EUROPEAN COMMISSION
Competition DG

CASE AT.40135 FOREX

(Sterling Lads)

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) No 1/2003

Article 7 Regulation (EC) 1/2003

Date: 02/12/2021

EUROPEAN
COMMISSION

Brussels, 2.12.2021
C(2021) 8613 final

COMMISSION DECISION

of 2.12.2021

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

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(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,[1]

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,[2] and in particular Articles 7 and 23(2) thereof,

Having regard to Commission Decision of 27 October 2016 to initiate proceedings in this case,[3]

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

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1 OJ C 115, 9.5.2008, p. 47.

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

3 For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period.
Therefore, for the purposes of this Decision, the EEA is understood to cover the 27 Member States of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) and the United Kingdom, as well as Iceland, Liechtenstein and Norway. Accordingly, any references made to the EEA in this Decision are meant to also include the United Kingdom.

and Article 12 of 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,[4]

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

Having regard to the final report of the hearing officer in this case,

Whereas:

1. INTRODUCTION

(1) This Decision concerns a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ("the Treaty") and Article 53 of the Agreement on the European Economic Area ("the EEA Agreement"). The single and continuous infringement, for which the addressees of this Decision are held liable, consisted in an underlying understanding reached among certain individual traders ("the participating traders") and implemented by them to exchange - on a multilateral private chatroom and on an extensive and recurrent basis - certain current or forward-looking commercially sensitive information about certain of their trading activities and to occasionally coordinate their trading activity with respect to Forex (FX)[5] spot trading of G10 currencies. The G10 currencies concerned by this Decision comprise the USD and CAD, JPY, AUD, NZD, GBP, EUR, CHF, SEK, NOK and DKK (in other words 11 currencies altogether, which corresponds to the market convention for currencies covered by the G10 designation).

(2) The infringement lasted from 25 May 2011 to 12 July 2012.

(3) This Decision is addressed to the following legal entities (hereinafter the "Addressees"):

(a) UBS AG (hereinafter "UBS");

(b) Barclays PLC, Barclays Services Limited (currently known as Barclays Execution Services Limited)[6] and Barclays Bank PLC (collectively "Barclays");

(c) The Royal Bank of Scotland Group plc (currently known as NatWest Group plc)[7] and The Royal Bank of Scotland plc (currently known as NatWest Markets Plc)[8] (collectively "RBS");[9]

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4 OJ L 123, 27.4.2004, p. 18.

5 The term "foreign exchange" ('Forex' or 'FX') refers to the trading of currencies, which happens in a decentralised manner. It includes all aspects of buying, selling and exchanging currencies at current or determined prices. The foreign exchange rate is the rate at which one currency will be exchanged for another. Since currencies are always traded in pairs, in foreign exchange there is not such a thing as a currency's absolute value but a relative value compared with other currencies. The market price of one currency is set in a given currency pair, that is, a value if it is exchanged against another.

6 On 21 April 2020, the Commission learnt that Barclays Services Limited changed its name to Barclays Execution Services Limited ([…]).

7 On 22 July 2020, The Royal Bank of Scotland Group plc changed its name to NatWest Group plc ([…]).

8 On 30 April 2018, The Royal Bank of Scotland plc changed its name to NatWest Markets Plc ([…]).

9 For clarity reasons, when referring to NatWest Group plc and NatWest Markets Plc in this Decision the Commission will use the acronym RBS, that collectively corresponds to The Royal Bank of Scotland

(d) HSBC Holdings plc and HSBC Bank plc (collectively "HSBC").

(4) The infringement involves the participation of the Addressees and of another participating undertaking (altogether the "participating undertakings").

(5) The other participating undertaking- which is not an addressee of this Decision-, comprises the following legal entities: [non-addressee], [non-addressee] and [non-addressee] (collectively "[non-addressee]" or "the other participating undertaking").

(6) In the present proceedings, the Commission is committed to ensure the equal treatment of all participating undertakings in the same infringement, irrespective of whether their liability is established in one or two procedures, in line with the principles set out in the case law.[10]. In so far as any content of this Decision makes reference to the participation of undertakings other than UBS, Barclays, RBS and HSBC, such references are made for the sole purpose of allowing UBS, Barclays, RBS and HSBC to fully exercise their rights of defence and to ensure that the equal treatment of all participating undertakings emerges from the text of the Decision.

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

(7) The infringement addressed in this Decision relates to the FX spot trading activity of G10 currencies of the undertakings involved. A spot foreign exchange or FX spot transaction is defined as an agreement between two parties to exchange two currencies, that is to buy a certain amount (the "notional amount") of one currency against selling the equivalent notional amount of another currency at the current value at the moment of the agreement (the "exchange rate"), for settlement on the spot date (which is usually T (transaction's day) plus 2 days).[11]

(8) The FX spot trading activity encompasses both:

(a) market making: the execution of customer's orders to exchange a currency amount by its equivalent in another currency; and

(b) trading on own account: the execution of other currency exchanges in order to manage the exposure resulting from the market making transactions.

(9) In their capacity as market makers, traders stand ready to trade on behalf of customers at the quoted prices. Customers include asset managers, hedge funds, corporations and other banks. In industry terms,[12] a market maker quotes two-way prices in a certain currency pair: the "bid price" which is the price at which the trader is ready to buy a currency against another, and the "ask price" which is the price at which the trader is ready to sell a currency against another currency. The difference

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Group plc and The Royal Bank of Scotland plc, which were the names of the companies at the time of the infringement.

10 Judgment of 20 May 2015, *Timab Industries and CFPR v Commission,* T-456/10, EU:T:2015:296, paragraphs 72-74, upheld by judgment of 12 January 2017, *Timab Industries, CFPR v Commission*, C-411/15P, EU:C:2017:11; see also judgment of 28 March 2019, *Pometon SpA v. Commission,* T-433/16, EU:T:2019:201, paragraphs 343 and 344.

11 The case does not concern FX spot e-commerce trading activity within the meaning of FX spot trades that are automatically booked by, or executed by either the relevant bank's proprietary electronic trading platforms or computer algorithms. These transactions take place without the intervention of any trader.

12 https://admiralmarkets.com/education/articles/forex-basics/how-do-forex-market-makers-work.

between the bid and ask prices is the "bid-ask spread".[13] A market maker would: (i) set bid prices and ask prices for a certain currency pair; (ii) commit to accepting spot transactions at these prices; and (iii) subsequently take the resulting exposure on to his/her own book.[14] As such, a market maker is a counterparty in a Forex transaction, who - unlike brokers - bears the resulting exposure of the transactions he or she enters into.

(10) When trading on their own account, traders may, after having taken a certain currency exposure into their books, choose to (i) hold it, (ii) close it by entering into an equivalent reverse transaction or (iii) increase the exposure further. Both the magnitude of currency exposure market makers are willing or able to keep in their books and the pace at which they modify currency exposure depends on their market expectations, their risk appetite and regulatory limits.[15] This activity is called trading on own account, because it takes place on behalf of a trader's own undertaking.

(11) The FX spot trading desks of G10 currencies of the participating undertakings stood ready to trade any of those currencies depending on market demand. The participating traders in the STG Lads chatroom had a particular focus on the GBP, which was most traded against the two main currencies (EUR and USD) but they could trade in all G10 currencies. In fact, the file contains evidence of discussions on every single currency of the G10, showing that all of them were discussed at some point throughout the STG Lads communications since the creation of the chatroom.[16]

(12) While the participating traders themselves were primarily responsible for market making in specific currencies or pairs, they could also engage in trading activity on behalf of their own undertaking with respect to any G10 currency available in their books, which they also did to different extents during the relevant period, with a view to maximising the value of their respective holdings.

(13) The following three types of orders characterising the customer-driven trading activity (market making) of the participating traders are pertinent in the present infringement:

(a) Customer immediate orders, to immediately enter trades for a certain amount of currency based on the prevailing market rate;

(b) Customer conditional orders, which are triggered when a given price level is reached and opens the traders' risk exposure. They only become executable when the market reaches a certain level (for example a stop-loss or take-profit order);

(c) Customer orders to execute a trade at a specific Forex benchmark rate or "fixing" for particular currency pairs, which in the current case only concerned the WM/Reuters Closing Spot Rates (hereinafter the "WMR fixes") and the

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13 For currency pairs, prices are often referred to as exchange rates, though the terms prices and exchange rates can be used interchangeably in this context.

14 A trader's book is his/her transactions portfolio.

15 In the FX spot trading of G10 currencies activity, undertakings generally seek to generate revenues from FX spot trading by buying the relevant currencies at lower prices than the prices at which they sell those currencies.

