in a data room procedure was not necessary in view of the data concerned. Crédit Agricole continues to dispute the confidential character of the financial data of its competitors and the reports drawn up on the basis of this data.
- (567) The Commission rejects the claims. In relation to the fines, the Statement of Objections should contain the principal elements of fact and of law that may give rise to a fine, such as the gravity and the duration of the alleged infringement and the fact that it has been committed intentionally or negligently.<sup>618</sup> Although under no legal obligations in this respect, the Commission has, in order to increase transparency, provided further information relevant to any subsequent calculation of fines, including the relevant sales figures to be taken into account.
- (568) The parties have also complained about the fact that they have not been provided access to their respective responses to the Statement of Objections. This claim is unfounded for the following reasons.

---

<sup>616</sup> [...].

<sup>617</sup> See recitals (100) and (101).

<sup>618</sup> See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, paragraph 98.

- (569) In this regard, it is necessary to emphasise that a Commission Decision imposing fines on various undertakings pursuant to a common procedure consists of several similar individual decisions. For the rights of defence, there is no need to give each party access to the response to the Statement of Objections of the other parties, or to other comments on each other's information.
- (570) As a general rule, pursuant to paragraph 27 of the Commission Notice on Access to file, no access is granted to other parties' replies to the Commission's objections. Documents received after the Statement of Objections are only made accessible where such documents constitute new evidence, and in particular where the Commission intends to rely on new evidence.<sup>619</sup> The replies also did not contain exculpatory evidence or new inculpatory evidence that the Commission wished to rely on for this Decision.
- (571) The access to file procedure has not in any way prevented Crédit Agricole, HSBC and JPMorgan Chase from properly defending themselves against the findings of fact or qualification of their participation in an infringement, as explained to them under the standard procedure in the Statement of Objections of 19 May 2014 and the letters of facts of 30 March 2015 and 9 September 2016.
- (572) Even before the adoption of this Statement of Objections on 19 May 2014, and the normal access to file procedure thereafter, Crédit Agricole, HSBC and JPMorgan Chase were informed of the essential elements and evidence of the case, including the various leniency statements, since they had actively participated in settlement discussions.<sup>620</sup> They returned this evidence when they withdrew from the settlement procedure.<sup>621</sup>
- (573) Following the receipt of the Statement of Objections, Crédit Agricole, HSBC and JPMorgan Chase received full access to the Commission file under the standard procedure.<sup>622</sup> The Commission has given the non-settling parties access to all documents on the Commission file, excluding only documents containing business secrets or other confidential information, internal documents as well as certain documents related to the settlement procedure.
- (574) Following specific requests and after clearing questions of confidentiality, the Commission gave further access where possible.<sup>623</sup> The Hearing Officer rejected other claims for further access because they concerned information that was not necessary for the proper exercise of the right to be heard.
- (575) Finally, the non-settling parties' very complete and detailed responses to the SO, including their comments on the methodology of the fines calculation confirm that they had a proper access to the file. Further access has been granted to all three

---

<sup>619</sup> See Judgment of the General Court of 30 September 2009, *Hoechst v Commission*, T-161/05, ECLI:EU:T:2009:366, paragraph 163; See also Judgment of the General Court of 27 September 2012, *Shell Petroleum NV and others v Commission*, T-343/06, ECLI:EU:T:2012:478, paragraphs 79-90; and Judgment of the General Court of 15 July 2015, *Akzo Nobel NV and others v Commission*, T-47/10, ECLI:EU:T:2015:506, paragraphs 335-358.

<sup>620</sup> See recital (91).

<sup>621</sup> See recital (93).

<sup>622</sup> See recitals (98) - (99).

<sup>623</sup> On several occasions, the Hearing Officer granted requests for further access pursuant to Article 7 of Decision 2011/695/EU.

parties to certain financial data of [non-addressee], following the decision of 4 April 2016 amending the settlement decision of 4 December 2013. All the above illustrates that the Commission has conducted a careful procedure and has devoted the time that was needed to do so.

- (576) The Commission considers that there were sufficient objective guarantees to ensure impartiality and full respect of the parties' rights of defence in the standard procedure. Crédit Agricole, HSBC and JPMorgan Chase had access to the Commission's file, had an opportunity to reply to the Statement of Objections adopted in their respect in writing and at an oral hearing, to comment on the letters of facts and to comment on the methodology for calculating the fines. As a consequence, it can be concluded that the rights of defence have been respected.

#### 5.4.6. Remedies

- (577) Crédit Agricole claims that the Commission is prevented from adopting a decision because there is no effective jurisdictional remedy for the alleged violations of the rights of defence in Court, other than reducing the fines or annulling the Commission Decision.<sup>624</sup> Crédit Agricole also refers to the allegedly limited resources of the Court in comparison to the Commission for exercising a full review.<sup>625</sup>
- (578) The Commission refutes this claim. The Courts have very wide powers to apply effective remedies, including for non-compliance with the rights of defence and none of the alleged violations of the rights of defence can lead the Commission to waive its obligation under the Treaty to enforce the competition rules and investigate and to impose sanctions for infringements of Article 101 of the Treaty and Article 53 the EEA Agreement.

#### 5.4.7. Conclusion

- (579) The Commission concludes that the procedure was carried out in full compliance with the parties' rights of defence.
- (580) Such alleged violations can also not be derived from the content of the settlement decision of 4 December 2013, the public statements of the Commissioner formerly responsible for competition, the continuation of the proceeding after the adoption of the settlement decision against the non-settling parties, the Statement of Objections of 19 May 2014, the access to file procedure and the oral hearing of 15 to 17 June 2015.
- (581) Crédit Agricole, HSBC and JPMorgan Chase have had the possibility to defend themselves properly against the Statement of Objections adopted in their regard and nothing prevented the Commission from adopting this Decision fairly and lawfully, with respect to their rights of defence and without violation of the presumption of innocence.

---

<sup>624</sup> [...].

<sup>625</sup> [...].

## 6. ADDRESSEES

### 6.1. Principles

- (582) The Union's competition law applies to activities of "undertakings". This concept covers any entity engaged in an economic activity, regardless of its legal status. An undertaking must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.<sup>626</sup> The concept of undertaking is not identical with the notion of corporate legal personality in national commercial or fiscal law.
- (583) When such an economic entity infringes Article 101 of the Treaty, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. The infringement must be imputed unequivocally to a legal person on whom fines may be imposed.<sup>627</sup> The same principles hold true for the purposes of the application of Article 53 of the EEA Agreement.
- (584) An employee performs his duties for and under the direction of the undertaking for which he works and, thus, is considered to be incorporated into the economic unit comprised by that undertaking. For the purposes of a finding of infringement of EU competition law any anti-competitive conduct on the part of an employee is thus attributable to the undertaking to which he belongs and that undertaking is, as a matter of principle, held liable for that conduct.<sup>628</sup>
- (585) The conduct of a subsidiary may be imputed to the parent company where they form a single economic unit and therefore a single undertaking for the purposes of Community competition law.
- (586) The economic, organisational and legal links between the subsidiary and its parent determine if they form one undertaking. A subsidiary forms a single economic unit with its parent company where the subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company.
- (587) There is a rebuttable presumption that a parent company does in fact exercise such decisive influence over the conduct of its subsidiary when it has a (direct or indirect) near 100% shareholding in its subsidiary.<sup>629</sup> In those circumstances, it is sufficient for the Commission to prove that the subsidiary is nearly wholly owned by a parent company in order to presume that this parent company exercised a decisive influence over the commercial policy of its subsidiary. On the basis of this presumption, the

---

<sup>626</sup> See Judgment of the Court of Justice of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, ECLI:EU:C:2009:536, paragraphs 54 and 55 and the case law referred to in those paragraphs.

<sup>627</sup> See Judgment of the Court of Justice of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, paragraphs 56 and 57 and the case law referred to in those paragraphs.

<sup>628</sup> See Judgment of the Court of Justice of 21 July 2016, *SIA 'VM Remonts'*, C-542/14, ECLI:EU:C:2016:578, paragraphs 23-24.

<sup>629</sup> See Judgment of the Court of Justice of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, paragraph 60 and the case law referred to in that paragraph. See also Judgment of the Court of Justice of 29 September 2011, *Elf Aquitaine SA v Commission*, C-521/09, ECLI:EU:C:2011:620, paragraphs 56; and Judgment of the General Court of 30 September 2009, *Arkema SA v Commission*, T-168/05, ECLI:EU:T:2009:367, paragraphs 69-70 and the case law referred to therein, as well as paragraph 100.



parent and its subsidiary are considered to form part of one undertaking that is held liable for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement and both legal entities can be held jointly and severally liable for the payment of the fine imposed on that undertaking.

- (588) The presumption that a parent company exercises decisive influence over the conduct of its nearly wholly owned subsidiaries can only be rebutted by adducing sufficient evidence that the subsidiary concerned acted independently on the market.<sup>630</sup> Evidence that the parent company was not aware of the participation of its subsidiary in a cartel does not amount to proving that this subsidiary acted autonomously with respect to its overall commercial policy.<sup>631</sup>

## 6.2. Application in this case

- (589) The traders that participated in the collusive contacts were entitled and authorised to trade EIRDs for the undertakings for which they worked. Most of them performed the function of market maker.<sup>632</sup> The submitters were authorised to make benchmark submissions to the calculation agent for the calculation of benchmark rates on behalf of their undertaking.<sup>633</sup> The banking management could or should have been aware of this conduct.<sup>634</sup>

- (590) On this basis, the Commission holds the respective traders' and submitters' undertakings liable for the cartel conduct of their employees. The following factors are used to establish liability for the infringement within each undertaking and to identify the addressees of this Decision.

### 6.2.1. *Crédit Agricole*

- (591) The relevant individuals for the facts described in section 4 of this Decision were employed at the time of the infringement by *Crédit Agricole Corporate and Investment Banking*. This entity had responsibility for trading financial derivative products based on Euro interest rates.<sup>635</sup>

NAME	ENTITY/DEPARTMENT	POSITION	PERIOD
[employee of Crédit Agricole]	CACIB Paris (Department: Interest Rates Derivatives, Team: Linear	[...]	[...]

<sup>630</sup> See Judgment of the Court of Justice of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, paragraph 61 and the case law cited; Judgment of the Court of Justice of 29 September 2011, *Elf Aquitaine SA v Commission*, C-521-09, paragraphs 57; and Judgment of the General Court of 30 September 2009, *Arkema SA v Commission*, T-168/05, paragraph 70.

<sup>631</sup> See Judgment of the General Court of 15 June 2005, *Tokai Carbon Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v Commission*, Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03, ECLI:EU:T:2005:220, paragraph 54.

<sup>632</sup> See recitals (40)-(43)

<sup>633</sup> The responsibility of trading EIRDs lay with the colluding banks in whose name the contracts affected by the cartel were concluded (see recitals (63), (55), (59), (68), (73), (78) and (82)). The traders involved in the cartel contacts acted on their behalf. HSBC states that with regard to the submissions of quotes to the Euribor panel, this task was bestowed on traders employed by HSBC France [...]. For a list of HSBC employees who were traders involved in trading financial derivatives products based on Euro interest rate see [...]. JPMorgan Chase states that the responsibility for determining and submitting JPMorgan Chase's daily Euribor contribution lay with the submitters [...]. As for *Crédit Agricole* see for instance [...].

<sup>634</sup> See Recital (465).

<sup>635</sup> [...].

	Interest Rate Trading)		
[employee of Credit Agricole]	CACIB Paris (Department: Interest Rates Derivatives, Team: Linear Interest Rate Trading)	[...]	[...]
[employee of Credit Agricole]	CACIB Paris	[...]	[...]

- (592) During the infringement period, nearly all shares of *Crédit Agricole Corporate and Investment Banking* were held by *Crédit Agricole SA*, the ultimate parent company of the *Crédit Agricole* group.<sup>636</sup> *Crédit Agricole SA* determined the various aspects of strategy of the *Crédit Agricole* group including *Crédit Agricole Corporate and Investment Banking* and coordinated the strategies of the subsidiaries of the *Crédit Agricole* group within and outside of France.<sup>637</sup> The accounts of *Crédit Agricole Corporate and Investment Banking* were consolidated into those of *Crédit Agricole SA* and a significant number of executives within *Crédit Agricole SA* have held multiple functions in *Crédit Agricole Corporate and Investment Banking*.<sup>638</sup>
- (593) The Commission considers that *Crédit Agricole Corporate and Investment Banking* has directly participated in the anticompetitive contacts and presumes the exercise of decisive influence by *Crédit Agricole SA* over *Crédit Agricole Corporate and Investment Banking*'s conduct on the market. This presumption is confirmed by additional indications and *Crédit Agricole* has not rebutted this presumption in its response to the Statement of Objections.
- (594) Both *Crédit Agricole SA* and *Crédit Agricole Corporate and Investment Banking* form part of the undertaking that committed the infringement described in this Decision. The Commission holds *Crédit Agricole SA* and *Crédit Agricole Corporate and Investment Banking* jointly and severally liable for this infringement. Accordingly, this Decision is addressed to *Crédit Agricole Corporate and Investment Banking* and *Crédit Agricole SA*.
- (595) *Crédit Agricole* does not deny that *Crédit Agricole Corporate and Investment Banking* and *Crédit Agricole SA* formed part of the same undertaking. However, unlike [non-addressees] involved in these proceedings, *Crédit Agricole* claims that it bears no responsibility for the conduct of its employees. *Crédit Agricole* claims that it had no knowledge of the contacts of its traders with submitters or with the traders of [non-addressees] and that it cannot be held liable for the conduct of traders that operate for their personal interest outside their mandate.<sup>639</sup> *Crédit Agricole* asserts that the conduct of its traders would not be imputable to the bank under penal codes or financial regulations and so should not be under competition rules.
- (596) The Commission refutes this claim. Article 20(1) and (2) of Regulation 1/2003 empower the Commission to impose fines on undertakings where, intentionally or negligently, they have committed an infringement of the European competition

---

<sup>636</sup> [...].

<sup>637</sup> [...].

<sup>638</sup> [...]. For example, a General Director at *Crédit Agricole SA* was a member of the executive committee of CACIB and various General Directors at CACIB were members of the executive board of *Crédit Agricole SA*.

<sup>639</sup> [...].

rules.<sup>640</sup> The physical persons that are involved in the infringement do not in themselves constitute undertakings within the meaning of European competition law, but are incorporated into the undertakings with whom they have an employment relationship and thus form an economic unit.<sup>641</sup> It therefore falls to the legal entity to answer for an infringement of Article 101 of the Treaty.