16 See, among others, […], of 18 April 2012, for EUR, GBP and USD; […], of 22 May 2012, for CHF; […], of 5 July 2012, for DKK; […], of 9 March 2012, for NOK, SEK; […], of 26 March 2012, for AUD, NZD and JPY; […], of 6 March 2012, for CAD.

European Central Bank foreign exchange reference rates (hereinafter the "ECB fixes").[17]

2.2. Undertakings subject to these proceedings

2.2.1. The Addressees

2.2.1.1. UBS

(14) UBS is a global financial institution headquartered in Switzerland which has offices in more than 50 countries including all major financial centres, including in the EEA. It offers financial services including wealth management, investment banking and asset management.

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

– UBS AG, with registered offices at Bahnhofstraße 45, 8001 Zürich, Switzerland.

2.2.1.2. Barclays

(16) Barclays is a bank headquartered in the United Kingdom, which operates worldwide, including in the EEA.

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

– Barclays PLC, with registered offices at 1 Churchill Place Canary Wharf London, E14 5HP, United Kingdom;

– Barclays Services Limited (currently known as Barclays Execution Services Limited), with registered offices at 1 Churchill Place Canary Wharf London, E14 5HP, United Kingdom (formerly, "Barclays Capital Services Limited"); and

– Barclays Bank PLC, with registered offices at 1 Churchill Place Canary Wharf London, E14 5HP, United Kingdom.

2.2.1.3. RBS

(18) RBS is a provider of banking and integrated financial services. It is headquartered in the United Kingdom and active in the EEA, United States and Asia Pacific.

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

– The Royal Bank of Scotland Group plc (currently known as NatWest Group plc), with registered offices at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom; and

– The Royal Bank of Scotland plc (currently known as NatWest Markets Plc), with registered offices at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom.

2.2.1.4. HSBC

(20) HSBC is an undertaking headquartered in the United Kingdom, which operates worldwide, including the EEA.

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[17] The WMR fix and the ECB fix are based on spot FX trading activity by market participants at or around the times of the respective WMR or ECB fix.

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

– HSBC Holdings plc with registered offices at 8 Canada Square, London, E14 5HQ, United Kingdom; and

– HSBC Bank plc with registered offices at 8 Canada Square, London, E14 5HQ, United Kingdom.

2.2.2. The other participating undertaking

2.2.2.1. [non-addressee]

(22) [non-addressee].

3. PROCEDURE

(23) On 27 September 2013, UBS applied for a marker under points 14 and 15 of the Notice on immunity from fines and reduction of fines in cartel cases (hereinafter "the Leniency Notice").[18] The application was followed by a number of submissions consisting of oral statements and documentary evidence. By Decision of 2 July 2014, the Commission granted UBS conditional immunity pursuant to point 8(a) of the Leniency Notice.

(24) On 11 October 2013, Barclays submitted an application for reduction of fines under the Leniency Notice. The application […].

(25) On 14 October 2013, RBS submitted an application for reduction of fines under the Leniency Notice. The application was […].

(26) On 17 July 2015, HSBC submitted an application for reduction of fines under the Leniency Notice. The application was […].

(27) On 27 October 2016, the Commission informed the participating undertakings that it considered that the evidence submitted constituted significant added value with respect to the evidence already in its possession and accordingly notified to them its intention to apply a reduction of fines within the applicable bands, in accordance with point 29 of the Leniency Notice.

(28) On 27 October 2016, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the participating undertakings and fixed a deadline pursuant to Article 10a(1) of Regulation (EC) Nº 773/2004 for participating undertakings to manifest their eventual interest in engaging in settlement discussions, which they all confirmed.

(29) Settlement meetings with the participating undertakings took place between 9 November 2016 and 7 February 2018. At these bilateral meetings, the Commission informed the participating undertakings about the potential objections it envisaged raising against them and disclosed the evidence in the Commission file relied on to establish the facts supporting the potential objections.

(30) The participating undertakings were also given access to […]. The participating undertakings were further provided with an estimation of the range of the likely fines to be imposed by the Commission.

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[18] OJ C 298, 8.12.2006, p. 17.

(31) Each participating undertaking expressed its view on the potential objections, which the Commission envisaged raising against them. The participating undertakings comments were carefully considered by the Commission and, where appropriate, taken into account in the ensuing settlement discussions.

(32) At the end of the settlement discussions, all the Addressees considered that there was a sufficient common understanding between them and the Commission as regards the potential objections as well as the estimation of the range of likely fines in order to continue the settlement process.

(33) On 19 February 2018, after having participated in all three settlement meetings, and having been granted 15 working days to introduce a settlement submission, [non-addressee] informed the Commission that it did not intend to request settlement.[19]

(34) Between […] and […], the Addressees of this Decision submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 solely for the purpose of reaching a settlement with the Commission in the present proceedings and without prejudice to any other proceedings (the "settlement submissions"). Each settlement submission contained:

- an acknowledgement in clear and unequivocal terms of its liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including the Addressee's role and the duration of its participation in the infringement in accordance with the results of the settlement discussions;
- an indication of the maximum amount of the fine each Addressee foresees to be imposed by the Commission and which it would accept in the framework of a settlement procedure;
- the Addressee's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;
- the Addressee's confirmation that it does not envisage requesting access to the file or requesting to be heard in an oral hearing, unless the Commission does not reflect its settlement submission in the Statement of Objections and the Decision;
- the Addressee's agreement to receive the Statement of Objections and the final Decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(35) Each of the Addressees made the above-mentioned settlement submission conditional upon the imposition of a fine by the Commission, which will not exceed the amount as specified in its settlement submission.

(36) On 24 July 2018, the Commission adopted a Statement of Objections addressed to the Addressees. All the Addressees replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

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[19] [non-addressee] is the addressee of a separate decision regarding the same cartel pursuant to Article 101(1) of Regulation (EC) Nº 773/2004 in the framework of the ordinary procedure.

(37) Having regard to the body of evidence in the Commission's file referred to in this Decision, the clear and unequivocal acknowledgments of the facts and the legal qualification thereof contained in the settlement submissions introduced by the Addressees of this Decision, as well as their explicit and unequivocal confirmation that the Statement of Objections reflected the contents of their settlement submissions, the Commission concludes that the Addressees of this Decision took part in the cartel as described in Section 4 and should be held liable for the infringement as set out in this Decision.

4. DESCRIPTION OF THE EVENTS

4.1. Nature, scope and functioning

(38) This Decision concerns the conduct herewith described as also documented in communications that took place within a […] chatroom[20] called 'Sterling Lads' (identification number ddc0d4) between [employee of HSBC] for HSBC; [employees of Barclays] (all Barclays); [employee's name] (first Barclays and later [non-addressee]); [employees of UBS] (all UBS); and [employee of RBS] (RBS) (the chatroom is hereinafter referred to as the "STG Lads chatroom" or "the chatroom").

(39) The above-mentioned individuals were traders employed by their respective undertakings during the relevant period, and all of them were authorised to trade G10 currencies in spot transactions on behalf of their respective employing undertaking at the corresponding dedicated FX spot trading desk.

4.1.1. Evolution and duration of Sterling Lads membership

(40) The chatroom was created by its administrator [employee of Barclays] (Barclays) on 25 May 2011 and formally closed on 1 August 2012. The communications took place from 25 May 2011 to 12 July 2012. Not all participating undertakings participated in the chatroom for its entire duration.

(41) Barclays participated in communications in the chatroom from 25 May 2011 to 12 July 2012 ([employee of Barclays] for the entire period, [employee of Barclays] from 25 May 2011 to 4 November 2011, [employee of Barclays] from 8 November 2011 to 12 July 2012).

(42) HSBC participated in communications in the chatroom from 25 May 2011 to 26 June 2012 ([employee of HSBC] for the entire period).

(43) UBS participated in communications in the chatroom from 25 May 2011 to 12 July 2012 ([employee of UBS] from 25 May 2011 to 4 November 2011, [employee of UBS] from 8 November 2011 to 12 July 2012 and [employee of UBS] from 30 May 2011 to 12 July 2012).

(44) RBS participated in communications in the chatroom from 5 August 2011 to 12 July 2012 ([employee of RBS] for the entire period).

(45) [non-addressee] participated in communications in the chatroom from […] to […] ([employee of non-addressee] for the entire period).

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[20] […] chatrooms (or […]) are a messaging /chat tool integrated in the […] Professional service ([...]). […] Professional service users can create electronic chatrooms using the […] tool, and invite other […] Professional users.

4.1.2. Arrangements reached within the chatroom

4.1.2.1. Underlying understanding to participate in the relevant private multilateral chatroom

(46) The participating traders of UBS, Barclays, RBS, HSBC and the other participating undertaking participated in nearly daily communications. As part of these communications, they engaged in extensive, recurrent and reciprocal[21] exchanges of information, in the STG Lads chatroom, relating to different aspects of FX spot trading of G10 currencies (although not all 55 combinations of the G10 currencies might necessarily have been discussed or actually implicated in the relevant conduct during the periods set out in Section 6).

(47) This Decision does not concern the communications between the participating traders in the STG Lads chatroom, in the ordinary course of their business, relating to matters such as the provision of information needed and intended to explore trading opportunities with each other as potential counterparties or as potential customers, or communications about market colour.[22]

(48) In addition to such communications, the participating traders however agreed to exchange - in a private[23] multilateral chatroom and on an extensive and recurrent basis - certain current or forward-looking commercially sensitive information about their trading activities. This information exchange took place in accordance with a tacit underlying understanding that: (i) such information could be used to the traders' respective benefit and in order to identify occasions to coordinate their trading;[24] (ii) such information would be shared within the private chatroom;[25] (iii) the traders would not disclose such shared information received from other chatroom participants to parties outside of the private chatroom;[26] and (iv) such shared information would not be used against the traders who shared it[27] (hereinafter referred to as the "underlying understanding"). The exchange of information is further detailed in Section 4.1.2.2.

(49) Moreover, pursuant to this underlying understanding, the participating traders occasionally coordinated their trading activities with respect to FX spot trading of G10 currencies.

(50) In particular, the exchange of information pursuant to the underlying understanding facilitated the participating traders, at times, to better predict each other's market conduct and potentially informed their subsequent decisions, allowing for occasional opportunistic coordinated behaviour relating to trading activities.[28] Through their participation in nearly daily exchanges, the participating traders had the expectation

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21 See recital (142).

22 For a definition of "market colour", see the Bank of International Settlements' Report published in May 2016 ('FX Global Code') which defined the term as: "a view shared by market participants on the general state of, and trends in the market", and provides additional context on the subject (http://www.bis.org/mktc/fxwg/gc_may16.pdf).

23 For the purpose of this Decision, "private chatroom" means a chatroom reserved to the chatroom's members.

24 […].

25 […].

26 […].

27 […].

28 […].

of standing a better chance to coordinate behaviour opportunistically. The occasional coordination is further detailed in Section 4.1.2.3.

(51) In particular, the participating traders involved in the private chatroom engaged in the exchanges of information and occasional trading coordination, expecting some degree of reciprocity, without which the strategy would have been generally self-defeating. Such an underlying understanding appears from numerous chats, in which traders (i) expressed gratitude when receiving certain current or forward-looking information,[29] (ii) indicated willingness to coordinate their trading to benefit any of the chatroom participants,[30] or (iii) apologized to each other when they may have departed from the underlying understanding.[31]

(52) As a result, participating in the STG Lads chatroom entailed membership of a closed group of traders who trusted each other and tacitly committed to comply with the terms of the underlying understanding.[32] The underlying understanding provided a basis for, and was implemented through, extensive and recurrent exchanges of certain current or forward-looking commercially sensitive information about their trading in a multilateral private chatroom, which in turn enabled the participating traders to identify, and in some cases, seize opportunities for coordinated trading.

4.1.2.2. Extensive exchange of information amongst competitors pursuant to the underlying understanding

(53) Pursuant to the underlying understanding, the participating traders exchanged in a recurrent and extensive fashion with each other, in a multilateral private chatroom, certain current or forward-looking commercially sensitive information about their trading of either immediate commercial value, or of commercial value lasting for a period of minutes or at most hours after it had been shared, depending on the type of information or until it had been superseded by new updated information that overrode it (a practice hereinafter referred to as 'exchange of information'). The following specific types of exchange of information occurred in the STG Lads chatroom:

(a) Exchange of information on open risk positions[33] of the participating traders

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29 See, among others, […].

30 See, among others, […].

31 See, among others, […].

32 See, for example, chat of […] or chat of […], […].

33 An "open risk position" in a certain currency is a position that has been recorded by a trader in his/her trading book following a spot transaction. The position remains open until an opposing trade takes place. An open risk position represents market exposure (the risk) for the trader. Open risk positions can be 'long' or 'short'. In long positions, the trader holds a positive amount of a certain currency in his/her trading book. The trader will gain if the value of this currency increases vs. other currencies. The trader will have to sell this currency in order to close the position. In short positions, the trader holds a negative amount of a certain currency in his/her portfolio. The trader will gain if the value of this currency decreases vs. other currencies. The trader will have to buy this currency in order to close the position.
The "size" of a position is the positive or negative amount of a certain currency that a trader holds in his/her trading book.
For example, a trader begins the day with an empty trading book, meaning no position in any currency. If the trader sells EUR 1 million against USD and assuming an EUR/USD exchange rate of 1.15, he or she will create two open risk positions: a 'long' position, the size of which is USD 1 150 000 and a 'short' position of EUR 1 000 000. In order to close this short position, the trader will have to buy back EUR 1 000 000 (not necessarily against USD).

(54) The exchange of information on open risk positions[34] consisted in the recurrent sharing of certain current or forward-looking commercially sensitive information on open risk positions with competitors (the direction of the position (either "short" or "long") and, at times, the size of the position or an indication of it) pursuant to the underlying understanding. The exchange of such information could provide the traders with an insight into each other's potential hedging conduct. The recurrent knowledge update of such open risk positions of major competitors provided the participating traders with information which could be, for a window of minutes or until new information superseded it, relevant to their subsequent trading decisions and enable the participating traders to identify opportunities for coordination.

(b) Exchange of information on outstanding customers' orders

(55) The exchange of information on outstanding customers' orders concerned stop-loss orders,[35] orders for the fix[36] and immediate orders.[37]

(56) Pursuant to the underlying understanding, the participating traders were expected to share and shared with each other confidential information related to their respective customers' outstanding orders. This applied to:

- **Customers Conditional orders** such as "stop-loss" and "take-profit" orders, which are triggered when a given price level is reached and opens the traders' risk exposure. In this case, the participating traders frequently revealed certain current or forward-looking commercially sensitive information on conditional orders such as the size or the direction of the orders or the type of customer to other participating traders on an extensive basis. This eased the identification of opportunities for coordination among the participating traders. The recurrent update of knowledge of customers' confidential conditional orders placed with participating traders increased the likelihood of the traders successfully coordinating their trading activities for their own benefit.
- **WMR or ECB fix positions**: traders usually engaged in these exchanges in the hour preceding the relevant fix. In contrast to instances of sharing their own fix positions (based on their own customers' orders executable at the fix or their own hedging needs) to explore trading opportunities as potential counterparties or as potential customers, these traders often shared certain commercially sensitive information on their fix positions (such as the size or direction of the orders) to identify occasions to coordinate trading at or around the fix. Shared current or forward-looking information on customers' orders executable at the fix remains relevant information until the relevant fix.
- **Commercially sensitive information on customers' immediate orders** (such as the size or the direction of the orders, the type of customer).pursuant to the underlying understanding. In this case, the exchange of information results in the same consequences as explained in section (c) regarding the exchange of certain commercially sensitive information on current or planned trading activity.

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34 See, for instance, chats of […]. Some of the examples in this list also happened to take place within the proximity of one fix.

35 See, for instance, chats of […].

36 See, for instance, chats of […].

37 See, for instance, chats of […].

(c) Exchange of information on other details of current or planned trading activities

(57) Traders are constantly seeking to execute trades and to cover risks for those trades. This requires traders at competing undertakings to communicate with each other and request quotes directly from separate traders of given amounts and currencies. Nevertheless, traders should manage their operations independently from competitors and should not coordinate their trading activities with one another.

(58) The exchange of information on current or planned trading activities[38] covered by this Decision concerns the recurrent disclosure to other traders in a multilateral private chatroom of certain commercially sensitive information on their current and intended trading activity pursuant to the underlying understanding, which made it easier for participating traders to identify occasions to coordinate their trading activities. Such information can remain relevant for competing undertakings during a window of between a few minutes and a few hours, or until new information supersedes it.