- (597) An employee is deemed to act on behalf of his employer.<sup>642</sup> It is not necessary for there to have been action by, or even knowledge on the part of the management of the undertaking concerned; action by a person who is authorised to act suffices.<sup>643</sup>
- (598) Further, the portfolio of financial products handled by Crédit Agricole's employees is the bank's portfolio and not the personal portfolio of its employees. In competition law, Crédit Agricole therefore remains liable for the anticompetitive conduct of its employees, irrespective of whether the management had not authorised the employees to engage in such conduct, was not aware of such conduct, or if the conduct ran contrary to instructions provided.
- (599) Due to regulatory requirements and the sums at stake, the banking industry and in particular any activity in the international financial markets is characterised by a high level of recording and supervision of individual employees which, compared to other industries, considerably facilitates the detection of illicit behaviour by its employees, if a bank so wishes. The evidence in the form of online chats and emails on which this Decision is based was available to the bank all along, and the bank therefore could or should have been aware of the essential characteristics of the collusive scheme and the involvement of its traders.
- (600) Crédit Agricole argues that it cannot be held liable for any attempts of its traders to manipulate a benchmark, because these traders had no authority to make benchmark submissions to the calculation agent for the calculation of benchmark rates.
- (601) However, such authorisation to act should not be interpreted narrowly. The traders involved in the infringement were authorised by the bank to trade EIRDs, and all their actions aimed to improve their trading positions for EIRDs, irrespective of whether these actions took the form of trading, exchanging information on pricing intentions or trading strategies with other traders or attempting to manipulate the benchmark used for trading EIRDs.
- (602) The fact that the benchmark submissions technically fall within the remit of another employee does not mean that these traders could not aim to coordinate and improve their trading positions for EIRDs when exchanging information on the benchmark submissions or colluding to influence these benchmark submissions. When doing this, they still formed an economic unit with their bank, and the bank remains

---

<sup>640</sup> See Judgment of the Court of Justice of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, paragraph 54.

<sup>641</sup> See Judgment of the Court of Justice of 16 September 1999, *Jean Claude Becu*, C-22/98, ECLI:EU:C:1999:419, paragraph 26.

<sup>642</sup> See Judgment of the General Court of 15 July 2005, *Voestalpine v Commission*, T-418/10, ECLI:EU:T:2015:516, paragraph 394.

<sup>643</sup> See Judgment of the Court of Justice of 7 June 1983, *Musique Diffusion française and Others v Commission*, Joined Cases 100/80 to 103/80, paragraph 97; and Judgment of the General Court of 20 March 2002, *Brugg Rohrsysteme v Commission*, T-15/99, paragraph 58; and Judgment of the General Court of 14 March 2013, *Dole Food Company v Commission*, T-588/08, paragraph 581.

responsible for the conduct of its employees that had directly or indirectly an impact on the trading position of the bank.

- (603) In *Crédit Agricole's* narrow interpretation undertakings can only be held liable for the conduct of employees that operate within the strict remit of their mandate. This position ignores that the participation in agreements that are prohibited by the Treaty is usually clandestine and not governed by formal rules. It is rarely the case that an undertaking's representative attends a meeting with a mandate to commit an infringement.<sup>644</sup> In this narrow interpretation, it would suffice to exclude cartel behaviour from the mandate of its employees in order to escape liability for such conduct.
- (604) *Crédit Agricole* not only claims that its traders had no authority to talk to the submitters, but also claims that the traders were closely monitored and that there is no evidence of such contacts with submitters. *Crédit Agricole* further submits that internal investigation have not produced evidence of such contacts or any abnormal submission to the calculation agent.<sup>645</sup>
- (605) This argument ignores that the supervision of the traders was not perfect. At some banks, including *Crédit Agricole*, traders and submitters were located on the same trading floor and could talk face-to-face without leaving any written trace.<sup>646</sup> The contemporaneous evidence confirms the existence of contacts with submitters.<sup>647</sup> Under these circumstances, *Crédit Agricole* cannot invoke a theoretical internal division, to escape responsibility for the conduct of its employees, traders and submitters, in the trade of EIRDs.
- (606) If and to what extent the bank benefited from the actions of its traders is irrelevant.<sup>648</sup> It has been established that the conduct in question is an infringement by object, and the Commission is not required to demonstrate or assess its effect.<sup>649</sup>
- (607) Thus, there is no doubt that the infringing conduct can be attributed to *Crédit Agricole*. Taking personal responsibility as a reference point normally supports the effective enforcement of the competition provisions, given that the person conducting the undertaking also has decisive influence over its market behaviour; the pressure of the penalties imposed should lead him to alter this conduct, such that in future the undertaking conducts itself in compliance with competition law.<sup>650</sup>

---

<sup>644</sup> See Judgment of the Court of Justice of 7 February 2013, *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, C-68/12, paragraphs 26-28.

<sup>645</sup> [...].

<sup>646</sup> For *Crédit Agricole*, see Recital (191). This was also the case at HSBC and [non-addressee][non-addressee][non-addressee].[...] At JPMorgan Chase, the traders and the submitters were in the same building and possibly on the same floor (See recital (265)). At [non-addressee], submitters were situated in [...] while the traders involved in the cartel were sitting in [...].

<sup>647</sup> For *Crédit Agricole*, see recitals (189)-(191), (210), (213)-(219), (224)-(226), (292)-(294), (304)-(307) and (319)-(321).

<sup>648</sup> [...].

<sup>649</sup> See section 5.1.2. Restriction of competition.

<sup>650</sup> Opinion of Advocate General Kokott in Case C-97/08P, *Akzo Nobel and Others v Commission*, ECLI:EU:C:2009:262, paragraph 41.

### 6.2.2. HSBC

- (608) The relevant individuals at the time of the infringement were employed by *HSBC France*.<sup>651</sup> Within the HSBC group framework, *HSBC France* is active in trading financial derivative products based on Euro interest rates.<sup>652</sup>

NAME	ENTITY	POSITION	PERIOD
[employee of HSBC]	HSBC France	[...]	[...]
[employee of HSBC]	HSBC France	[...]	[...]
[employee of HSBC]	HSBC France	[...]	[...]
[employee of HSBC]	HSBC France	[...]	[...]

- (609) During the infringement period, *HSBC France* was wholly owned by *HSBC Bank plc*, another entity of the HSBC group that is active in trading financial derivative products based on Euro interest rates.<sup>653</sup> *HSBC Bank plc* appointed all members of the Board of Directors of *HSBC France* and the accounts of *HSBC France* were consolidated into those of *HSBC Bank plc*.
- (610) During the infringement period, *HSBC Bank plc* was wholly owned by *HSBC Holdings plc*, the ultimate holding company of the HSBC group that determines the various aspects of strategy of the HSBC group including *HSBC Bank plc* and *HSBC France*.<sup>654</sup> [...].<sup>655</sup> The accounts of *HSBC Bank plc* and *HSBC France* were consolidated within the *HSBC Holdings plc* accounts.<sup>656</sup> Various executives within *HSBC Holdings plc* had multiple parallel management functions within *HSBC Bank plc* and *HSBC France* during the infringement period.<sup>657</sup>
- (611) The Commission considers that *HSBC France* and *HSBC Bank plc* have directly participated in the anticompetitive contacts and presumes the exercise of decisive influence by *HSBC Holdings plc* over *HSBC Bank plc*'s and *HSBC France*'s conduct on the market and the exercise of decisive influence by *HSBC Bank plc* over *HSBC France*'s conduct on the market. This presumption is confirmed by additional indications and HSBC has not rebutted this presumption in its response to the Statement of Objections.
- (612) *HSBC France*, *HSBC Bank plc* and *HSBC Holdings plc* form part of the undertaking that committed the infringement described in this Decision. The Commission holds *HSBC France*, *HSBC Bank plc* and *HSBC Holdings plc* jointly and severally liable for this infringement. Accordingly, this Decision is addressed to *HSBC France*, *HSBC Bank plc* and *HSBC Holdings plc*. For the same reasons as those set out in recitals (596) to (607), HSBC is held liable for the conduct of its employees.

---

<sup>651</sup> See recital (60). *Crédit Commercial de France (CCF)* became a wholly owned subsidiary of the HSBC Group in 2000 and *HSBC France* on 1 November 2005.

<sup>652</sup> [...].

<sup>653</sup> [...].

<sup>654</sup> [...].

<sup>655</sup> [...].

<sup>656</sup> [...].

<sup>657</sup> [...].

### 6.2.3. JPMorgan Chase

- (613) The relevant individuals at the time of the infringement were employed by *J.P. Morgan Services LLP*, until 30 January 2009 known as *J.P. Morgan Markets LLP*.<sup>658</sup>

NAME	ENTITY	POSITION	PERIOD
[employee of JPMorgan Chase]	J.P. Morgan Services LLP	[...]	[...]
[employee of JPMorgan Chase]	J.P. Morgan Services LLP	[...]	[...]
[employee of JPMorgan Chase]	J.P. Morgan Services LLP	[...]	[...]

- (614) The trade of financial derivative products based on Euro interest rates was concluded in the name of *JPMorgan Chase Bank, N.A.*
- (615) During the infringement period, the trading entity *JPMorgan Chase Bank, N.A.* and the employing entity *J.P. Morgan Services LLP* were, directly or indirectly, wholly owned subsidiaries of *JPMorgan Chase & Co*, the ultimate parent company of the JPMorgan Chase group.<sup>659</sup> *JPMorgan Chase & Co* sets the strategy with regard to the JPMorgan Chase group and manages it.<sup>660</sup> The accounts of *JPMorgan Chase Bank, N.A.* and *J.P. Morgan Services LLP* are consolidated into those of *JPMorgan Chase & Co*.<sup>661</sup> Various executives within *JPMorgan Chase & Co*. have held multiple parallel management functions within the JPMorgan Chase group, including at *JP Morgan Chase Bank N.A.*<sup>662</sup>
- (616) The Commission considers that *J.P. Morgan Services LLP* (the employing entity) and *JPMorgan Chase Bank N.A* (the legal entity in whose name EIRDs were traded) have directly participated in the anticompetitive contacts and presumes the exercise of decisive influence by *JPMorgan Chase & Co* (the ultimate parent company) over *J.P. Morgan Services LLP*'s and *JPMorgan Chase Bank N.A.*'s conduct on the market. This presumption is confirmed by additional indications and JPMorgan Chase have not rebutted this presumption in its response to the Statement of Objections.
- (617) *JPMorgan Services LLP* , *JPMorgan Chase Bank, N.A.* and *JPMorgan Chase & Co* form part of the undertaking that committed the infringement described in this Decision. The Commission holds *JPMorgan Services LLP*, *JPMorgan Chase Bank, N.A.* and *JPMorgan Chase & Co* jointly and severally liable for this infringement. Accordingly, this Decision is addressed to *JPMorgan Services LLP*, *JPMorgan Chase Bank, N.A.* and *JPMorgan Chase & Co*. For the same reasons as those exposed in recitals (596) to (607), JPMorgan Chase is held liable for the conduct of its employees.

### 6.2.4. Conclusion

- (618) For these reasons this Decision is addressed to:

---

<sup>658</sup> See Recital (64).

<sup>659</sup> [...].

<sup>660</sup> [...].

<sup>661</sup> [...].

<sup>662</sup> [...].

- (a) Crédit Agricole SA,
- (b) Crédit Agricole Corporate and Investment Bank,
- (c) HSBC Holdings plc,
- (d) HSBC Bank plc,
- (e) HSBC France,
- (f) JPMorgan Chase & Co.,
- (g) JPMorgan Chase Bank, National Association,
- (h) J.P. Morgan Services LLP.

## 7. DURATION

- (619) Concerning **Crédit Agricole**, as set out in recitals (177) to (179) on 4 October 2006 in an exchange [employee of non-addressee] reveals to [employee of non-addressee] that he has discussed his interest in high fixings for the IMM dates in October and November with [employee of Crédit Agricole]. This exchange shows that [employee of Crédit Agricole] was considered at the time by the traders of [non-addressee] and [non-addressee] to be part of a small group of traders whom they could ask for submissions in a certain direction. As explained in recitals (189)-(191), on 16 October [employee of non-addressee] exchanges with [employee of Credit Agricole] about his preference for a high 1 month EURIBOR fixing and asks if he can request his submitters to make a higher submission. [employee of Credit Agricole] agrees to such conduct and reports back on his (successful) exchange with his submitters before the fixing. After the fixing, both traders comment on the results, and [employee of non-addressee] explains that other market players were involved in the scheme. Therefore, 16 October 2006 should be considered as the starting date of the infringement as far as Crédit Agricole is concerned.
- (620) As regards **HSBC** it is described in recitals (252) to (253), (254) to (255) and (259) to (260) that in January and early February 2007 [employee of non-addressee] and [employee of HSBC] exchange information on EIRD pricing components, outside of the context of potential transactions. As explained in recitals (271) to (276), on 12 February 2007 [employee of non-addressee] explains to [employee of HSBC] that he plans to squeeze the spread between the 3 months EURIBOR and the 3 months EONIA on 19 March 2007 through a joint action of several banks, and that he has already built a large trading position on EIRDs priced by reference to the 3 month EURIBOR on the March IMM and intends to double this trading position. During this conversation, both traders remind one another to keep the content of the conversation secret and both promise not to disclose the information received. [employee of HSBC] adds that he will closely watch over the events. Apart from HSBC's claims concerning the most plausible interpretation of the exchange on 12 February 2007 which are examined in recitals (272) to (276), HSBC also claim<sup>663</sup> that the exchanges in which [employee of HSBC] was involved prior to 19 March 2007 were "*merely ancillary to the manipulation on that date*". However, [employee of HSBC] is not only clearly involved in a collusive exchange on 12 February 2007,

---

<sup>663</sup> [...].

but he is also involved in several other such exchanges with [employee of non-addressee] in the period up to 19 March 2007.<sup>664</sup> Therefore, 12 February 2007 should be considered as the starting date of the infringement as far as HSBC is concerned.