(d) Exchange of information on bid-ask spreads

(59) The exchange of information on bid-ask spreads concerned the instances in which the participating traders occasionally discussed existing or intended bid-ask spreads quotes of specific currency pairs for certain trade sizes.[39] The knowledge of existing or intended bid-ask spreads quotes of specific currency pairs for certain trade sizes, where there is a specific live trade, may remain useful for the other traders for a window of up to a few hours depending on the market's volatility at the time, and could enable coordination of spreads to that client.

(60) Bid-ask spreads quoted by traders refer to specific currency pairs for certain trade sizes. They are an essential competition parameter in FX spot trading activity. Spreads affect the overall price paid by customers for trading currencies. The potential revenue earned by a trader is also affected by the spread. When quoting both bid and ask price to a client, the traders would generally apply a spread to a given market mid-point[40] (whether in even amounts from that mid-point or otherwise) as part of this calculation.

4.1.2.3. Occasional instances of coordination facilitated by the exchange of information

(61) When engaging in fixing-related trading, traders should decide independently whether to decrease, offset or increase their open risk positions (see recital (54)) in order to optimize their exposure to risk at the fix. However, in the present case, the underlying understanding implemented by the participating traders occasionally facilitated specific forms of coordination, which took place with a view to benefiting the participating traders' returns or to avoiding trading against each other's interest (see also recitals (49) to (50) above).

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38 See, for instance, chats of […].

39 See, for instance, chats of […].

40 For a certain currency pair, the mid-point is equal to the average (in fact, the point in the middle) of the bid price and the ask price. For example, in the EUR/USD currency pair, if the bid price is 1.1560 and the ask price is 1.1580, then the bid-ask spread is 0.0020 and the mid-point is 1.1570. In perfect markets with costless forex transactions, the bid-ask spread would be zero and both the bid price and the ask price (and hence the mid-point) would be the same.

(62) The occasional standing down practice[41] concerned instances in which traders refrained from trading as they otherwise had planned to undertake during a particular time window on account of another trader's announced position or trading activity.

(63) Standing down constituted a form of coordinated trading by which the participating traders showed an implicit understanding not to trade in ways that would damage each other's interest. This entailed some alignment of their trading activities. Having exchanged the requisite current or forward-looking commercially sensitive information regarding their open positions without any intention of exploring trading opportunities as a potential counterparty or as a potential customer, the participating traders were occasionally in a position to align their trading interests by means of 'standing down', in other words one or more of the traders refrained for a limited period of time from trading activity which was perceived to have the potential to negatively affect the trading interests of another participating trader. The suspension of trading activities by some participating traders during this time reduced the risk that a transaction by the participating trader would not achieve the desired outcome and avoided simultaneous trading in opposite directions.

4.2. Participation in the conduct

(64) The following undertakings participated in the conduct: UBS, Barclays, RBS, HSBC and the other participant undertaking, [non-addressee].

(65) UBS, Barclays, RBS, HSBC and the other participant undertaking, [non-addressee], engaged in the conduct described in Section 4.1.2 above in the periods indicated in the following table:

BANK	TRADER	ENTRY	EXIT
Barclays	[employee of Barclays]	25/05/2011	12/07/2012
	[employee of Barclays]	25/05/2011	04/11/2011
	[employee of Barclays]	08/11/2011	12/07/2012
HSBC	[employee of HSBC]	25/05/2011	26/06/2012
UBS	[employee of UBS]	25/05/2011	04/11/2011
	[employee of UBS]	08/11/2011	12/07/2012
	[employee of UBS]	30/05/2011	12/07/2012
RBS	[employee of RBS]	05/08/2011	12/07/2012

[41] See, for instance, chats of […]. The evidence does not show any instance of standing down in the STG Lads chatroom after 31 October 2011.

BANK	TRADER	ENTRY	EXIT
[non-addressee]	[employee of non-addressee]	[…]	[…]

5. LEGAL ASSESSMENT

(66) Having regard to the body of evidence, the facts as described in Section 4 and the Addressees' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions and their replies to the Statement of Objections, the Commission's legal assessment is set out in Section 5.

5.1. Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement

5.1.1. Agreements and/or concerted practices

5.1.1.1. Principles

(67) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit anticompetitive agreements between undertakings, decisions by associations of undertakings and concerted practices.

(68) An agreement can be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The agreement may be express or implicit in the behaviour of the parties. Furthermore, it is not necessary, in order for there to be an infringement of Article 101(1) of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan. The concept of agreement in Article 101(1) of the Treaty applies to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.

(69) In its judgement in PVC II case,[42] the General Court stated that *"it is well established in the case law that for there to be an agreement within the meaning of Article [101(1)] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way".*[43]

(70) Although Article 101(1) of the Treaty and Article 53 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

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42 Judgment of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), 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, EU:T:1999:80, paragraph 715 and the case law referred to therein.

43 The case law of the Court of Justice and the General Court in relation to the interpretation of Article 81 of the EC Treaty [currently Article 101 TFEU] applies equally to Article 53 of the EEA Agreement. See recitals No 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement, as well as Case E-1/94 of 16.12.1994, recitals 32-35. References in this text to Article 101 of the Treaty therefore apply also to Article 53 of the EEA Agreement.

where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.[44]

(71) The criteria of co-ordination and co-operation laid down by the case law of the Court of Justice, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which it intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.[45]

(72) Thus, conduct may fall under Article 101(1) of the Treaty as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices, which facilitate the co-ordination of their commercial behaviour.[46]

(73) Furthermore, exchange of information between competitors can be characterised as a concerted practice 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.[47]

(74) Although in terms of Article 101(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the 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 anticompetitive effects on the market.[48]

(75) Moreover, it is established case law that the exchange, between undertakings, in pursuance of a cartel falling under Article 101(1) of the Treaty, of information concerning their respective deliveries, which not only covers deliveries already made but is intended to facilitate constant monitoring of current deliveries in order to

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44 Judgment of 17 July 1972, *Imperial Chemical Industries v Commission,* 48/69, EU:C:1972:70, paragraph 64.

45 Judgment of 16 December 1975, *Suiker Unie and others v Commission,* 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, EU:C:1975:174, paragraph 174.

46 Judgment of 17 December 1991, *Hercules Chemicals v. Commission*, T-7/89, EU:T:1991:75, paragraphs 258–261 and judgment of 5 April 2006, *Degussa AG v. Commission*, T-279/02, EU:T:2006:103, paragraph 132.

47 Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraph 35.

48 Judgment of 8 July 1999, *Hüls v Commission*, C-199/92P, EU:C:1999:358, paragraphs 161-166.

ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that article.[49]

(76) However, in the case of a complex infringement of long duration, it is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. The anticompetitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 101 of the Treaty lays down no specific category for a complex infringement of the present type.[50]

(77) For instance, in this regard, according *to paragraph 59 of the Commission's Guidelines on Horizontal Cooperation,*[51] *"communication of information among competitors may constitute an agreement, a concerted practice, or a decision by an association of undertakings with the object of fixing, in particular, prices or quantities. Those types of information exchanges will normally be considered and fined as cartels. Information exchange may also facilitate the implementation of a cartel by enabling companies to monitor whether the participants comply with the agreed terms. Those types of exchanges of information will be assessed as part of the cartel*."

(78) In its PVC II judgement,[52] the General Court stated that *"[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [101] of the Treaty".*

(79) 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 of long duration, the term "agreement" can properly be applied not only 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 it follows from the express terms of Article 101(1) of

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49 See, in this sense, judgment of 6 April 1995, *Société Métallurgique de Normandie v Commission,* T-147/89, T-148/89 and T-151/89, EU:T:1995:67, paragraph 72; judgment of 6 April 1995, *Trefilunion v Commission,* T-148/89, EU:T:1995:68, paragraph 72; and judgment of 6 April 1995, *Société des treillis et panneaux soudés v Commission,* T-151/89, EU:T:1995:71, paragraph 72.

50 Judgment of 17 December 1991, *Hercules v Commission*, T-7/89, EU:T: 1991:75, paragraph 264.

51 Communication from the Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.1.2011, p. 1.

52 Judgment of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), 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, EU:T:1999:80, paragraph 696.

the Treaty that agreement may consist not only in an isolated act but also in a series of acts or a course of conduct.[53]

5.1.1.2. Application to this case

(80) The Commission considers that the complex conduct described in Section 4 can be qualified as constituting agreements and/or concerted practices between competitors, within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement, in which the addressees have taken part and thereby they knowingly substituted practical cooperation between them for the risks of competition.

(a) The underlying understanding qualifies as an agreement

(81) Being a member of the STG Lads chatroom came with a set of implied rules (the underlying understanding, as described above in Section 4.1.2.1) which the participating traders accepted and observed through their participation in the chatroom, and by means of which they knowingly substituted practical cooperation between them for the risks of competition. The participating traders agreed not to use the information against traders who shared it. They tacitly understood that rules were necessary in a situation where the participating traders shared with each other, pursuant to the underlying understanding, certain current or forward-looking commercially sensitive information about their trading and that, in some cases, exposed them to market opportunism from the recipients of this information. As the evidence shows, the participating traders were also expected not to disclose certain information they had obtained in the private chatroom to traders who did not participate in the chatroom.[54] To ensure that none of the participating traders could free ride on certain information shared by the others, each of them was expected to disclose certain information of the types described above and traders apologized when they failed to do so.[55] The recurrent and extensive exchange of certain commercially sensitive information facilitated occasional coordination among the participating traders with a view to securing commercial benefit. Moreover, the extensive exchange of information helped in monitoring compliance with the underlying understanding.

(82) All such facts show that the STG Lads chatroom was based on the underlying understanding, an implied tacit agreement with rules, commitments and reciprocity, which, while not set out in detail, were understood by the participating traders. This tacit agreement manifested itself through an extensive exchange of certain current or forward-looking commercially sensitive information (as described in Section 4.1.2.2), and the occasional coordination of trading activities (as described in Section 4.1.2.3).

(83) Based on its assessment of the complex conduct described in Section 4, the Commission considers that the underlying understanding constitutes an agreement in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.

(b) Other agreements and/or concerted practices

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53 Judgment of 8 of July 1999, *Commission v Anic Partecipazioni SpA,* C-49/92P, EU:C:1999:356, paragraph 81.

54 For example, […].

55 For example, […] or […].

(84) As described in Section 4.1.2.2, the participating traders were recurrently in direct contact, making regularly available to each other in a multilateral private chatroom, the STG Lads chatroom, certain current or forward-looking commercially sensitive information on their commercial circumstances and plans pursuant to the underlying understanding, whereby the undertakings knowingly substituted practical co-operation between them for the risks of competition. This exchange of information, with a view to reducing competitive uncertainty, which was pursuant to the underlying understanding, so facilitated occasional coordination among the traders as described in Section 4.1.2.3.

(85) Based on its assessment of the complex conduct described in Section 4, the Commission considers that the instances of exchange of information and occasional coordination described in Sections 4.1.2.2 and 4.1.2.3 qualify as agreements and/or concerted practices in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.1.2. Restriction and/or distortion of competition

5.1.2.1. Principles

(86) Article 101 of the Treaty and Article 53 of the EEA Agreement prohibit agreements and concerted practices that have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions. It is settled case law that, for the purpose of the application of Article 101 of the Treaty and Article 53 of the EEA Agreement, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market.[56] The same applies to concerted practices.[57] Furthermore, the 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. In particular, an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anticompetitive object.[58]

(87) It is inherent in the Treaty provisions on competition that every economic operator must determine autonomously the policy which it intends to pursue on the common market. Thus, according to that case law, such a requirement of autonomy precludes any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself or contemplates adopting on the market, where the object or effect of those contacts is to give rise to conditions of competition which do not correspond to the normal conditions of the market in question, taking into account the nature of the products or

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56 Judgment of 6 July 2000, *Volkswagen AG* v *Commission*, T-62/98, EU:T:2000:180, paragraph 178 and case law cited therein.

57 Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraph 51 and case law cited therein; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 127.

58 Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 117.

the services provided, the size and number of the undertakings and also the volume of the market.[59]

5.1.2.2. Application to this case

(88) Pursuant to the underlying understanding, the participating traders engaged in recurrent and extensive exchange of information through which they revealed to each other certain current or forward-looking commercially sensitive information about confidential aspects of their market conduct, which enabled participating traders trading on behalf of competing undertakings to engage in occasional coordination of their trading activities by occasionally suspending the trading activity of some traders in order not to interfere with another participating trader (standing down).

(89) Traders also competed specifically on prices quoted for specified currency pairs for certain trade sizes in relation to FX spot trading. It follows that the information exchanges pursuant to the underlying understanding, whereby the participating traders provided current or forward-looking information to one another on the level of spread quotes or communicated spread strategy for a given client in a specific situation where there was a specific live potential trade, may have facilitated occasional tacit coordination of those traders' spreads behaviour, thereby tightening or widening the spread quote in that specific situation.

(90) Traders generally have differing trading interests triggered by new customer orders, which did not favour constant coordination. However, in this case the participating traders engaged in occasional coordination pursuant to the underlying understanding and facilitated by extensive exchange of certain current or forward-looking commercially sensitive information about their trading, in which their interests could be favoured by occasionally refraining from action in order to help a member of the chatroom with higher stakes at play (as set out in the following recitals). This resulted in occasional coordinated trading at and around the WMR or ECB fixes in the form of 'standing down' (see recitals (62) and (63).

(91) Standing down constituted a form of coordinated trading by which the participating traders showed an implicit understanding not to trade in ways that would damage each other's interest. This entailed some alignment of their trading activities. Having exchanged the requisite current or forward-looking commercially sensitive information regarding their open positions without any intention of exploring trading opportunities as a potential counterparty or as a potential customer, the participating traders were occasionally in a position to align their trading interests by means of 'standing down', in other words one or more of the traders refrained for a limited period of time from trading activity which was perceived to have the potential to negatively affect the trading interests of another participating trader. The suspension of trading activities by some participating traders during this time reduced the risk that a transaction by the participating trader would not achieve the desired outcome and avoided simultaneous trading in opposite directions.

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[59] Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraphs 32 and 33; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 119 and 120; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 60..

(92) The Commission considers that the underlying understanding implemented through recurrent and extensive information sharing and occasional coordinated trading considered as a whole had the object of restricting and/or distorting competition.

(93) The extensive exchange of certain current or forward-looking commercially sensitive information among the participating traders about their trading enabled the participating traders (see Sections 4.1.2.2 and 4.1.2.3):

- to make market decisions informed by those information exchanges pursuant to the underlying understanding;
- to identify opportunities for coordination in the market amongst the participating traders;
- occasionally, to adjust their behaviour in the market and coordinate their trading activity, consisting in the suspension of trading activity of some traders not to interfere with another member of the chatroom (standing down); and
- to monitor the traders' compliance with the underlying understanding.

(94) It follows that the agreement and the agreements and/or concerted practices referred to in Section 5.1.1.2 were capable of altering the terms in which the participating traders competed on the market compared to how they would have competed in their absence.

(95) The Commission accordingly concludes that the agreement and the agreements and/or concerted practices described in Section 4 were capable of affecting the basic parameters on which the Addressees should be competing autonomously and accordingly have the object of distorting and/or restricting competition within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.1.3. Single and continuous infringement

5.1.3.1. Principles

(96) A complex cartel may properly be viewed as a single and continuous infringement for the timeframe in which it existed. The concept of "single agreement" or "single infringement" presupposes a group of practices adopted by various parties in pursuit of a single anticompetitive economic aim.[60] The cartel may well vary from time to time, or its mechanisms adapted or strengthened to take account of new developments.

(97) The mere fact that each participant in an infringement may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same anticompetitive object or effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement, where it is established that the undertaking in question was aware of

[60] Judgment of 15 March 2000, *Cimenteries CBR and Others v Commission*, T-25/95, EU:T:2000:77, paragraph 3699.

the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.[61]

(98) An undertaking may thus have participated directly in all the aspects of anticompetitive conduct comprising a single 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. Equally, the undertaking may have participated directly in only some of the anticompetitive conducts comprising a single infringement, but have been aware of all the other unlawful conducts 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 a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anticompetitive conducts comprising such an infringement and, accordingly, in relation to the infringement as a whole.[62]

(99) On the other hand, if an undertaking has participated directly in one or more of the aspects of anticompetitive conduct comprising a single infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other unlawful conduct planned or put into effect by those other participants in pursuit of the same objectives or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it participated directly and the conduct planned or put into effect by the other participants in pursuit of the same objectives as those pursued by that undertaking where it has been shown that the undertaking was aware of that conduct or could reasonably have foreseen it and was prepared to take the risk.[63]

5.1.3.2. Application to this case

(100) The cartel arrangements in this case present the characteristics of a single, complex and continuous infringement. The participating traders maintained a consistent pattern of nearly daily communications where they had extensive and recurrent information exchanges pursuant to the underlying understanding and occasionally engaged in coordination of their trading activities in the form of standing down, pursuant to an underlying understanding that being a member of the private chatroom entailed such behaviour and each member could rely on the fact that the other members would act the same way. They were under the assumption that, by behaving

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61 Judgment of 8 of July 1999, *Commission v Anic Partecipazioni SpA,* C-49/92P, EU:C:1999:356, paragraph 83: "*an undertaking that had taken part in such an infringement through conduct of its own which formed an agreement or concerted practice having an anti-competitive object for the purposes of Article 85(1) of the Treaty and which was intended to help bring about the infringement as a whole was also responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement. That is the case where it is established that the undertaking in question was aware of the offending conduct of the other participants or that it could reasonably have foreseen it and that it was prepared to take the risk.*" See also judgment of 7 November 2019, *Campine NV and Campine Recycling NV v European Commission*, T-240/17, EU:T:2019:778, paragraph 172.