- (621) As regards **JPMorgan Chase**, it is set out in recitals (144) to (147) that prior to working with JPMorgan Chase [employee of JPMorgan Chase] was involved [...] in exchanges with [employee of non-addressee] relating to preferences for the future rate setting of certain EURIBOR tenors, requests toward certain submission levels and other pre-pricing information such as "*spreads*" or "*mids*". Recital (153) illustrates that in early September 2006 [employee of JPMorgan Chase] was considered by the traders of [non-addressee] and [non-addressee] to be part of the small group of traders to whom they would ask for submissions in a certain direction, and recital (157) describes an exchange of 18 September 2006 between [employee of JPMorgan Chase] and [employee of non-addressee] on trading positions and strategies and intended submissions for the 3 month EURIBOR. As set out in recitals (160) to (164), on 27 September [employee of non-addressee] and [employee of JPMorgan Chase] exchange information about their respective trading interests with regard to EIRDs priced by reference to the 1, 3 and 6 month EURIBOR. [employee of non-addressee] asks [employee of JPMorgan Chase] if he can ask his treasury desk to submit a high 3 month EURIBOR fixing the next day and [employee of JPMorgan Chase] agrees to check with his submitters. Therefore, 27 September 2006 should be considered as the starting date of the infringement as far as JPMorgan Chase is concerned.
- (622) On this basis, the respective dates on which the non-settling parties started their participation in the infringement are considered to be:
- (a) JPMorgan Chase: 27 September 2006;
  - (b) Crédit Agricole: 16 October 2006;
  - (c) HSBC: 12 February 2007.
- (623) For the reasons set out below, the Commission considers that the participation of Credit Agricole and JPMorgan Chase continued until 19 March 2007 and that HSBC's participation continued until 27 March 2007.
- (624) Concerning **Crédit Agricole**, as set out in recitals (278) to (282), (304) to (307), (316) and (319) to (321), [employee of Crédit Agricole] was fully involved in the collusive arrangement on 19 March 2007. On 16 March 2007 [employee of Crédit Agricole] states that he and his colleague [employee of Credit Agricole] have increased their trading exposure on March IMM futures to 20 000 (which is nearly double the 11 000 he indicates he has on 14 February). On 19 March 2007 after the submission [employee of Crédit Agricole] confirms that everyone at Crédit Agricole is happy with the outcome of the fixing and goes on to discuss with [employee of non-addressee] the losses of some of their competitors (and counterparties) who were not involved in the 19 March 2007 scheme. [employee of Crédit Agricole] suggests that some of these competitors "*must have been busted*" and that "*what I have earned they have lost*". [employee of non-addressee] also mentions that they need to prepare the next moves and mentions the next December fixing, to which [employee of

---

<sup>664</sup> See recitals (283)-(285), (286)-(288), (289)-(291), (295), (296)-(298), (322)-(331).



Crédit Agricole] implicitly agrees. Crédit Agricole claim in its Response to the Statement of Objections<sup>665</sup> that it cannot have been involved in any concerted practice related to the 19 March 2007 date because there is no direct evidence of a contact between either [employee of Crédit Agricole] or [employee of Credit Agricole] and Crédit Agricole's submitters. However, whether or not [employee of Crédit Agricole] did contact his submitters on 19 March 2007 does not alter the fact that he gains advance knowledge of, is willing to benefit from and agrees to cooperate with [employee of non-addressee] for the scheme planned and implemented on that date. Therefore, 19 March 2007 should be considered as the end date of the infringement as far as Crédit Agricole is concerned.

- (625) As regards **HSBC** and as set out in recitals (339) to (341) [employee of HSBC] and [employee of non-addressee] discuss on 27 March 2007 about the past manipulation of the IMM fixing on 19 March 2007 and conclude the exchange stating that there are 4 IMM dates and that they intend to "deal with the next one". There are no indications in the case file that [employee of HSBC] distanced himself in any way from this statement. This shows that HSBC was considered to be part of the overall scheme until at least 27 March 2007. HSBC assert in its response to the Statement of Objections<sup>666</sup> that there is "*no valid evidence of HSBC's involvement*" after 19 March 2007. Firstly, HSBC do not contest that it was involved in a collusion concerning the EURIBOR on 19 March 2007.<sup>667</sup> Secondly, it cannot be denied that [employee of non-addressee] explicitly proposes to [employee of HSBC] to participate in the next IMM collusive scheme and that [employee of HSBC] tacitly approves of such a plan. There is no indication that [employee of HSBC] does not understand what [employee of non-addressee] is proposing, as [employee of HSBC] seems apprised of some non-public details of what happened on 19 March such as the exact size of the trading position which [employee of non-addressee] had on 19 March 2007 (80000 futures), a piece of information he or his colleague [employee of HSBC] could only know from [employee of non-addressee]. Therefore, 27 March 2007 should be considered as the end date of the infringement as far as HSBC is concerned.
- (626) As regards **JPMorgan Chase**, as set out in recitals (308) to (315) and (332) to (337), the evidence on file allows a conclusion to be drawn that [employee of non-addressee] exchanged with [employee of JPMorgan Chase] in January and early February 2007 information related to his trading strategy for the 2007 March IMM scheme (long March IMM futures). In view of his past relationship with [employee of non-addressee] (see recitals (477) to (483)), [employee of JPMorgan Chase] could not fail to take into account such information when he changed his trading position between early February and 19 March 2007 from a large short (in other words he had sold such contracts) to small long (in other words he had bought such contracts) March IMM futures. [employee of JPMorgan Chase] thanked [employee of non-addressee] twice, first on 16 March and again on 19 March 2007, for sharing this piece of information with him. JPMorgan Chase in its Response to the Statement of Objections<sup>668</sup> claim that [employee of JPMorgan Chase]'s trading position is

---

<sup>665</sup> [...].

<sup>666</sup> [...].

<sup>667</sup> [...] "*HSBC was only involved in a single Euribor manipulation event on 19 March 2007 concerning a particular tenor*".

<sup>668</sup> [...].

inconsistent with his statements, and that his question to [employee of non-addressee] about where the latter's submitters contributed on 19 March 2007 is evidence that [employee of JPMorgan Chase] was not aware of the collusive scheme. The Commission rejects the claims. As explained in recital (334), concerning the trading position of [employee of JPMorgan Chase] on 19 March 2007, JPMorgan Chase's submission at the stage of the Response to the Statement of Objections is not plausible. This submission contradicts JPMorgan Chase's earlier reply to a request for information by the Commission. JPMorgan Chase explains this contradiction by stating that it "*inadvertently omitted*" in the earlier reply a significant portion of the trading position. This explanation is not convincing and does not negate the fact that [employee of JPMorgan Chase] significantly reduced his short position in the weeks after his discussion of 6 February with [employee of non-addressee],<sup>669</sup> meaning that his action is informed by the previous exchange he had with [employee of non-addressee]. In its Response to the Statement of Objections, this change of position is not contested by JPMorgan Chase. Concerning the most plausible explanation of the exchange between [employee of JPMorgan Chase] and [employee of non-addressee] on 19 March 2007, as explained in recitals (335)-(337) JPMorgan Chase's interpretation is not plausible as this exchange is closely linked with their earlier exchanges on [employee of non-addressee]'s trading interest on March IMM futures. Therefore, 19 March 2007 should be considered as the end date of the infringement as far as JPMorgan Chase is concerned.

(627) Consequently, the respective dates on which the non-settling parties terminated their participation in the infringement are considered to be:

- (a) Crédit Agricole: 19 March 2007;
- (b) HSBC: 27 March 2007;
- (c) JPMorgan Chase: 19 March 2007.

(628) The duration taken into account for each respective legal entity involved is therefore as follows:

Crédit Agricole SA, from 16 October 2006 to 19 March 2007

Crédit Agricole Corporate and Investment Bank, from 16 October 2006 to 19 March 2007

HSBC Holdings plc, from 12 February 2007 to 27 March 2007

HSBC Bank plc, from 12 February 2007 to 27 March 2007

HSBC France, from 12 February 2007 to 27 March 2007

JPMorgan Chase & Co., from 27 September 2006 to 19 March 2007

JPMorgan Chase Bank, National Association, from 27 September 2006 to 19 March 2007

J.P. Morgan Services LLP, from 27 September 2006 to 19 March 2007

---

<sup>669</sup> [...].

## 8. REMEDIES

### 8.1. Article 7(1) of Regulation (EC) No 1/2003

(629) 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(1) of Regulation (EC) No 1/2003.

(630) Given the secrecy in which the cartel arrangements were carried out, it is not possible to determine with absolute certainty that the infringement has ceased. It is therefore necessary to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and, in future, to refrain from any agreement, concerted practice or decision of an association which might have the same or a similar object or effect.

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

(631) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose upon undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and/or Article 53 of the EEA Agreement.<sup>670</sup> For each undertaking participating in the infringement, the fine cannot exceed 10% of its total worldwide turnover in the preceding business year. Pursuant to Article 23(3) of Regulation (EC) 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.

(632) The principles used by the Commission to set fines are laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003<sup>671</sup> ("the Guidelines on fines"). The Commission determines a basic amount for each party. The basic amount can then be increased or reduced for each company if either aggravating or mitigating circumstances are found. Commission sets the fines at a level sufficient to ensure deterrence. The Commission assesses the role played by each undertaking party to the infringement on an individual basis. Finally, the Commission applies, as appropriate, the provisions of the 2006 Leniency Notice. The Commission may use rounded figures in its calculations.

(633) With respect to this type of infringement, parties cannot claim that they did not act deliberately.<sup>672</sup> In any event, even if it were found that the parties in this case did not act intentionally, they would have acted at the very least negligently.

---

<sup>670</sup> Under Article 5 of Regulation (EC) No 2894/94 concerning arrangements of implementing the Agreement on the European Economic Area, OJ L 305, 30.11.1994, p. 6, the Community rules giving effect to the principles set out in Articles 101 and 102 of the Treaty apply *mutatis mutandis*.

<sup>671</sup> OJ C 210, 1.9.2006, p. 2. According to point 37 of the Guidelines on fines the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in their point 21.

<sup>672</sup> See Judgment of the General Court of 19 May 2010; *Wieland-Werke AG v Commission*, T-11/05, ECLI:EU:T:2010:201 (summary publication), paragraph 140; see also Judgment of the General Court of 6 April 1995, *Ferriere Nord v Commission*, T-143/89, ECLI:EU:T:1995:64, paragraph 42; and Judgment of the Court of Justice of 17 July 1997, *Ferriere Nord SpA v Commission*, C-219/95 P, paragraph 50.

- (634) Running the cartel in this case required a high level of trust and sophistication as the financial risks at stake were enormous. The efforts to manipulate benchmark rates and a series of discussions about pricing strategies, trading positions, required the involvement of several departments within certain banks. This happened despite the existence of supervisory mechanisms within the trading desks, treasury departments and compliance departments whose task was to ensure the respective bank's compliance with regulatory requirements. The facts of this case thus show that the infringement has been committed intentionally.<sup>673</sup> The individuals involved in the anticompetitive discussions were skilled professionals who were well aware of the commercial value and usefulness of the information disclosed<sup>674</sup> which further reinforces the conclusion that the infringement was committed intentionally. Finally, some of the parties to the infringement also took precautions to conceal their arrangement and to avoid its detection.<sup>675</sup>
- (635) Some non-settling parties deny that they committed the infringement intentionally. As this is an argument by which they are pleading for a lower fine, it will be dealt with below when addressing the adjustment of the basic amount of the fine.<sup>676</sup>

### 8.3. Basic amount of the fine

- (636) In applying the Guidelines on fines, the basic amount for each party results from the addition of a variable amount and an additional amount (also called entry fee). The variable amount in principle results from a proportion of the value of sales to which the infringement relates in a given year multiplied by the number of years of the undertaking's participation in the infringement. The additional amount is determined as a proportion of the value of sales of goods or services to which the infringement relates in a given year.

#### 8.3.1. *The values of sales*

##### 8.3.1.1. Principles

- (637) (638) The Commission applies the methodology set out in the Guidelines on fines. The basic amount of the fine is to be set by reference to the value of sales, that is, the value of the undertakings' sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area in the EEA.<sup>677</sup>
- (638) In determining the value of sales, the Commission will take the best available figures.<sup>678</sup>

##### 8.3.1.2. Application

- (639) Given that interest rate derivatives do not generate any sales in the usual sense, the Commission applies in the present case a specific proxy for the value of sales as a starting point for its determination of the fines.

---

<sup>673</sup> See in particular Recitals (358), (384), (391).

<sup>674</sup> [...] [employee of non-addressee] reminds [employee of non-addressee] not too communicate the shared information as it gives a competitive advantage: "*nen parle pas trop de ce truc car cest un avantage competitiv quon a par rapport aux autres*". See also recitals (389) and (400)-(402).

<sup>675</sup> See Recital (360).

<sup>676</sup> See Chapter 8.4 Adjustment of the basic amount.

<sup>677</sup> Points 12 and 13 of the Guidelines on fines.

<sup>678</sup> Point 15 of the Guidelines on fines.

- (640) The Commission does not use as a proxy the sales made by the parties during the last full business year of their participation in the infringement. In view of the short duration of the infringement of some parties, of the varying market size of the EIRD business over the infringement period, and in view of the differences in the duration of the involvement of different parties, the Commission considers it more appropriate to base the annualised sales proxy on the value of sales actually made by the undertakings during the months corresponding to their respective participation in the infringement.<sup>679</sup>
- (641) Sales in the usual sense correspond to inflows of economic benefit, the form of which being in most cases in cash or cash equivalent.<sup>680</sup> In addition, the anti-competitive conduct of this case concerns, notably, the collusion on price components relevant for the cash-flows of EIRDs. For these reasons, the Commission determines the annual value of sales for all parties on the basis of the cash flows that each bank received from their respective portfolio of EIRDs linked to any EURIBOR tenor and/or the EONIA and entered into with EEA-located counterparties ("cash receipts").
- (642) Accordingly, based on the submissions of the addressees of this Decision, the Commission takes into account the following cash receipts:

<b>Undertaking</b>	<b>Cash receipts (EUR)</b>
JPMorgan Chase	[...] <sup>681</sup>
Crédit Agricole	[...] <sup>682</sup>
HSBC	[...] <sup>683</sup>

- (643) The Commission discounts the above mentioned cash receipts figures by an appropriate, uniform factor in order to take account of the particularities of the EIRD market, and in particular the netting inherent in derivatives trading, the netting inherent in the EIRD market and the scale of price variations in the EIRD market which is on a scale of basis points (a basis point is one hundredth of one percentage point) instead of full percentage points.
- (644) The first element is the netting inherent in derivatives trading in general. This element takes into account that banks both sell and buy derivatives so that the incoming payments are netted against outgoing payments. For this purpose, the

---

<sup>679</sup> In line with the Statement of Objections, based on the durations indicated in recital (628) and on the following approach: full calendar months of infringement are taken into account in the proxy, starting months are taken into account only if the start date of participation is on or before the 15 of the month and ending months are taken into account only if the end date of participation is on or after the 16 of the month. Accordingly, the Commission based the respective proxy on the following months: Crédit Agricole: from November 2006 to March 2007, HSBC: from February 2007 to March 2007, JPMorgan Chase: from October 2006 to March 2007.