62 Judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens NV*, C-441/11P, EU:C:2012:778, paragraph 43.

63 Judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens NV*, C-441/11P, EU:C:2012:778, paragraph 44.

recurrently in such way, they were increasing the knowledge with which they operated on the market and the probabilities to seize opportunities to their benefit. The traders' perception that this recurrent conduct was overall beneficial to them outweighed the fact that on a given transaction a number of traders had to be ready to serve the interests of only one of them, for instance by standing down, to increase the chances of that participating trader to seize an opportunity to obtain a better deal. Therefore, (a) the conduct documented in the chatroom formed part of a single overall plan pursuing an anticompetitive common objective during the whole duration of the infringement, (b) the Addressees intended to contribute to the common objective and were aware of the full scope of the infringement;

(a) Overall plan pursuing an anticompetitive common objective

– *(a.1) The Addressees shared the same common anticompetitive objective*

(101) The Commission considers that, taken together, the above-described agreement and the agreements and/or concerted practices, as referred to in Section 5.1.1.2 above, had a common anticompetitive objective. Evidence reveals that the same participating traders were engaged in an interrelated string of actions – in the same framework, using the same means – which were inextricably linked by their common overall objective of restricting and/or distorting competition in the FX spot trading of G10 currencies (although not all 55 combinations of the G10 currencies might necessarily have been discussed or actually implicated in the relevant conduct). The recurrent exchange of information among the closed group of traders pursuant to the underlying understanding allowed them to set the conditions to identify opportunities to coordinate their trading activities if and when they arose.

– *(a.2) Modus operandi*

(102) During the whole duration of the chatroom, the participating traders joined it following individual invitations on the basis of personal relationships with other members of the chatroom. The membership of the chatroom entailed the acceptance of a set of rules that remained unchanged during the whole duration of the infringement (see Section 4.1.2.1).

(103) All throughout the duration of the chatroom, the participating traders joined in almost daily communications. As part of these communications, they engaged in extensive, recurrent and reciprocal exchanges of information, relating to different aspects of FX spot trading of G10 currencies (although not all 55 combinations of the G10 currencies might necessarily have been discussed or actually implicated in the relevant conduct).

– *(a.3) Continuity of the individuals and undertakings participating in the chatroom*

(104) As the evidence shows and described in Section 4, the frequency and quality of these exchanges remained steady through the duration of the infringement.

(105) The participation of the traders covered parallel or adjacent periods, without there being any interruption of the infringement from its inception to its end.

(106) Therefore the Commission considers that the various arrangements between the undertakings concerned, which the Commission has found have occurred in this case (see Sections 4 and 5.1.1.2), constitute a complex, single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, in relation to FX spot trading of G10 currencies.

(b) Intention to contribute to the common objective and awareness

(107) With their participation in the chatroom, the participating traders intended to contribute and effectively contributed to their common objective. For the time of their respective participation, each of them was aware of the full scope of the infringement, since the conduct took place via a multilateral chatroom.

(108) In light of the above, the Commission considers that, for their respective periods of participation in the infringement (see Section 6.2), the Addressees can be held liable for the entire single and continuous infringement.

5.1.4. Effect upon trade (between Members States and between the EEA contracting parties)

5.1.4.1. Principles

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

(110) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement is not, however, limited to that part of the participants' sales that actually involves the transfer of goods from one Member 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 infringement as a whole, affected trade between the Member States[64] and between contracting parties to the EEA Agreement.

(111) The Union Courts have consistently held that: *"in order that an agreement between undertakings may 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. Article 101 of the Treaty does not require that agreements have actually affected trade between Member States, but it does require that it be established that the agreements are capable of having that effect."*[65]

5.1.4.2. Application to this case

(112) In this case, the Commission finds that the participating traders' FX spot trading activities in G10 currencies were at least EEA-wide in scope.

(113) FX spot trading services are routinely used by multinational undertakings such as banks, corporations, hedge funds, pension funds and investment banking firms within the EEA. The infringement covered the entire EEA and related to trade within the

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64 Judgment of 10 March 1992, *Imperial Chemical Industries v Commission,* T-13/89, EU:T:1992:35, paragraph 304.

65 Judgment of 30 June 1966, *Société Technique Minière*, 56/65, EU:C:1966:38, paragraph 7 (summary); judgment of 11 July 1985, *Remia BV and Others*, 42/84, EU:C:1985:327, paragraph 22; judgment of 15 March 2000, *Cimenteries CBR and Others v Commission*, T-25/95, EU:T:2000:77, paragraph 4612; and judgment of 21 January 1999, Carlo *Bagnasco and Others v Banca Popolare di Novara soc. coop. arl. (BNP) and Cassa di Risparmio di Genova e Imperia SpA (Carige)*, C-215/96 and C-216/96, EU:C:1999:12, paragraph 48.

EEA and was therefore capable of having an appreciable effect upon trade between EU Member States and between contracting parties to the EEA Agreement.

(114) Therefore, for the purposes of the application of Articles 101 of the Treaty and Article 53 of the EEA Agreement, the agreement and the agreements and/or concerted practices referred to in Section 5.1.1.2 covered the entire EEA and had an effect on trade between Member States and between the contracting parties to the EEA Agreement.

5.1.5. Non-applicability of Article 101(3) of the Treaty and of Article 53(3) of the EEA Agreement

5.1.5.1. Principles

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

5.1.5.2. Application to this case

(116) There is no indication that the agreements and/or concerted practices, as referred to in Section 5.1.1.2 above, entailed any efficiency benefits or otherwise promoted technical or economic progress or benefitted consumers. Complex infringements amounting to secretly organised coordination between competitors, like the one which is the subject of this Decision are, by definition, among the most detrimental restrictions of competition.

(117) Accordingly, the Commission considers that the conditions for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are not met in this case.

5.1.6. Conclusion regarding the application of Article 101 of the Treaty and Article 53 of the EEA Agreement

(118) The Commission concludes that by exchanging sensitive business information and by occasionally coordinating their trading activities pursuant to an underlying understanding (see Section 4.1.2), the Addressees have engaged in the agreements and/or concerted practices referred to in Section 5.1.1.2 which taken together constitute a single and continuous infringement by object of Article 101 of the Treaty and Article 53 of the EEA Agreement in relation to FX spot trading of G10 currencies.

6. ADDRESSEES

6.1. Principles

(119) Union/EEA competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed.[66]

(120) When such an entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. The conduct of the subsidiary can be imputed to the parent where the parent exercises a decisive influence over it, namely where that subsidiary does not decide independently upon its own conduct on the market. In effect, as the controlling company in the undertaking, the parent is deemed to have itself committed the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.[67]

(121) The Commission cannot merely find that a legal entity is able to exert decisive influence over another legal entity, without checking whether that influence was actually exerted. On the contrary, it is, as a rule, for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the legal entities may have over the other.[68]

(122) However, in particular in those cases, where one parent holds all or almost all of the capital in a subsidiary which has committed an infringement of Union/EEA competition rules, there is a rebuttable presumption that that parent company in fact does exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.[69]

(123) In addition, when an entity which has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor which infringed the competition rules, when, from an economic point of view, the two entities are identical. Where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred. In particular, applying penalties in this way is permissible where those entities have been under the control of the same person and have therefore, given the close

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66 Judgment of 13 June 2013, *Versalis v Commission*, C-511/11 P EU:C:2013:386, paragraph 51.

67 Judgment of 10 September 2009, *Akzo Nobel NV and Others v Commission*, C-97/08P, EU:C:2009:536, paragraph 61; judgment of 29 September 2011, *Elf Aquitaine* SA v *Commission*, C-521/09P, EU:C:2011:620, paragraph 57; judgment of 19 July 2012, *Alliance One International and Standard Commercial Tobacco* v *Commission* and *Commission* v *Alliance One International and Others,* C-628/10 P and C-14/11P, EU:C:2012:479, paragraphs 43 and 46; judgment of 8 May 2013, *ENI SpA* v *Commission*, C-508/11P, EU:C:2013:289, paragraph 47; judgment of 16 November 2000, *Stora Kopparbergs Bergslags AB v Commission*, C-286/98P, EU:C:2000:630, paragraph 29; judgment of 23 January 2014, *Evonik Degussa et AlzChem v Commission*, T-391/09, EU:T:2014:22, paragraph 77; and judgment of 11 July 2013, *Commission v Stichting Administratiekantoor Portielje*, C-440/11P, EU:C:2013:514, paragraph 41.

68 Judgment of 27 March 2014, *Saint-Gobain Glass France and others v Commission*, T-56/09 and T-73/09, EU:T:2014:160, paragraph 311.

69 Judgment of 10 September 2009, *Akzo Nobel NV and Others v Commission*, C-97/08P, EU:C:2009:536, paragraph 60.

economic and organisational links between them, carried out, in all material respects, the same commercial instructions.[70]

(124) Where several legal entities may be held liable for the participation in an infringement of one and the same undertaking, they must be regarded as jointly and severally liable for that infringement.

6.2. Application to this case

(125) Having regard to the body of evidence and the facts described in Section 4, the clear and unequivocal acknowledgements by the Addressees of the facts and the legal qualification thereof, the Commission imputes liability to the following legal entities, as Addressees:

6.2.1. UBS

(126) From 25 May 2011 until 12 July 2012, [employees of UBS], concurrently or successively, participated in the behaviours that took place in the STG Lads chatroom, of which they were members (see recital (43)). At that time, [employees of UBS] were all employed by UBS AG and they could execute FX spot transactions on its behalf for G10 currencies[71]. Hence, UBS AG directly participated in the STG Lads infringement, through [employees of UBS]'s participation in the STG Lads chatroom, for the duration indicated in recital (65). UBS AG acknowledged its direct participation as described above.

(127) The Commission therefore holds UBS AG liable for the infringement from 25 May 2011 until 12 July 2012.

6.2.2. Barclays

(128) From 25 May 2011 until 12 July 2012, [employees of Barclays], concurrently or successively, were members of the STG Lads chatroom and participated in the conduct that took place in this chatroom. Barclays Services Limited (currently known as Barclays Execution Services Limited) directly participated in the infringement through the behaviour of its employees, [employees of Barclays][72]. Likewise, Barclays Bank Plc directly participated in the infringement through the behaviour of [employees of Barclays], who could execute FX spot transactions on behalf of Barclays Bank Plc for G10 currencies[73]. Barclays Execution Services Limited and Barclays Bank Plc acknowledged their direct participation as described above.

(129) In addition, for the duration indicated in recital (65) Barclays PLC indirectly owned 100 % or at least 99,99 % of the shareholdings of Barclays Bank Plc and Barclays Execution Services Limited[74].Therefore, for the reasons explained in recital (122), Barclays Plc is presumed to have had decisive influence over the conduct of its wholly-owned or nearly wholly-owned subsidiaries Barclays Execution Services Limited and Barclays Bank Plc. Barclays PLC shall be jointly and severally liable for the conduct of those subsidiaries for the whole duration of their participation in the

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70 Judgment of 18 December 2014, *Commission v Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraphs 40-41.

71 See […].

72 […].

73 […].

74 See […].

infringement. Finally, Barclays PLC, acknowledged its joint and several liability for the conduct of its respective subsidiary, either Barclays Bank Plc or Barclays Execution Services Limited, as described in recital (128).

(130) The Commission therefore holds Barclays PLC, Barclays Execution Services Limited and Barclays Bank Plc. jointly and severally liable for the infringement from 25 May 2011 until 12 July 2012.

6.2.3. RBS

(131) From 5 August 2011 until 12 July 2012, [employee of RBS] participated in the behaviours that took place in the STG Lads chatroom, of which he was a member. At that time, [employee of RBS] was employed by The Royal Bank of Scotland Plc (currently known as NatWest Markets Plc), and could execute FX spot transactions on its behalf for G10 currencies[75]. Hence, NatWest Markets plc directly participated in the infringement, through [employee of RBS]'s participation in the STG Lads chatroom, for the duration indicated in recital (65), NatWest Markets Plc acknowledged its direct participation as described above.

(132) In addition, for the duration indicated in recital (65), The Royal Bank of Scotland Group plc (currently known as NatWest Group plc) owned 100% of the shareholding of NatWest Markets Plc[76].Therefore, for the reasons explained in recital (122), NatWest Group plc is presumed to have had decisive influence over the conduct of its wholly-owned NatWest Markets Plc. NatWest Group plc shall be jointly and severally liable for the conduct of its subsidiary for the whole duration of the latter's participation in the infringement. Finally, NatWest Group plc acknowledged its joint and several liability for the conduct of its subsidiary for the whole duration of the latter's participation in the infringement as described in recital (131).

(133) The Commission therefore holds NatWest Group plc and NatWest Markets Plc jointly and severally liable for the infringement from 5 August 2011 until 12 July 2012.

6.2.4. HSBC

(134) From 25 May 2011 until 26 June 2012, [employee of HSBC] participated in the behaviours that took place in the STG Lads chatroom, of which he was a member. At that time, [employee of HSBC] was employed by HSBC Bank plc and could execute FX spot transactions on its behalf for G10 currencies[77]. Hence, HSBC Bank plc directly participated in the infringement, through [employee of HSBC]'s participation in the STG Lads chatroom, for the duration indicated in recital (65). HSBC Bank plc acknowledged its direct participation as described above.

(135) In addition, for the duration indicated in recital (65), HSBC Holdings plc owned 100 % of the shareholding of HSBC Bank plc[78].Therefore, for the reasons explained in recital (122), HSBC Holdings plc is presumed to have had decisive influence over the conduct of its wholly-owned HSBC Bank plc[79]. HSBC Holdings plc shall be jointly and severally liable for the conduct of its subsidiary for the whole duration of

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75 […].
76 See […].
77 […].
78 See […].
79 […].

the latter's participation in the infringement. Finally, HSBC Holdings plc acknowledged its joint and several liability for the conduct of its subsidiary HSBC Bank plc for the whole duration of the latter's participation in the infringement as described in recital (134).

(136) The Commission therefore holds HSBC Holdings plc and HSBC Bank Plc. jointly and severally liable for the infringement from 25 May 2011 until 26 June 2012.

6.3. Addressees of this Decision

6.3.1. UBS

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

– UBS AG, with registered offices at Bahnhofstraße 45, 8001 Zürich, Switzerland.

6.3.2. Barclays

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

– Barclays PLC, with registered offices at 1 Churchill Place, London, E14 5HP, United Kingdom;

– Barclays Execution Services Limited, with registered offices at 1 Churchill, London, E14 5HP, United Kingdom (formerly, "Barclays Capital Services Limited"); and

– Barclays Bank PLC, with registered offices at 1 Churchill Place, London, E14 5HP, United Kingdom.

6.3.3. RBS

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

– NatWest Group plc, with registered offices at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom; and

– NatWest Markets Plc, with registered offices at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom.

6.3.4. HSBC

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

– HSBC Holdings plc with registered offices at 8 Canada Square, London, E14 5HQ, United Kingdom; and

– HSBC Bank plc with registered offices at 8 Canada Square, London, E14 5HQ, United Kingdom.

7. DURATION OF THE INFRINGEMENT

(141) The Commission considers that the infringement relating to the STG Lads chatroom concerned the period from 25 May 2011 until 12 July 2012.

(142) The Commission has established each Addressee's participation in the collusive arrangements on the basis of the participation in the chatroom of one or more of their participating traders during the period in which the anticompetitive arrangements took place. To the effect of proving the participation of the Addressees in the conduct, the Commission considers that once their membership to the chatroom during a period of anticompetitive arrangements is proven, their continued

involvement is established, irrespective of whether the relevant trader: (i) was an active participant in a given instance of the anticompetitive discussions, (ii) was simply present in the chatroom as those discussions were taking place between other participating traders or, (iii) had connected to the chatroom after an anticompetitive exchange had taken place, but was able to see its content. In this regard, it is taken into account that none of the participating traders left the chatroom in reaction to the anticompetitive arrangements that were taking place or have otherwise distanced themselves from them.

(143) In sum, having regard to the periods of involvement of the participating traders established at recital (65), the Commission finds that the Addressees have participated in the infringement during the following periods:

(a) UBS: from 25 May 2011[80] until 12 July 2012[81].