<sup>680</sup> See International Accounting Standard 18 *Revenue*.

<sup>681</sup> [...].

<sup>682</sup> [...].

<sup>683</sup> [...].

Commission has considered an industry-wide level for the netting inherent in the derivatives industry. According to the International Swap Dealer Association, the level would be around 85% to 90%.<sup>684</sup>

- (645) The second element is the netting inherent in the EIRD industry in particular. For this purpose, the Commission cross-checked the above percentages against the individual netting figures derived from the values of sales data submitted by the banks in the EIRD case. In its analysis, the Commission compared the relevant cash receipts data provided by the banks to the relevant net cash settlements data. More precisely, because net cash settlements can be negative and the collusive conduct aimed at manipulating the rate either upwards (in case the exposure was net receiver, so as to receive more) or downwards (in case the exposure was net payer, so as to pay less), the Commission computed, for each bank, the ratio between the annualised sum of the absolute values<sup>685</sup> of its relevant monthly net cash settlements against the annualised cash receipts. The result of such analysis was that, in the context of the EIRD case, the use of a discount factor in the range of 85% to 90% would have given rise to the application of a proxy for the value of sales leading to a level of fines that is over-deterrent. This factor, inherent in the EIRD industry, therefore called for a further increase of the discount factor beyond the above percentages.
- (646) The third element is the scale of price variations in the EIRD market which is on a scale of basis points instead of full percentage points. This refers to the fact that in classic industries, the average overcharge from cartels is around 20%<sup>686</sup> whereas the potential overcharge in this case, due to the particularities of the EIRD industry, is much lower. Indeed, the facts of the EIRD case indicate that price shifts are expressed in basis points. Even when expressed in relative terms to the underlying rates, it remains far below 20%. On this basis, the Commission compared an hypothetical overcharge of 2 to 4 basis points to the average level of the Euribor 6 month (one of the main tenors used in the EIRD industry and also in the present case) during the overall infringement period (around 4%) and the resulting percentages are 0.5% and 1% respectively. These percentages are thus far below the average overcharge from cartels in classical industries. Although the exact percentage may increase when the Commission shifts the numerator of the ratio (the hypothetical overcharge considered) or its denominator (the average rate considered, be it by looking at another tenor or at a narrower time period), the conclusion (that the levels are far below the average overcharge from cartels in classical industries) remains valid. As a result, another further increase of the discount factor is justified by the scale of price variations in the EIRD industry.

---

<sup>684</sup> See <http://www.isda.org/researchnotes/pdf/Netting-ISDAResearchNotes-1-2010.pdf> at page 1.

<sup>685</sup> Absolute value is a mathematical formula which indicates the distance a number is from zero. For example the absolute value of -100 is 100, which is also the absolute value of 100. If net cash settlements are +100 in a given month and -100 in another month, the simple sum of the net cash settlements over these two months is zero while the sum of the absolute values of the net cash settlements is 200.

<sup>686</sup> See [http://ec.europa.eu/competition/antitrust/actionsdamages/quantification\\_guide\\_en.pdf](http://ec.europa.eu/competition/antitrust/actionsdamages/quantification_guide_en.pdf), at page 45.

- (647) Finally, according to the case law, the Commission is not required to apply a precise mathematical formula and has a margin of discretion when determining the amount of each fine.<sup>687</sup>
- (648) On this basis, the Commission discounts the cash receipts figures indicated in recital (642) by an appropriate, uniform factor of [...] % which is the Commission's estimate of the factors mentioned in recitals (643) to (646). The Commission uses the resulting figures (hereafter referred to as "the "discounted cash receipts") as proxy for the value of sales. In doing so, the Commission applies the same methodology for the non-settling parties to determine the value of sales as the one used to calculate the fines in the Commission Decision C(2013) 8512 final of 4 December 2013. The discounted cash receipts of the parties are indicated in the following table.

<b>Undertaking</b>	<b>Discounted cash receipts (EUR)</b>
JPMorgan Chase	[...]
Crédit Agricole	[...]
HSBC	[...]

### 8.3.1.3. Arguments from the addressees and findings

- (649) The addressees disagree with the way the Commission determined the value of sales in this case. They raise (a) procedural arguments claiming that the Commission has violated their rights of defence when calculating the fines. They also claim that (b) the proxy chosen for the value of sales was arbitrary and inappropriate, (c) the scope of the proxy was too wide, and (d) the Commission has violated the principle of equal treatment by applying this proxy inconsistently. They also claim (e) that the application of a uniform discount factor was arbitrary and/or insufficient.

#### **(a) Arguments concerning the procedure**

- (650) The addressees claim that the use of a proxy on the basis of the cash receipts had been insufficiently explained, and that they had insufficient access to the data underlying the Commission's calculation of the proxy. Crédit Agricole claims that there were numerous obstacles and still outstanding issues that have prevented the bank from exercising a proper verification of the financial data of the [non-addressees]. This has allegedly breached its rights of defence.<sup>688</sup> Even though it voluntarily agreed to the data room, JPMorgan Chase now also argues that despite the organisation of a data room procedure in October 2014 and June 2016, JPMorgan Chase (as opposed to its external advisors) lacked access to certain data of other parties, which allegedly impeded JPMorgan Chase's rights of defence.<sup>689</sup>

---

<sup>687</sup> See Judgment of the Court of Justice of 29 September 2011, *Arkema v Commission*, C-520/09 P, ECLI:EU:C:2011:619, paragraph 93.

<sup>688</sup> [...].

<sup>689</sup> [...].

- (651) The Commission rejects the claims. In relation to the calculation of possible fines, it is settled case law that the Commission fulfils its obligation to respect the right of undertakings to be heard where it makes it clear in the Statement of Objections that it will consider whether it is appropriate to impose fines on the undertakings concerned and sets out the principal elements of fact and of law that may give rise to a fine, such as the gravity and the duration of the alleged infringement and the fact that it has been committed intentionally or negligently.<sup>690</sup> It follows from this case-law that the respect for the right of undertakings to be heard does not require the communication of the other parties' financial data, and even less their disclosure without any restriction notwithstanding the legitimate confidentiality concerns of those parties. In this case, even though under no legal obligation to do so,<sup>691</sup> the Commission has informed the non-settling parties about the methodology that it intended to use for the fines calculation and given them sufficient opportunities to comment on this methodology.
- (652) The Commission has explained in the Statement of Objections that it intended to calculate the fines on the basis of its Guidelines on fines, and that it would apply a proxy for the value of sales, because EIRDs do not generate sales in the usual sense. It was explained that the proxy was based on cash flows that each bank received from their respective portfolio of EIRDs linked to any EURIBOR tenor and/or EONIA entered into with EEA-located counterparts ("cash receipts"). The use of the proxy on the basis of discounted cash receipts was also well known to the parties from the settlement decision, to which they had access. The Commission also explained the reasoning underlying all its considerations and choices (see recitals (641), (644) et seq.)
- (653) The non-settling parties received access to the non-confidential version of the submissions of all other settling and non-settling parties that were used to calculate the proxies, and in particular the replies to the Commission's request for information of 12 October 2012. Full access was granted to the confidential versions of these documents, under a data room procedure in order to respect the confidential character of sensitive financial information. When the Commission on 6 April 2016 amended the settlement decision of 4 December 2013 for [non-addressee], because the latter had discovered an error in the data it had originally submitted for calculating the fine, the Commission again granted the non-settling parties access to the non-confidential version in a data room of the corrected data provided by [non-addressee], and access to the confidential versions under the same conditions as the previous data room exercise.

---

<sup>690</sup> See Judgment of the Court of Justice of 7 June 1983, *Musique Diffusion française and Others v Commission*, Joined Cases 100/80 to 103/80, paragraph 21; Judgment of the Court of Justice of 28 June 2005, *Dansk Rørindustri and Others v Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, ECLI:EU:C:2005:408, paragraph 428; Judgment of the Court of Justice of 24 September 2009, *Erste Group Bank and Others v Commission*, C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P, ECLI:EU:C:2009:576, paragraph 181; Judgment of the General Court of 27 February 2014, *LG Display v Commission*, T-128/11, ECLI:EU:T:2014:88, paragraph 93; Judgment of the General Court of 27 March 2014, *Saint-Gobain Glass France and Others v Commission*, T-56/09 and T-73/09, ECLI:EU:T:2014:160, paragraph 118; Judgment of the General Court of 17 December 2014, *Pilkington Group and Others v Commission*, T-72/09, ECLI:EU:T:2014:1094, paragraphs 228 to 244.

<sup>691</sup> Point 85 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ C 308 of 20.20.2011 p. 6.



- (654) This access went far beyond any usual access to value of sales data compared to the Commission's practice, and the non-settling parties were very well able to comment on the methodology for calculating the fines, as demonstrated by the numerous and detailed claims raised in their responses to the Statement of Objections and in any subsequent submission on this issue thereafter.
- (655) Some non-settling parties also claim that the Commission should have explained in the Statement of Objections why other possible alternative proxies were not used. This claim points to the alleged arbitrary and inappropriate character of the proxy chosen and applied. The Commission refutes this claim for the reasons which will be explained below. With regard to the rights of defence, according to settled case-law, the Commission fulfils its obligation to respect the undertakings' right to be heard provided that it indicates expressly in the Statement of Objections that it will consider whether it is appropriate to impose fines on the undertakings concerned and that it sets out the principal elements of fact and of law that may give rise to a fine, such as the gravity and the duration of the alleged infringement and the fact that it has been committed intentionally or negligently.<sup>692</sup> The choice for this proxy as such cannot amount to a violation of their rights of defence.

**(b) *Arguments concerning the appropriateness of the proxy***

- (656) The addressees claim that the Commission's choice of discounted cash receipts as a proxy for the value of sales was arbitrary and inappropriate. They claim that the Commission allegedly failed to consider other alternatives that in their view are more appropriate.
- (657) They refer to the particular features and peculiarities of the EIRD market arguing that, by using cash receipts, the Commission allegedly ignored the fact that banks are active on both sides of the market (in other words that they both make and receive payments). They also argue that cash receipts do not properly reflect the value of the EIRD products traded during that period. Crédit Agricole contend that the Commission should have used the net result from financial operations that is mentioned in the Merger Regulation<sup>693</sup>. JPMorgan Chase also refer to the Merger Regulation and argues that the use of AFR (allocated franchise revenue) [...] would be a more appropriate measure.<sup>694</sup> HSBC in turn draws the conclusion that no proxy for the value of sales can be meaningfully chosen at all in this case, and that this should lead the Commission to depart from its standard fining methodology by using point 37 of the Guidelines on fines.<sup>695</sup>
- (658) The Commission rejects the claim. It is reiterated that the proxy for values of sales selected is not cash receipts, but discounted cash receipts (see recitals (643) to (648)). The choice was neither arbitrary nor inappropriate as explained in the Statement of Objections.

---

<sup>692</sup> See notably Judgment of the General Court of 12 December 2012, *I. garantovaná v Commission*, T-392/09, ECLI:EU:T:2012:674, paragraph 68.

<sup>693</sup> OJ L 24, 29.1.2004, p. 1.

<sup>694</sup> [...].

<sup>695</sup> [...].

- (659) The Commission's choice for a proxy for the value of sales on the basis of discounted cash receipts is not arbitrary. Unlike any other metric, such as the net profit from financial operations suggested by Crédit Agricole, the AFR suggested by JPMorgan Chase or the net cash receipts and payments suggested by HSBC, cash receipts cannot lead to negative outcomes that would be inappropriate from a fines deterrence perspective. Interest rate swaps for instance are contracts that are designed precisely to have a value of zero, in principle, at their inception.<sup>696</sup> A proxy based on the value of the EIRD products traded during the infringement period could be meaningless when a major part of those would be close to zero.
- (660) The Commission's choice for a proxy on the basis of discounted cash receipts is also appropriate. According to the Guidelines on fines, sales are the starting point for calculating fines,<sup>697</sup> not profits. Using profits instead of discounted cash receipts would therefore not be more appropriate and could lead to under-deterrence. In comparison to the net profits, the discounted cash receipts provide a better measure of the scale of the cartel conduct on the market, as that covered collusion on price components relevant for the cash flows of EIRDs. Net profits take into account not only the cashflows on the contracts but also their change in value over time.
- (661) The Commission has duly taken into account the netting inherent in the industry by applying a discount factor to the proxy ((see recitals (643) to (648)) and in particular recitals (644) and (645)).
- (662) The Commission considers that the alternative methodologies suggested by the non-settling parties in their responses to the Statement of Objections are not appropriate. On the contrary, as set out, there are considerable flaws in these alternatives.

**(c) Arguments concerning the scope of the proxy**

- (663) The addressees claim that the proxy used for the value of sales is disproportionate and they define specific transactions that the Commission, in their view, should have excluded from the value of sales.
- (664) The Commission rejects the claims. All these claims may apparently address the value of sales but in essence they target and criticise the product scope of the infringement. The Commission has already explained in recital (3) that the products affected by the cartel found in this Decision are EIRDs linked to the EURIBOR and/or EONIA.
- (665) For the calculation of the fines, Point 13 of the 2006 Fining Guidelines makes it clear that the Commission takes the value of the undertaking's sales of goods and services to which the infringement *directly or indirectly* relates in the relevant geographic area. It is settled case-law that Point 13 does not relate solely to these sales for which the Commission has documentary evidence of the infringement.<sup>698</sup>

---

<sup>696</sup> See notably John C. Hull (2009), *Options, Futures and Other Derivatives* seventh edition p.159.

<sup>697</sup> Point 12 of the Guidelines on fines.

<sup>698</sup> See Judgment of the Court of Justice of 9 July 2015, *InnoLux v Commission*, C-231/14, ECLI:EU:C:2015:451, paragraph 51. Judgment of the Court of Justice of 23 April 2015, *LG Display v Commission*, C-227/14, ECLI:EU:C:2015:258, paragraph 57.

- (666) More specifically, Crédit Agricole argue that the proxy includes transactions that could not be affected by the anticompetitive conduct. According to Crédit Agricole, the Commission should only have considered the contracts which are re-sold by virtue of a novation or a cancellation during the infringement period.<sup>699</sup> Contracts that remained in the bank's portfolio until their maturity did not lead to any transaction, and should have been excluded because their price could not have been affected by the cartel.<sup>700</sup>
- (667) The Commission rejects the claims. In this case, the Commission had set the value of sales, in view of the functioning of the cartel in a specific sector, by means of a proxy on the basis of the cash receipts during the period of infringement. Cash receipts are defined in the Commission's request for information of 12 October 2012, as "*all amounts of cash received during the period for entering, selling or closing-out Euro Interest Rate Derivatives, including all settlement payments received under the terms of the derivative contracts*". It is inherent to the use of any proxy that it makes use of abstractions. Some contracts may have remained in the bank's portfolio during the entire infringement period, but others may have led to new contracts because the bank may at any time offset the risks by entering into new transactions with opposite terms to the original one.<sup>701</sup> Some contracts in the bank's portfolio during the infringement period may have been concluded before the infringement period, and other contracts were concluded during the infringement period but may have remained in the bank's portfolio long after the infringement period. The use of a proxy neutralises these effects by focusing on the cash receipts during the period of infringement.
- (668) The Commission is entitled to include in the value of sales, the sales made during the period of infringement on the basis of contracts concluded before the beginning of the infringement period and which were not renegotiated during that period.<sup>702</sup> The use of a proxy on the basis of cash receipts aims precisely to cover all the revenues during the infringement period.
- (669) Crédit Agricole claims that the Commission should exclude the values of sales relating to the tenors of the EURIBOR benchmark not concerned by the collusive conduct, the value of sales relating to the EONIA benchmark and the value of sales relating to long-term EIRD contracts (with a maturity beyond 2 years).<sup>703</sup> JPMorgan Chase also claims that the value of sales relating to the EONIA benchmark should be excluded and that if the only finding of an infringement against JPMorgan Chase relates to anti-competitive information exchange, the Commission should establish that both exchange-traded and OTC products would be affected.<sup>704</sup> HSBC contends that the Commission should take into account only the values of sales from the

---

<sup>699</sup> See footnote 13.

<sup>700</sup> [...].

<sup>701</sup> See, for example recital (42).

<sup>702</sup> See Judgment of the General Court of 17 December 2014, *Pilkington Group and Others v Commission*, T-72/09, paragraph 226.

<sup>703</sup> [...].

<sup>704</sup> [...].

activities of its individual trader mentioned in this Decision and only the values of sales from EIRD contracts indexed to 3-months EURIBOR.<sup>705</sup>

- (670) The Commission rejects the allegations. The Commission has already explained that the infringement concerns all EIRDs. The infringement did not only relate to rate manipulation, but also covered exchanges on preferences for rate submissions, prospective rate submissions, trading strategies and positions/exposures, trading prices and numerous other exchanges of information on pricing components. The evidence on file does not exclude any EIRD maturity and there is no evidence that the infringement only covered some short term or long term maturities. The infringement explicitly refers to EIRDs linked to the EURIBOR and/or the EONIA and does not exclude any specific tenor (see also recital (430)). Therefore, in accordance with Point 13 of the Guidelines on Fines, these transactions form part of the goods and services to which the infringement directly or indirectly relates.<sup>706</sup>
- (671) For the calculation of the fine, the Commission is entitled to rely on the total sales made by the undertakings involved for the product concerned in the sector concerned.<sup>707</sup> There is no need to limit the sales to the transactions of individual employees of the undertaking.
- (672) JPMorgan Chase claims that its proxy must be limited to the exchange of information only is irrelevant because JPMorgan Chase is not only held liable for an anti-competitive information exchange, but also for the infringement as set out in recitals (392) and (393) in their respect.
- (673) HSBC and JPMorgan Chase further argue that only those contracts that were settling or resetting on days of alleged manipulation could have been affected by any alleged collusion. On this basis, HSBC argues to limit the scope of the proxy for the value of sales to the transactions of 19 March 2007 only.
- (674) This claim may envisage the scope of the proxy used for the value of sales, but in essence targets the duration of the infringement and this will be addressed in Section 8.3.3.2. of this Decision. The Commission stresses that the parties are not held liable for an infringement that would cover only specific days of collusion, but that they are held liable for their individual participation for a specific period of time in a single and continuous infringement.

**(d) Arguments concerning alleged inconsistencies**

- (675) Since the non-settling parties have had access to the information provided by all parties to the Commission for calculating their individual proxy for the value of sales, they had ample opportunities to analyse these replies. On this basis, they claim that there are inconsistencies in the various values reported and/or used for calculating the proxies for values of sales. As a consequence, they claim that the

---

<sup>705</sup> [...].

<sup>706</sup> See also for instance recitals (18), (27) or (430).

<sup>707</sup> See Judgment of the Court of Justice of 19 March 2015 *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, paragraph 150.

methodology was applied inconsistently and that this has led to various instances of unequal treatment.<sup>708</sup>

- (676) The non-settling parties claim that the request for information of 12 October 2012 that gathered financial data used for the calculation of the individual proxies lacked clarity, was open to different interpretations, and inevitably led to inconsistent answers and unequal treatment for the calculation of the fines.<sup>709</sup> The Commission has allegedly further increased the inconsistency by giving clarifications to individual parties without informing the others, and the Commission allegedly failed to properly compare and verify the consistency of the replies received.<sup>710</sup>
- (677) The Commission refutes these claims. The Commission sent all parties the same request for information, which was clear on what they could include or exclude in their reply. For the proxy for the value of sales, the cash receipts, the definition was nearly one page long.<sup>711</sup> In case of doubt, all parties had the possibility to ask questions of the Commission, and some of them did so. To the extent that the Commission provided answers that were relevant for the other parties, the Commission shared this information with all parties. Crédit Agricole for instance acknowledges itself that the Commission informed the parties that they should exclude OTC transactions entered into in their capacity as agent.<sup>712</sup> Also the Commission itself could contact the parties in case their reply required further clarification.
- (678) The Commission carefully verified the consistency of the replies to the request for information. The Commission has ensured consistency by asking the parties exactly the same questions and making the parties aware that they were exposed to possible sanctions in case of providing the Commission with misleading or incorrect information in reply to a request for information pursuant to Article 18 of Regulation (EC) N°1/2003. The Commission has requested the parties to include in their replies concerning the value of sales independent auditors' reports and opinions confirming the appropriateness of the methodologies followed vis-à-vis the Commission's request for information. On this basis, the Commission did not detect any material differences in the replies to the request for information.<sup>713</sup>
- (679) The non-settling parties, Crédit Agricole and JPMorgan Chase in particular, try to substantiate their claims by referring to various examples of inconsistencies and/or failures of the Commission to detect or share those inconsistencies.

---

<sup>708</sup> (JPMorgan Chase comments on the amending decision of 6 April 2016 and the underlying correspondence).

(Crédit Agricole comments on the amending decision of 6 April 2016 and the underlying correspondence).

(HSBC comments on the amending decision of 6 April 2016 and the underlying correspondence).

<sup>709</sup> [...].

<sup>710</sup> [...].

<sup>711</sup> [...].

<sup>712</sup> [...].

<sup>713</sup> See Judgment of the General Court of 14 May 1998, *Buchmann v Commission*, T-295/94, paragraphs 162 to 164 and 171 and 173; Judgment of the General Court of 27 September 2012, *Shell Petroleum v Commission*, T-343/06, paragraph 114.

- (680) Crédit Agricole for instance refer to the fact that JPMorgan Chase submitted an amended reply in May 2013 which allegedly reduced its cash receipts by more than [...].<sup>714</sup> The fact that a company amends its reply to a request for information does not prove that the Commission was insufficiently diligent when receiving the first version of the reply. To the extent that Crédit Agricole's claim tries to suggest that the amendment was so important that the Commission should have spotted the inconsistency itself, it is noted that the amended reply of JPMorgan Chase led the Commission to reduce the fine by a factor of around 2, which is far removed from the reduction by a factor of more than 20 alleged by Crédit Agricole.<sup>715</sup>
- (681) Crédit Agricole claims that JPMorgan Chase have provided incorrect information by excluding intragroup sales [...]. This claim must be rejected. JPMorgan Chase provided economic justification for excluding these intragroup sales. Moreover, the intragroup sales excluded by JPMorgan Chase in any event relate to a period in 2008 that was not used for calculating their fine.
- (682) Likewise, Crédit Agricole claims that [non-addressee] has provided incorrect information by excluding intragroup sales against [non-addressee]. This claim must equally be rejected. [Non-addressee] indeed excluded specific trades against [non-addressee], but provided justification for this exclusion and the fine of [non-addressee] was only computed on data [...], so the impact of this exclusion, if at all, was only minimal and did not lead to a serious breach of the principle of equal treatment. The fact that [non-addressee] gave considerable thought to its reply to the Commission's request for information to the difficult issue of [non-addressee] is also not evidence of an attempt to provide the Commission with incorrect information.<sup>716</sup> [Non-addressee] discussed the matter with its external auditor and the latter gave a positive opinion on the data as provided by [non-addressee] to the request for information.<sup>717</sup>
- (683) JPMorgan Chase and Crédit Agricole claim that there was an inconsistency in the treatment of trades with multiple cashflows. Crédit Agricole blame [non-addressee] for having excluded swap contracts for which it was receiving the fixed leg and similarly, JPMorgan Chase blame [non-addressee] for its approach of excluding the fixed leg of a swap where it has both a fixed and a floating leg. JPMorgan Chase argue that it should benefit from a reduction of [...] % of its value of sales on this basis and Crédit Agricole request the Commission to reduce its own value of sales by [...]%.<sup>718</sup> HSBC consider that the Commission has failed to respond to alleged inconsistencies in the methodology applied by the banks and notably [non-addressee], arguing that this has led to a breach of the principle of equal treatment.
- (684) The Commission rejects the claims. The claim that the information provided by [non-addressee] is incorrect must also be rejected. [non-addressee] did not exclude the swap contracts for which it was receiving the fixed leg, as claimed by Crédit

---

<sup>714</sup> [...].

<sup>715</sup> A reduction by (more than) 95%, that is to say from, for example, 100% to (less than) 5%, is equivalent to a reduction by a factor of (more than) 20.

<sup>716</sup> [...].

<sup>717</sup> [...]. The auditor's opinion is a qualified opinion, prepared under the International Standards on Assurance Engagements 3000.

<sup>718</sup> [...].

Agricole, but excluded the fixed leg of the swap, where a swap has both a fixed and floating leg.<sup>719</sup> [non-addressee] has thus not excluded the whole swap, but only one of the legs of the swap. This method does not amount to providing incorrect information because it does not necessarily lead to lower cash receipts. [non-addressee] may benefit from this method for swaps in which it receives the fixed leg but this method may equally act against [non-addressee] for swaps in which it pays the fixed leg (and receives the floating leg).

- (685) Crédit Agricole overstates the impact of [non-addressee]'s choice of this method as being a factor of [...] % also, in comparison to JPMorgan Chase's estimate of [...]. The Commission has calculated the impact of this method on the annualised proxy for the value of sales of [non-addressee] to be about [...] %. This calculation is based on the calculation files submitted by [non-addressee] in its reply to the request for information, including the STATA program codes used.<sup>720</sup> These program codes enabled the Commission to recompute the figures that [non-addressee] would have submitted if it had not excluded the fixed leg of the swaps for those swaps with a fixed and floating leg (based on the months corresponding to [non-addressee]'s participation in the infringement). The Commission considered this possible impact of [...] % immaterial and did not consider that there was ground for rejecting [non-addressee]'s response to the request for information as misleading, incorrect and leading to any substantial unequal treatment. However, even if [non-addressee]'s method were to be considered inappropriate and the information provided incorrect, this does not give the other parties a right to apply this method, let alone to claim that their fine should be reduced by [...] %.
- (686) On 14 October 2016, Crédit Agricole submitted revised cash receipts data,<sup>721</sup> in which the bank applied arguably the most favourable methodology accepted by the Commission for the [non-addressees] and in particular for [non-addressee].
- (687) The Commission considers that the new methodology used by Crédit Agricole is inappropriate and the new data provided is also incorrect. In the new data, Crédit Agricole, excluded, among other things, the fixed leg of interest rate swaps. Such exclusion does not comply with the instructions from the request for information and, especially in the way it was performed by Crédit Agricole, leads to material differences and was submitted without any confirmation by Crédit Agricole's auditor of the appropriateness of the revised methodology. In its revised submission Crédit Agricole excluded the cash receipts from the fixed leg of interest rate swaps, but did not revise "les soultes" that is to say the amounts of cash receipts which are obtained by netting between the floating leg and the fixed leg. This approach, which leads to lower cash receipts, is not in line with both the request for information and the methodology followed by [non-addressee] as explained in recital (684). As a consequence the impact on Crédit Agricole's data is material. According to the Commission, for relevant cash receipts, the impact is around [...] %, that is to say a factor of around [...] (which is lower than what mentioned in Crédit Agricole's reply to the Statement of Objections). The impact on Crédit Agricole's data is thus

---

<sup>719</sup> [...].

<sup>720</sup> [...] (documents) to which the non-settling parties' legal and economic advisors had access under a data room procedure.

<sup>721</sup> [...].

material, unlike the impact computed by the Commission on [non-addressee]'s data as explained in recital (685).

- (688) Finally, the audit report submitted on 14 October 2016 by Crédit Agricole includes the following sentence "*Il ne nous appartient pas de remettre en cause les hypothèses retenues par la direction de la Société Crédit Agricole Corporate and Investment Bank*" ("it is not our responsibility to call into question the assumptions made by the management of Crédit Agricole"). The Commission notes such a statement was absent from the audit report annexed to the previous reply submitted by Crédit Agricole in 2013 and concludes that Crédit Agricole's auditor has not sought to validate the appropriateness of the revised part of the methodology.
- (689) For these reasons, the Commission considers that the new methodology used by Crédit Agricole is inappropriate and that the new data provided incorrect. As a consequence, the Commission computes Crédit Agricole's fine on the basis of the previous data submitted by it in 2013.
- (690) JPMorgan Chase submits that the Commission insufficiently verified the consistency of [non-addressee] reply.<sup>722</sup> JPMorgan Chase support this claim by reference to a Commission email of 27 November 2012. However, this email does not suggest that the Commission was not concerned with each bank taking a consistent approach. On the contrary, the email stated that "*we cannot agree that a part of [non-addressee]' business is disregarded for the purposes of reporting figures on sales and turnovers*" and requested [non-addressee] to use a methodology that fits within the limits and conditions set out in the request for information and that can be confirmed by an external independent auditor.
- (691) Crédit Agricole claims that there were inconsistencies between the methodologies followed by the banks for the computation of notional amounts.<sup>723</sup> The Commission however did not base the value of sales in this case on notional amounts but on cash receipts. Crédit Agricole's claim is thus irrelevant and must be rejected.
- (692) JPMorgan Chase also claims that [non-addressee] used "*full within contract netting*" and that this should give JPMorgan Chase a further reduction of [...] % of its value of sales.<sup>724</sup> [non-addressee] has never indicated that they used full within contract netting. [non-addressee]' methodological note<sup>725</sup> includes the following statement: "*All cash flows for related trades are included for calculation purposes (with the exception of internal trades).*" In that same note, [non-addressee] clarifies that "*As a result the submission will incorporate data relating to products outside of the scope set out in section 5.3 (for example a structured IR transaction with multiple legs may have a single leg referencing a Euro index but all legs of the overall trade are included for the purposes of calculating cash flows)*". What the [non-addressee]' note

---

<sup>722</sup> [...].

<sup>723</sup> [...].

<sup>724</sup> [...]. The notion of "*full within contract netting*" is unnecessary to this discussion as it was never requested in the 12 October 2012 Request for information. JPMorgan Chase defines its concept of "*full within contract netting*" used in its Response to the SO as follows: "*Full within contract netting implies that all of the cash flows within a contract (i.e. not just netting within day) are considered before deciding whether the trade in question should or should not be counted towards the Cash Receipts figure for the bank in question*" [...].

<sup>725</sup> [...].



indicated is that, for specific trades, [non-addressee]' reply might cover legs relating to products falling outside the scope of the request for information. With regard to netting, [non-addressee]' methodological note does state that their method reflects "*market convention*", which as explained above is netting on a daily basis. JPMorgan Chase also used a netting on a daily basis. For these reasons, JPMorgan Chase's claim that its values of sales should be reduced by [...] % due to full within contract netting must be rejected.

- (693) JPMorgan Chase claims that [non-addressee] has excluded trades with a Euro denominated notional which reference floating rates in a complex manner that could only be ascertained by reference to the individual term sheets and that [non-addressee] excluded hybrids (in other words exotics that trade a basket of interest rate and non-interest rate risks) while [non-addressee] included structured (namely exotic) trades only where the primary risk being traded is interest rate risk.<sup>726</sup> On this basis, JPMorgan Chase argues that its own value of sales data should exclude trades from JPMorgan Chase exotics business leading to a reduction by [...].
- (694) The Commission does not dispute that [non-addressee] followed the approach indicated above by JPMorgan Chase. However, JPMorgan Chase ignores in its reply to the Statement of Objections that [non-addressee] had equally explained that (underlining added) "*Trades with a Euro denominated notional which reference floating rates in a complex manner that could only be ascertained by reference to the individual term sheets ("Exotic Trades") are excluded (exotic trades with readily ascertainable reference rates will be included). To determine which Exotic Trades fall within the Commission's requests would take a significant amount of time which would delay submission of data to the Commission. [non-addressee] understands that the number and value of potentially relevant Exotic Trades is immaterial to the overall trade position."<sup>727</sup> [non-addressee]'s methodological note, which JPMorgan Chase counsels were able to access in the data room, also provided a quantification which is close to zero and therefore not a material difference. [non-addressee] effectively excluded a certain category of trades because it would have taken them a disproportionate amount of time to ascertain whether or not they actually fell within the scope of the Commission's request for information while the overall impact would have been immaterial.*
- (695) Concerning [non-addressee], the Commission stresses that its request for information defined Euro Interest Rate Derivatives as (underlining added) "interest rate derivative contracts (at least partially) denominated in Euro". That definition does not include hybrid derivatives that is to say exotic derivatives covering a basket of interest rate and non-interest rate risks. [non-addressee] followed an approach (that included exotic EIRDs but excluded hybrids) which complies with the requirements of the request for information. This is further confirmed in [non-addressee]' audit report which indicates that in the auditor's opinion, [non-addressee]' financial information has been properly prepared, in all material aspects, in accordance with the request for information.<sup>728</sup> In this connection, the Commission notes that the remedy proposed by JPMorgan Chase, the exclusion of its exotic EIRDs business as a whole goes

---

<sup>726</sup> [...].  
<sup>727</sup> [...].  
<sup>728</sup> [...].

significantly beyond what JPMorgan Chase allege for [non-addressee] and [non-addressee], because, as JPMorgan Chase itself indicates, this business includes both exotic trades and vanilla trades. For all these reasons, JPMorgan Chase's claim of alleged methodological discrepancy concerning the treatment and classification of exotic EIRDs is rejected.

- (696) JPMorgan Chase claims that its approach was also different from the approach taken by [non-addressee] and HSBC in terms of the desks covered. [non-addressee] allegedly excluded around [...] % of the trade population while HSBC included trades from its Paris desk and a particular business unit in London, whereas JPMorgan Chase claims that it has included the full London and New York desks.<sup>729</sup>
- (697) The Commission notes that JPMorgan Chase's argument that [non-addressee] did not include [...] % of its trade population is factually incorrect. The argument is based on a provisional paper submitted by [non-addressee] in 2012, to which the Commission objected (see Recital (690)). [non-addressee] ultimately did not follow the approach initially proposed in 2012 and [non-addressee]' final methodological note, a document dated 8 July 2013, does not include the text quoted by JPMorgan Chase in its reply to the Statement of Objections. JPMorgan Chase's claim is not based on the correct document.
- (698) As for the claim against HSBC, the Commission considers that the approach followed by HSBC is not inconsistent with the approach followed by JPMorgan Chase: both focussed on locations/desks with significant (predominant) trading activity in the relevant product excluding locations/desks with insignificant (immaterial) trading activity in the relevant product. The Commission observes that JPMorgan Chase did not provide any quantification of the potential impact of this alleged discrepancy for JPMorgan Chase.
- (699) JPMorgan Chase also argues that its share of the total cash receipts of the non-settling and the [non-addressees] does not correspond to JPMorgan Chase's market position at the time. JPMorgan Chase supports its claim by first pointing to inconsistencies between the bank's notional amounts and also between the banks' ratio of cash receipts to notional amounts. Secondly, JPMorgan Chase supports its claim by reference to market shares of cleared OTC interest rate swaps computed from data of LCH.Clearnet which allegedly indicate that JPMorgan Chase was not the largest bank on the market. Thirdly, JPMorgan Chase mentions that its analysis of the notional amounts traded with the top 15 counterparties submitted by the banks in response to the Commission's request for information dated 12 April 2012 reveals material discrepancies of the Commission.<sup>730</sup>
- (700) The Commission considers this argument flawed. First of all, concerning the claimed inconsistencies between the banks' notional amounts, the Commission notes that it did not base the value of sales in this case on notional amounts but on cash receipts. JPMorgan Chase's analysis of notional amounts is thus irrelevant. The same also applies to JPMorgan Chase's analysis which involves notional amounts by looking at the ratio of cash receipts to notional amounts. Secondly, the product scope used by JPMorgan Chase for performing a market share analysis does not correspond to the

---

<sup>729</sup> [...].  
<sup>730</sup> [...].

product scope of this case, far from it: data for OTC euro-denominated interest rate swaps cleared via LCH. Clearnet cannot be applied to a value of sales that concerns all (OTC and exchange-traded) euro-denominated interest rate derivatives (interest rate swaps, FRAs, options and futures) traded against EEA counterparties (only) irrespective of whether or not they were cleared and irrespective of the clearing method. JPMorgan Chase itself indicated that over the course of the relevant period only [...] % of its euro-denominated interest rate swaps were cleared meaning that at least [...] % of its euro-denominated interest rate swaps are not covered by the LCH.Clearnet data.<sup>731</sup> The positioning of the banks on the basis of the values of sales data is also corroborated by evidence and in particular by [non-addressee]' earlier statements in which it classified the banks into three categories: first category JPMorgan Chase, [non-addressee], [non-addressee], [non-addressee]; second category Crédit Agricole, [non-addressee] and [non-addressee]; third category: all the [non-addressees].<sup>732</sup> Thirdly, relating to notional amounts, the value of sales in this case was not based on notional amounts but on cash receipts. In addition, these notional amounts come from the replies to another request for information. This request for information was sent out for a different purpose, namely seeking information on the functioning of the business, and the replies were not accompanied by any methodological or audit report. As a result, no proper analysis and assessment could be carried out on this basis. JPMorgan Chase's analysis of notional amounts with top 15 counterparties therefore cannot simply replace the replies received for the (discounted) cash receipts as a proxy or prove that the data received for the value of sales were incorrect.

- (701) Crédit Agricole claims that the different banks have followed different methodologies in terms of netting (some banks netted on a daily basis while others netted on a monthly basis) and that the results obtained under the two methods are radically different.
- (702) This claim must be rejected. Various banks may have followed different methodologies for netting, but this has not led to any material differences or unequal treatment. Netting is a central concept in the derivatives trading activity. Banks trade derivatives on the basis of "Master agreements", such as those governed by ISDA which are the market standards. These master agreements notably foresee the netting.<sup>733</sup> The Commission's request for information specified that in order to compute cash receipts, the banks were not allowed to net at portfolio level; the banks had to disregard cash payments and to consider only cash receipts except for individual contract flows which the banks were allowed to net.<sup>734</sup> The latter instruction relates to contracts generating multiple cashflows. Netting on a daily basis is the market convention.<sup>735</sup> [Non-addressee], which provided cash receipts

---

<sup>731</sup> [...].

<sup>732</sup> [...].

<sup>733</sup> See <https://zoek.officielebekendmakingen.nl/blg-240837.pdf> (an example of ISDA master agreement).

<sup>734</sup> [...]: "*While the notion of net cash settlements includes both cash receipts and cash payments (on a net basis), the notion of cash receipts does not consider the cash payments (those are not to be taken into account, or, in other words, they have to be zero-ed) and only considers the cash receipts (before netting with other derivative contracts; only the netting of individual contract flows can occur).*"

<sup>735</sup> See <https://zoek.officielebekendmakingen.nl/blg-240837.pdf> and in particular the clause Netting of Payments on page 2.

data using netting on a monthly basis, indicated that "*From its experience of derivatives trading, [non-addressee] considers it would be very rare for a trade to generate multiple cash flows in a single month*".<sup>736</sup> In other words, [non-addressee] indicated that the difference between the results obtained with a netting on a monthly basis and the results obtained with a netting on a daily basis is immaterial. It is on that basis that the Commission considered that [non-addressee] cash receipts figures were consistent and accepted them. [Non-addressee] submission in 2015<sup>737</sup> confirms the validity of this. [non-addressee] ran calculations for two approaches (netting on a daily basis and netting on a monthly basis) and the results show a difference of about [...]%, which is immaterial.

- (703) It is only when [non-addressee] informed the Commission that it had failed to apply the netting for a substantial part of their transactions, that the Commission accepted that this was a material change that could lead to unequal treatment. As a consequence, the Commission itself amended the settlement decision for [non-addressee] on 6 April 2016.
- (704) Crédit Agricole also refer to a number of contacts between the Commission and JPMorgan Chase about the netting methodology about which Crédit Agricole was not informed.<sup>738</sup> However, at the time that the Commission informed JPMorgan Chase about the acceptance of netting on a daily basis, Crédit Agricole had already replied to the request for information, computing cash receipts using netting "*on a daily basis, as indicated by the Commission*".<sup>739</sup> Crédit Agricole had already provided figures that were in line with the clarification given to JPMorgan Chase. Under these circumstances, there was no need to share the clarification given to JPMorgan Chase with Crédit Agricole.
- (705) Crédit Agricole, HSBC and JPMorgan Chase claim that the documents accessed by them during the June 2016 data room confirm the above mentioned alleged inconsistencies.<sup>740</sup> The three parties refer, in particular to a report prepared by [non-addressee]'s external advisers and submitted to the Commission on 28 July 2015.<sup>741</sup>
- (706) The Commission rejects the claims. First of all, the main methodological differences identified in this report relate to (i) [non-addressee]'s methodology (already discussed in recitals (683) to (685) above) and (ii) the failure by [non-addressee] to apply netting in its initial reply (which led the bank to submit new, amended, data on 4 February 2016). More fundamentally, the latter submission by [non-addressee] and thereafter the adoption by the Commission of the amending decision of 6 April 2016 mean that the report previously prepared by [non-addressee]'s external advisers simply became void. The Commission also stresses that the amending decision of 6

---

<sup>736</sup> [...].

<sup>737</sup> [...] (to which the non-settling parties' legal and economic advisers had access under a data room procedure) lines Scenario 5 ("*Netting quotidien des flux payés et reçus*") and Scenario 6 ("*Netting mensuel des flux payés et reçus*"), column "*Recalcul selon méthodologie alternative*".

<sup>738</sup> [...].

<sup>739</sup> [...] "*la Banque [a] calculé les recettes en numéraire sur une base journalière, comme préconisé par la Commission*".

<sup>740</sup> [...].

[...].

[...].

<sup>741</sup> [...].

April 2016 is based on the new, corrected, data submitted by [non-addressee] on 4 February 2016 (accompanied by a new audit report prepared by a different firm of auditors than that which had been previously used by [non-addressee]) and is not based on the report submitted on 28 July 2015.

**(e) Arguments concerning the discount factor**

- (707) HSBC claims that the application of a uniform discount factor for all parties on the proxy for the value of sales fails to state adequate reasons and is arbitrary as in practice the netting ratio would vary between banks and over time.<sup>742</sup>
- (708) JPMorgan Chase similarly argue that the application of a uniform discount factor does not reflect trader's actual bid-ask spreads (allegedly one of the key determinants of traders' earnings) and does not reflect variations in bid-ask spreads (and expected earnings / costs of hedging) either across trades or between banks.<sup>743</sup> JPMorgan Chase also contends that the discount factor of at least [...] % applied to cash receipts is too low because, in general, it underestimates the netting effect and, in particular because JPMorgan Chase's proxy for values of sales yields allegedly values [...] times larger than its AFR (see recitals (657),(659)) for the period and allegedly exceeds its net cash settlements for the period.<sup>744</sup>
- (709) The Commission rejects these allegations. The Commission has explained in the Statement of Objections the methodology on the basis of which it intended to impose fines. For the exercise of the rights of defence, the Commission is not required to explain exactly what the amount of the fine will be and in particular what discount it intends to apply for the value of sales or the basic amount.<sup>745</sup>
- (710) In any event, the Statement of Objections is transparent about the Commission's intention to discount the cash receipts used as a proxy for the value of sales by a uniform factor of at least [...] % in order to take account of the particularities of the EIRD industry, such as the netting inherent in this industry and the scale of price variations at a level of basis points.<sup>746</sup>
- (711) The Commission has explained its rationale for choosing the discounted cash receipts, and although HSBC and JPMorgan Chase criticise this choice, they have not put forward a convincing economic reason which could justify applying another approach. JPMorgan Chase's arguments about applying bid-ask spreads (and expected earnings / costs of hedging) to cash receipts (instead of notional amounts) suggest that the only activities the traders were involved in was market making where the banks would immediately offset their risks and therefore run no trading risks and generate no trading revenues. This is not correct. The facts of this case show that the traders involved in the infringement were running trading positions/exposures (see point (b) of recital (358)) thereby generating trading revenues; in other words, in these latter instances, they were not performing only as market makers.

---

<sup>742</sup> [...].

<sup>743</sup> [...].

<sup>744</sup> [...].

<sup>745</sup> See notably Judgment of the General Court of 12 December 2012, *I. garantovaná v Commission*, T-392/09, paragraph 68.

<sup>746</sup> Statement of Objections, paragraph (496).

- (712) The Commission has explained why AFR or the simple sum of cash settlements is not an appropriate proxy for the purpose of values of sales.<sup>747</sup>
- (713) The Commission has not applied individual discount factors because this could amount to unequal treatment. The method chosen and the size of the discount was overall favourable in comparison to individual discount factors. [...].
- (714) On this basis, the Commission rejects the claims that a discount of [...] % was insufficient.

#### 8.3.1.4. Conclusions on values of sales

- (715) The rights of defence do not include a right to be heard on the fines methodology. In this case, even though it is under no legal obligation to do so, the Commission has given the non-settling parties sufficient access to all data of the settling and non-settling parties in order to defend themselves on the methodology applied by the Commission for the value of sales in this case.
- (716) The Commission has made a careful analysis of the non-settling parties' arguments. Based on the methodological notes and independent audit reports submitted by all parties, the Commission concludes that all the non-settling parties have relied on assumptions that are sufficiently comparable in their collection and collation. On that basis, the Commission considers their data reliable and consistent.
- (717) This conclusion is reached on the understanding that the Commission works on the basis of the best available figures where certain financial differences between the parties' methodologies may exist. This is inevitable due to the fact that, in particular, banks have different business organisations, different IT systems and structures.

### 8.3.2. Gravity

#### 8.3.2.1. Principles

- (718) The basic amount consists of an amount of up to 30% of the an undertaking's values of sales in the EEA, depending on the gravity of the infringement and multiplied by the number of years<sup>748</sup> of the undertaking's participation in the infringement ('the variable amount'), and, where appropriate, an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration.<sup>749</sup>
- (719) The gravity of the infringement determines the percentage of the value of sales taken into account when setting the fine. When assessing the gravity of the infringement, the Commission will have regard to a number of factors, such as the nature of the infringement and the geographic scope of the infringement.

#### 8.3.2.2. Application

- (720) The addressees of this Decision participated in an infringement of Article 101 of the Treaty and Article 53 of the EEA agreement. The infringement consisted of price-coordination and price-fixing arrangements which are, by their very nature, among

---

<sup>747</sup> See recital (659) and footnote 685.

<sup>748</sup> If appropriate under the circumstances of the case, the Commission may, contrary to the second sentence of point 24 of the Guidelines on fines, count periods of less than a year as the corresponding fraction of a year (for instance, 3 months as a factor 0.25 instead of 0.5).

<sup>749</sup> Points 19-26 of the Guidelines on fines.

the most harmful restrictions of competition, as this practice restricts or distorts competition with regard to the main parameters of competition. According to point 23 of the Guidelines on fines, these practices will, as a matter of policy, be heavily fined and the gravity percentage is generally set at the higher end of the scale of the value of sales. In this case the Commission considers that this element would justify a gravity percentage of 15%.

- (721) In addition, the Commission's assessment takes into account (i) that the cartel covered at least the entire EEA,<sup>750</sup> (ii) that the affected benchmark rates which are reflected in the pricing of EIRDs and serve as uniform market prices apply to all participants in the EIRD market, and (iii) that the affected benchmark rates are Euro-based and have a paramount importance for the harmonisation of financial conditions in the internal market and for banking activities in the Member States. These factors further increase the harm to competition and therefore the gravity percentage. In line with the settlement decision of 4 December 2013, the further distortion caused by these facts taken together justifies an increase in the gravity percentage of 3% for all undertakings.

### 8.3.2.3. Arguments from the parties and findings

- (722) Crédit Agricole claims that its gravity percentage should be lower than that for the [non-addressees] as, according to Crédit Agricole, the [non-addressees] were involved in far greater and more frequent collusive practices than those in which Crédit Agricole was implicated.<sup>751</sup> HSBC claims that its gravity percentage should be decreased compared to other undertakings which, according to HSBC, participated more fully in the infringement whereas HSBC's participation is limited.<sup>752</sup>
- (723) The Commission has indeed the choice to take into account the relative gravity of the parties' participation in the infringement and the particular circumstances of the case either when assessing the gravity of the infringement or when adjusting the basic amount according to the mitigating and aggravating circumstances.<sup>753</sup> In the present case, the Commission establishes that the various parties participated in a single and continuous infringement and considers it justified that the same gravity percentage is applied to all parties. Their individual role may be reflected in a mitigating circumstance (see *infra*). Therefore the claims by Crédit Agricole and HSBC that their gravity percentage should be lower are rejected.
- (724) HSBC also argue that the nature of the market means that use of a conventional gravity factor bears no reasonable relationship to the harm caused and, if applied would constitute a wholly disproportionate proxy.<sup>754</sup> The Commission disagrees with HSBC as the particularities of the EIRD are already taken into account in the proxy for values of sales and in particular in the discount factor embedded into this proxy which addresses, amongst others, the scale of price variations in the EIRD industry.<sup>755</sup> On that basis, the Commission considers it justified to apply a gravity

---

<sup>750</sup> See Section 2.2.5.

<sup>751</sup> [...].

<sup>752</sup> [...].

<sup>753</sup> See Judgment of the General Court of 17 December 2014, *Pilkington Group and Others v Commission*, T-72/09, paragraph 191.

<sup>754</sup> [...].

<sup>755</sup> See recitals (643) to (647).

percentage determined in accordance with the 2006 Fining Guidelines and therefore rejects HSBC's claim.

- (725) HSBC further contend that the criteria to determine the gravity percentage of the infringement justify the lowest level set by the Commission in previous cases if not lower, on the basis that this was not a hardcore infringement, that the affected benchmark is not a price, that the geographic scope was neutral, and of the irrelevance of the importance of the benchmark in light of the de minimis effects of the alleged practice, the limited relevance of market shares in this case and the absence of evidence of anti-competitive effects or implementation.<sup>756</sup> With regard to geographic scope, HSBC states that in all decisions covering an infringement across the EEA,<sup>757</sup> the Commission set the gravity percentage at 16%, a level which was also used in a decision covering a worldwide infringement.<sup>758</sup> The Commission notes that what is relevant is not the exact gravity percentage used in these cases, but the fact that the gravity percentage in these cases was set taking into account, among others, the geographic scope. The Commission follows the same approach in the present case. With regard to market shares, the Commission does not use that as a factor to set the gravity percentage in this case. With regard to the alleged de minimis effects, the Commission stresses that the concept of de minimis does not apply to the actual impact on price but to market coverage and in any event it does not apply to restrictions by object with an effect on trade, such as in the present case.<sup>759</sup> In this case, the EURIBOR determines the price for the whole industry, hence the potential impact of any collusion is particularly significant. Also, although the impact of the manipulation may seem small at first sight, this industry is characterized by large volumes and low price variations (in basis points) and as such even a small movement in the EURIBOR is of great significance. All other arguments are reiterations of arguments previously presented by HSBC and which the Commission already addressed in this Decision (see in particular Section 5).

#### 8.3.2.4. Conclusion on the gravity

- (726) Given the specific circumstances of this case, the Commission considers that the proportion of the value of sales to be taken into account should be 18% for all undertakings. In doing so, the Commission applies the same methodology to determine the gravity percentage as the one used to calculate the fines in the Commission Decision C(2013) 8512 final of 4 December 2013.

#### 8.3.3. Duration

- (727) For the duration multiplier, the Commission takes into account the respective duration of each undertaking's participation in the infringement, as described in Section 7 on a rounded down monthly and *pro rata* basis. Hence, if, for example, the

---

<sup>756</sup> [...].

<sup>757</sup> HSBC mentions notably the following cases: Power Exchanges, Automotive Wire Harnesses, Mountings for windows and window-doors, etc.

<sup>758</sup> HSBC mentions the LCD case.

<sup>759</sup> See Judgment of the General Court of 13 December 2012, *Expedia v Autorité de la concurrence*, C-226/11, ECLI:EU:C:2012:795, paragraphs 35, 36 and 37. See also point 2 of the Communication from the Commission — Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice) OJ C 291, 30.8.2014, pp. 1–4.



duration is 4 months and 12 days, the calculation takes into account 4 months without counting the number of days less than a month. In doing so, the Commission applies the same methodology to determine the duration multipliers as the one used to calculate the fines in the Commission Decision C(2013) 8512 final of 4 December 2013.

- (728) Accordingly, the table below sets out the duration multipliers corresponding to the duration of each undertaking.

<b>Undertaking</b>	<b>Start Date</b>	<b>End Date</b>	<b>Duration Multiplier</b>
JPMorgan Chase	27 September 2006	19 March 2007	0.41
Crédit Agricole	16 October 2006	19 March 2007	0.41
HSBC	12 February 2007	27 March 2007	0.08

- (729) For the duration, Crédit Agricole claims that, in setting its fine, a duration of 16 October 2006 to 1 March 2007 should be used.<sup>760</sup> The evidence on file demonstrates however that Crédit Agricole's participation in the infringement does not end on 1 March, but on 19 March 2007 (see Section 7).
- (730) JPMorgan Chase and HSBC claim that the Commission should only take into account the days for which there is evidence of anticompetitive conduct. On that basis HSBC even comes to the conclusion that the duration multiplier should reflect for HSBC a duration of one single day only (19 March 2007).<sup>761</sup>
- (731) The Commission rejects the claims. JPMorgan Chase and HSBC participated in a single and continuous infringement and the Commission Guidelines on fines apply on the basis of a period of participation, not on the basis of specific facts within that period.<sup>762</sup> HSBC's claim that it only participated in a one day infringement also ignores the fact that the infringement is limited neither to rate manipulation nor to the arrangements concerning the 19 March 2007 scheme. The established infringement is described in recitals (392) and (393), and the evidence demonstrates that JPMorgan Chase's and HSBC's participation in the infringement lasted for HSBC from 12 February 2007 to 27 March 2007 and for JPMorgan Chase from 27 September 2006 to 19 March 2007.

#### 8.3.4. *Additional amount*

- (732) As the infringement includes horizontal price-fixing, the Commission includes in the basic amount a sum of between 15% and 25% of the values of sales in order to deter undertakings from even entering into such practices irrespective of the duration of

---

<sup>760</sup> [...].

<sup>761</sup> [...].

<sup>762</sup> Point 24 of the Guidelines on fines.

the undertakings' participation in the infringement. In deciding the specific percentage to be applied, the factors referred to in Section 8.3.2. are considered.<sup>763</sup>

- (733) As regards the additional amount, all three non-settling parties claim that there is no basis for an entry fee and HSBC in particular claims that, given the duration of its involvement in the infringement, the setting of an entry fee would breach the principle of proportionality and the principle of equal treatment.<sup>764</sup> HSBC's claim relies on its short duration which however ignores that the entry fee is applied once and irrespective of the duration of the participation in the infringement, that is to say whether the infringement lasted 1 day or 15 years. HSBC's short duration is sufficiently reflected in its duration multiplier. Imposing an entry fee is Commission standard practice in cartel cases, and it is also standard practice to use the same percentage for setting the entry fee as for the gravity.
- (734) Accordingly, the percentage for setting the additional amount is 18% for all undertakings. In doing so the Commission applies the same methodology to determine the percentage used for the additional amount as the one used to calculate the fines in the Commission Decision C(2013) 8512 final of 4 December 2013.

#### 8.3.5. Conclusion

- (735) Based on the percentages to be applied to them established in recitals (726) and (734) and the duration multipliers established in recital (728), the table below sets out the basic amount of the fine to be imposed on each undertaking:

<b>Undertaking</b>	<b>Basic amount of the fine (EUR)</b>
JPMorgan Chase	[...]
Crédit Agricole	[...]
HSBC	[...]

#### 8.4. Adjustments to the basic amount

- (736) In this specific case, the Commission does not take into account any aggravating circumstances.<sup>765</sup>
- (737) The Commission however takes into account mitigating circumstances that result in a reduction of the basic amount.<sup>766</sup>

##### 8.4.1. HSBC

- (738) HSBC contends that a significant mitigating circumstance is warranted owing to its lack of awareness of the overall plan of the single and continuous infringement, its passive role and substantially limited involvement, the fact the infringement was

---

<sup>763</sup> Point 25 of the Guidelines on fines.

<sup>764</sup> [...]

<sup>765</sup> Point 28 of the Guidelines on fines.

<sup>766</sup> Point 29 of the Guidelines on fines contains a non-exhaustive list of possible mitigating circumstances.

committed by a rogue employee who acted in his own personal interests rather than the bank's interests, the fact that the infringement was not committed intentionally but as a result of negligence and the reasonable doubt as to whether the conduct constitutes an infringement of competition law. HSBC further claims that it has effectively cooperated with the Commission outside the scope of the Leniency Notice and beyond its legal obligation including giving prompt and extensive responses to five requests for information and undertaking a considerable amount of work to do so, notably for identifying relevant phone communications.<sup>767</sup>

- (739) As regards HSBC's cooperation, replying correctly to a request for information is not voluntary cooperation outside the Leniency Notice. On this basis, it does not deserve a further reduction of the fine.<sup>768</sup>
- (740) The claims that the banks cannot be held liable for the conduct of their so-called rogue traders that acted for their personal gain and possibly not necessarily in the interest of the banks have already been addressed and rejected in this Decision.<sup>769</sup> The Commission reiterates that the infringement is not limited to rate manipulation and that during the period of HSBC's participation to the infringement, two traders and one submitter of HSBC were involved. Even if their incentive was to increase personal gain, it should be taken into account that the profits from their individual trading books contribute to the bank's profits. HSBC's claim that the infringement was the result of a rogue trader acting on his own interest rather than the bank's interest, which would deserve a mitigating circumstance, must be rejected.
- (741) The Commission disagrees that HSBC's conduct was not intentional. The HSBC trader involved in the anticompetitive conduct ([employee of HSBC]) perfectly understood the scheme presented by [non-addressee] on the first day of HSBC's participation to the infringement.<sup>770</sup> HSBC was aware that some traders and submitters (in other words several departments) within [non-addressees] were involved. For these reasons, HSBC's claim of unintentional conduct is rejected.
- (742) As to HSBC's claim that there is reasonable doubt as to whether the conduct constitutes an infringement of competition law, the Commission does not consider that the infringing conduct in this case was novel or unprecedented, or that HSBC could not have contemplated that the conduct established in this Decision would be characterised as horizontal practices relating to prices. The Commission refers to the legal assessment made earlier in this Decision (see in particular Section 5.1.2.2). Further, there is nothing novel or unprecedented in horizontal practices relating to coordination and fixing of prices, proof of which is that the Commission received in this case immunity/leniency applications from 4 banks. Therefore, HSBC's claim that there is a reasonable doubt as to whether the conduct constitutes an infringement of competition law is not considered as a mitigating circumstance.

---

<sup>767</sup> [...].

<sup>768</sup> See Judgment of the Court of Justice of 24 June 2015, *Fresh Del Monte Produce v Commission*, Joined Cases C-293/13 P and C-294/13 P, ECLI:EU:C:2015:416, paragraph 184, where it was confirmed that a reduction of a fine "is justified only where an undertaking provides information to the Commission without being asked to do so".

<sup>769</sup> See recitals (595)-(607) : for Crédit Agricole, but this reasoning also applies to HSBC.

<sup>770</sup> See recitals (271) to (276) and (471) to (476).

- (743) As regards lack of awareness, HSBC claims a mitigating circumstance of at least 65%, referring to the *Coppens* case law. The reduction in that case was not only attributable to limited awareness but took into account all the circumstances of the case, which were quite different from the situation of HSBC in the present case.<sup>771</sup> As explained in recitals (471) to (476), HSBC was aware of the general scope and the essential characteristics of the cartel as a whole and was, at the very least able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and was prepared to take the risk.
- (744) As regards the passive role, the 2006 Guidelines on fines do no longer provide for a further reduction on the basis of a passive or minor role. Any reference to precedents based on older versions of the Guidelines on fines are therefore irrelevant. As regards the substantially limited involvement, the 2006 Guidelines on fines recognise the limited role of an undertaking as a mitigating circumstance only if there is evidence that the involvement in the infringement was indeed substantially limited and that, during the period in which it was party to the offending agreement, it actually avoided applying it by adopting competitive conduct in the market.
- (745) The evidence shows that HSBC's involvement was not substantially limited and that it has not played a passive role, which would justify a reduction in fines<sup>772</sup>. Indeed, after having been informed of the 19 March 2007 scheme, the HSBC trader first states that he will closely watch the events<sup>773</sup> and later states that he has been careful not to have the opposite trading position.<sup>774</sup> On 19 March 2007 itself, the HSBC trader first confirms his agreement to speak to the HSBC submitters (to request a low submission), then calls the HSBC submitter and finally reports back that HSBC submitter will contribute a low EURIBOR submission.<sup>775</sup> This cannot be considered a merely passive role or a substantially limited involvement.
- (746) HSBC misunderstands the notions of limited involvement or awareness with that of limited duration. The fact that an undertaking participates for only a limited duration in an infringement is already duly reflected in the multiplier for duration and it does not automatically prove that this undertaking had only a limited involvement or awareness of the infringement.
- (747) The list of circumstances set out in point 29 of the 2006 Guidelines is not exhaustive and specific circumstances of the case, in particular whether the undertaking participated in all the aspects of the infringement, must be taken into account.
- (748) In this specific case, the Commission considers that HSBC participated in the collusive arrangements in a different way than the main players, because it had a lower degree of intensity of collusive contacts than the main players.<sup>776</sup>

---

<sup>771</sup> Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens NV*, C-441/11 P, paragraph 82.

<sup>772</sup> Judgment of the General Court of 8 October 2008, *Carbone-Lorraine v Commission*, T-73/04, ECLI:EU:T:2008:416, paragraphs 163-164, and cited case-law.

<sup>773</sup> Recitals (271) to (276).

<sup>774</sup> Recitals (289) to (291).

<sup>775</sup> Recitals (322) to (331).

<sup>776</sup> In the period under consideration in this Decision the main players were [non-addressees] (see recitals (117) to (120)).

(749) It follows that HSBC had a more peripheral/minor role in the infringement that cannot be compared to that of the main players and that should be reflected in its fine. The Commission therefore concludes that, in the specific circumstances of the case, it is appropriate to grant HSBC a 10% reduction of the basic amount of the fine.

#### 8.4.2. *Crédit Agricole*

(750) Crédit Agricole claims it should be granted a mitigating circumstance at least at the level considered by the Commission during the settlement procedure.<sup>777</sup>

(751) The Commission disagrees with Crédit Agricole. In the standard procedure, the Commission is not bound by the range indicated as part of the settlement procedure. Therefore the Commission cannot be bound by the mitigating circumstance percentage which underlie this range.

(752) In addition, the mitigating circumstance granted to Crédit Agricole takes notably into account the evidence mentioned in recitals (278) to (282) which was not in the case file at the time of the settlement procedure. There are therefore new elements after the end of the settlement procedure which impact the assessment of Crédit Agricole's awareness of the full scope of the collusive arrangements. The Commission therefore rejects Crédit Agricole's claim.

(753) Crédit Agricole further claims that it deserves a significant mitigating circumstance due to its lack of awareness of the global plan and essential characteristics of the collusion, its involvement in only a minimal proportion of the overall collusive contacts and its lack of implementation of the agreements via the bank's submitters. Crédit Agricole also claim that any involvement in an infringement by Crédit Agricole was committed by negligence which also would justify a mitigating circumstance. Crédit Agricole supports the latter claim by stating that the Statement of Objections attributes the infringement to two individuals only.<sup>778</sup>

(754) As regards the lack of implementation, this argument has already been rejected in relation to Crédit Agricole's claim that it proves that there was no restriction of competition at all.<sup>779</sup>

(755) Furthermore, the Commission disagrees that Crédit Agricole's conduct was only negligent. The liability of Crédit Agricole's employees can be fully attributed to the bank. The employees involved indicated several times that they would contact their submitters and were also aware that the submitters of [non-addressees] were involved in collusive arrangements. For these reasons, Crédit Agricole's claim that it committed the infringement by negligence which would deserve a mitigating circumstance is rejected.

(756) As regards lack of awareness, as explained in recitals (466) to (470), Crédit Agricole was aware of the general scope and the essential characteristics of the cartel as a whole and was, at the very least, able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and prepared to take the risk.

---

<sup>777</sup> [...].

<sup>778</sup> [...].

<sup>779</sup> See recitals (189) to (191), (210) to (213), (214) to (216), (224) to (226), (292) to (294), (304) to (307) and (319) to (321).

- (757) As regards the limited involvement, the evidence shows that Crédit Agricole's involvement was not limited in the meaning of the 2006 Guidelines on fines as explained in recital (744). Indeed, on the first (last) day of its participation in the infringement, Crédit Agricole agrees to request a high (low) submission and then reports back. This cannot be considered a substantially limited involvement.
- (758) However, the list of circumstances set out in point 29 of the 2006 Guidelines is not exhaustive and specific circumstances of the case, in particular whether the undertaking participated in all the aspects of the infringement, must be taken into account.
- (759) In this specific case, the Commission considers that Crédit Agricole participated in the collusive arrangements in a different way than the main players, because it had a lower degree of intensity of collusive contacts than the main players.<sup>780</sup>
- (760) It follows that Crédit Agricole had a more peripheral/minor role in the infringement that cannot be compared to that of the main players and that should be reflected in its fine. The Commission therefore concludes that, in the specific circumstances of the case, it is appropriate to grant Crédit Agricole a 10% reduction of the basic amount of the fine.

#### 8.4.3. *JPMorgan Chase*

- (761) JP Morgan Chase claims it should be granted a mitigating circumstance due to its only partial awareness of [non-addressee]'s and [non-addressee]' roles in the alleged conduct and because it had a peripheral role particularly in relation to the rate manipulation conduct.<sup>781</sup>
- (762) As regards the partial nature of JPMorgan Chase's awareness, as explained in recitals (477) to (483), JPMorgan Chase was aware of the general scope and the essential characteristics of the cartel as a whole and was, at the very least, able to reasonably foresee the offending conduct planned or put into effect by the other parties in pursuit of the same objective and prepared to take the risk.
- (763) As regards the peripheral role, in this specific case, the Commission considers that JPMorgan Chase participated in the collusive arrangements in a different way than the main players, because JPMorgan Chase had a lower degree of intensity of the collusive contacts than the main players.
- (764) It follows that JPMorgan Chase had a more peripheral/minor role in the infringement that cannot be compared to the one of the main players and that should be reflected in its fine. The Commission therefore concludes that, in the specific circumstances of the case, it is appropriate to grant JPMorgan Chase a 10% reduction of the basic amount of the fine.
- (765) JPMorgan Chase further claims that it deserves a further reduction of its fine because it allegedly did not intentionally engage in any conduct that infringed Article 101(1) of the Treaty. JPMorgan Chase supports its claims by stating that the Statement of

---

<sup>780</sup> In the period under consideration in this Decision the main players were [non-addressees] (see recitals (117) to (120)).

<sup>781</sup> [...].

Objections attributes the infringement to one individual only and that JPMorgan Chase did not take steps to conceal its conduct.<sup>782</sup>

- (766) This argument cannot be upheld, as the number and precision of the contacts show that [employee of JPMorgan Chase] was fully aware of what he was doing. As already noted (see Section 5.1.3 and in particular recitals (460) to (465) and (477) to (483)), participating in a concerted practice and in a single and continuous infringement with a single economic aim means that [employee of JPMorgan Chase] knowingly restricted or distorted competition. Moreover, he was also fully aware that several departments within [non-addressee] were involved in the infringement and he could reasonably foresee that [non-addressees] might also be involved. His actions, when exchanging information with [non-addressee], can be fully attributed to JPMorgan Chase. JPMorgan Chase's claim that [employee of JPMorgan Chase], and therefore the bank, did not intentionally engage in the infringement is therefore unfounded.

### 8.5. Legal maximum

- (767) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking participating in the infringement must not exceed 10% of its total turnover relating to the business year preceding the date of the Commission Decision. The fines set out below do not exceed 10% of the total turnover for any of the undertakings concerned.<sup>783</sup>
- (768) Crédit Agricole claims that, unless there are new factors after the end of the settlement procedure, the Commission is barred from imposing a fine higher than the high end of the fines range proposed during the settlement procedure plus 10% representing the loss of the settlement reward.<sup>784</sup>
- (769) The Commission disagrees with Crédit Agricole. In the standard procedure, the Commission is no longer bound by the range indicated as part of the settlement procedure.<sup>785</sup> In this case, there were also new factors. The investigation continued after the Settlement decision and there was additional evidence supplied to the Commission in February 2015 and communicated to the addressees of the Statement of Objections via a Letter of Facts.<sup>786</sup> This illustrates well why the Commission cannot be obliged to stay within the limits of the fines ranges proposed during the settlement procedure.

### 8.6. Final amount of fines

- (770) Based on the methodology chosen and explained in this Chapter 8, the final amount of the fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 should be as follows:

---

<sup>782</sup> [...]

<sup>783</sup> The Commission's request for information of 26 June 2013 asked the banks to provide their 2012 total turnover on both a gross and a net basis. These data for 2015 are publicly available on the websites of Crédit Agricole, HSBC and JPMorgan Chase. The fines do not exceed 10% of the total turnover for any of the undertakings concerned irrespective of the 2015 total turnover used (gross or net).

<sup>784</sup> [...].

<sup>785</sup> See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, paragraph 96.

<sup>786</sup> See recital (102).

- a) Crédit Agricole: 114 654 000 EUR ;
- b) HSBC: 33 606 000 EUR ;
- c) JPMorgan Chase: 337 196 000 EUR ;

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, during the periods indicated, in a single and continuous infringement regarding Euro interest rate derivatives covering the entire EEA, which consisted of agreements and/or concerted practices that had as their object the distortion of the normal course of pricing components in the EIRD sector:

- (a) Crédit Agricole SA and Crédit Agricole Corporate and Investment Bank from 16 October 2006 to 19 March 2007;
- (b) HSBC Holdings plc, HSBC Bank plc and HSBC France from 12 February 2007 to 27 March 2007;
- (c) JPMorgan Chase & Co., JPMorgan Chase Bank, National Association and J.P. Morgan Services LLP from 27 September 2006 to 19 March 2007.

*Article 2*

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

- (a) Crédit Agricole SA and Crédit Agricole Corporate and Investment Bank jointly and severally liable: 114 654 000 EUR
- (b) HSBC Holdings plc, HSBC Bank plc and HSBC France jointly and severally liable: 33 606 000 EUR
- (c) JPMorgan Chase & Co., JPMorgan Chase Bank, National Association and J.P. Morgan Services LLP jointly and severally liable: 337 196 000 EUR

The fines shall be credited, in euros, within a period of three months from the date of notification of this Decision to the following bank 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.39914

After the expiry of this period, interest will 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 must cover the fine by the due date, either by providing an acceptable financial guarantee, or by making a



provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.<sup>787</sup>

### *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

Crédit Agricole SA  
12, Place des Etats-Unis  
92120 Montrouge  
France

Crédit Agricole Corporate and Investment Bank  
12, Place des Etats-Unis  
92120 Montrouge  
France

HSBC Holdings plc  
Level 26, 8 Canada Square  
London E14 5HQ  
United Kingdom

HSBC Bank plc  
Level 26, 8 Canada Square  
London E14 5HQ  
United Kingdom

HSBC France  
103 Avenue des Champs Elysées  
75419 Paris  
Cedex 08 France

JPMorgan Chase & Co.  
270 Park Avenue  
New York  
New York 10017-2070  
United States of America

JPMorgan Chase Bank, National Association  
1111 Polaris Parkway  
Columbus

---

<sup>787</sup> OJ L 362, 31.12.2012, p. 1.

Ohio 43240  
United States of America  
J.P. Morgan Services LLP  
25 Bank Street  
Canary Wharf  
London, E14 5JP  
United Kingdom

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

Done at Brussels, 7.12.2016

*For the Commission*

*Margrethe VESTAGER*  
*Member of the Commission*