(b) Barclays: from 25 May 2011[82] until 12 July 2012[83].

(c) HSBC: from 25 May 2011[84] until 26 June 2012[85].

(d) RBS: from 5 August 2011[86] until 12 July 2012[87].

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003 – Termination of the infringement

(144) Where the Commission finds that there is an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.[88]

(145) Although evidence shows that the agreements and concerted practices which are the object of these proceedings have ceased with the closing of the STG Lads chatroom, it is not possible to determine with absolute certainty that the Addressees of this Decision have ceased all agreements or concerted practices which may have the same or a similar object or effect of those concerned with the STG Lads chatroom. The Commission therefore enjoins the Addressees of this Decision to refrain from participating in any agreement, concerted practice or decision of an association, which may have the same or a similar object or effect.

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80 Chat of […].
81 Chat of […].
82 Chat of […].
83 Chat of […].
84 Chat of […].
85 Chat of […].
86 Chat of […].
87 Chat of […].
88 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1 of 4.1.2003, p. 1.

8.2. Article 23(2) of Regulation (EC) No 1/2003 – Determination of the applicable fines

(146) Under Article 23(2) of Regulation (EC) No 1/2003,[89] the Commission may, by decision, impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

(147) In the present case, the Commission considers that, based on the facts described in this Decision, the infringement has been committed intentionally. The anticompetitive conduct required deliberate actions by the Addressees, who actively, privately, extensively and recurrently exchanged certain current or forward looking commercially sensitive information with direct competitors, thereby facilitating the actual coordination of their trading activities when the opportunity arose.

(148) The Commission therefore imposes fines in this case on the undertakings to which this Decision is addressed.

(149) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, in fixing the amount of fine, the Commission shall have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in the Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to an infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.

(150) In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003[90] (hereinafter "the Guidelines on fines"). Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice and the Commission Notice on the conduct of settlement procedures in view of the adoption of decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (hereinafter "the Settlement Notice").[91]

8.2.1. Calculation of the fines

8.2.1.1. The value of sales

(151) In applying the Guidelines on fines, the basic amount of the fine for each party results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement directly or indirectly relates, in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in that infringement. The additional amount is calculated as a percentage of between 15% and 25% of the same value of

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89 Under Article of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area *"the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102] of the EC Treaty [...] shall apply mutatis mutandis*" (OJ L 305, 30.11.1994, p.6).

90 OJ C 210, 1.9.2006, p. 2.

91 OJ C 167, 2.7.2008, p. 1–6.

sales. The resulting basic amount can then be increased or reduced for each undertaking if aggravating or mitigating circumstances are retained.

(152) In hybrid cases such as this one, involving the adoption of two decisions with different addressees and following two separate procedures, for participants in one and the same cartel, the principle of equal treatment applies, including for determining the amount of the fine. In this case, the Commission will determine the applicable fines so that there is no discrimination between the participants in the same cartel with respect to the type of information, criteria and calculation methods which are not affected by the specific features of the settlement procedure, such as the 10% reduction of fine for settling parties.[92]

(153) The basic amount of the fine to be imposed on the undertakings concerned should be set by reference to the value of sales,[93] that is, the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA. Normally, the Commission takes the sales made by the undertakings during the last full business year of their participation in the infringement.[94] There are circumstances, such as the last year of the infringement not being representative, in which another reference period might be considered to be more appropriate in view of the characteristics of the case or the available data.[95] Moreover, 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.[96]

(a) General point

(154) The Commission considers it appropriate to apply a proxy for the value of sales as a starting point for its determination of the fines because the FX spot trading activities of G10 currencies concerned by the infringement do not generate any value of sales in the traditional sense which are directly traceable in the accounts of the Addressees.

(155) Normally, in other sectors, the value of sales is traceable in the accounts of the companies or in the publicly available financial reports, because the sales concerned typically involve the exchange of goods or services against a certain amount of money, that is to say the selling price. In such cases, the value of sales is determined easily by multiplying the quantity of products sold by the selling price, which is then recorded.

(156) In the present case, FX spot transactions of G10 currencies involve the exchange of a notional amount of money expressed in a certain currency into the equivalent notional amount expressed in another currency, to which the revenues made by the traders on those transactions are proportional. Besides, the revenues of such transactions are embedded in the bid-ask spread applied by the FX spot dealer. Both

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92 Judgment of 20 May 2015, *Timab Industries and CFPR v Commission,* T-456/10, EU:T:2015:296, paragraphs 72-74.

93 Point 12 of the Guidelines on fines.

94 Point 13 of the Guidelines on fines.

95 Judgment of 16 November 2011, *Plásticos Españoles (ASPLA) v Commission*, T-76/06, EU:T:2011:672, paragraphs 111-113.

96 Judgment of 13 September 2010, *Trioplast Industrier AB* v *Commission*, T-40/06, EU:T:2010:388, paragraph 141; judgment of 29 June 2006, *Showa Denko* v *Commission*, C-289/04P, EU:C:2006:431, paragraph 36.

factors – the notional amounts exchanged and the applied bid-ask spreads – are therefore considered by the Commission to be the most adequate factors to build a proxy for the value of sales related to the infringement. However, none of these two factors is recorded as such in the publicly available accounts of the dealer's undertaking.

(157) Accordingly, as will be explained in recitals (165) to (188) the relevant values of sales is determined by reference to a proxy resulting from multiplying a notional amount by a bid-ask spread, in the following way:

– Firstly, the Commission takes as reference amount the annualised notional amounts traded by the concerned Addressee in the FX spot transactions of G10 currencies entered into with a counterparty located in the EEA[97] (see recital (161)). To this end, as explained in recital (160), the Commission considers it more appropriate to base the proxy for the value of sales directly on the revenues made by the Addressees during the months corresponding to their respective participation in the infringement, which are subsequently annualised.

– Secondly, those amounts are multiplied by an appropriate factor, uniform for all Addressees, reflecting the applicable bid-ask spreads in the relevant FX spot transactions of G10 currencies.[98]

(b) The notional amounts traded as the reference amount

(158) Regarding the notional amounts, as indicated in recital (12) and Sections 4 and 6.2, participating traders engaged in trading activity on behalf of their own undertaking with respect to any G10 currency available in their portfolios, which they did to varying extents during the respective relevant periods. As regards the notional amounts traded, the evidence on file relating to the infringement supports that all G10 currencies were discussed[99], but that not all the 55 possible combinations of these currencies might necessarily have been discussed or implicated in the transactions in question.

(159) Taking into account that potentially all 55 combinations could have been discussed or implicated in the transactions in question and that it is not possible to precisely distinguish those currency pairs from the others, the Commission considers it appropriate to determine the proxy for the value of sales of the infringement on the basis of the notional amounts corresponding to the top G10 currency pair most discussed and traded in the evidence of the infringement and the notional amounts corresponding to the G10 currency pairs involving any of the EEA currencies.[100] As the most discussed category for this infringement (GBP/USD) already involves an EEA currency at the time of the infringement, it is therefore fully included into the

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97 As the geographic scope of the alleged infringement is EEA-wide, the proxy for the value of sales is based on the notional amounts traded against EEA-located clients, in line with the Request for Information sent by the Commission on 29 April 2016, which defined an EEA counterparty as any counterparty (legal entity) located in the EEA. This definition includes all subsidiaries located in the EEA of any parent companies, irrespective of whether their parent companies are located inside or outside the EEA.

98 In particular, the revenues of such transactions are proportional to the bid-ask spread (intermediation margin) applied by the FX spot trader to the notional amounts exchanged.

99 See […].

100 EUR, GBP, NOK, SEK and DKK are the EEA currencies within the G10 currencies.

category of G10 currency pairs involving any of the EEA currencies at the time of the infringement. Therefore, the Commission determines the value of sales for all Addressees on the basis of the notional amounts traded of the FX spot transactions of G10 currencies involving at least one of the EEA currencies (EUR, GBP, NOK, SEK, DKK).

(160) The Commission does not calculate the proxy for value of sales on the basis of revenues made by the Addressees during the last full business year of their participation in the infringement. Having regard to the fact that the amounts traded in FX spot activities of G10 currencies vary significantly over the period of the infringement and of individual involvement, depending on the specific month and the specific Addressee, the Commission considers it more appropriate to base the proxy for the value of sales directly on the revenues made by each Addressee during the months corresponding to their respective participation in the infringement, which are subsequently annualised.[101]

(161) Moreover, given that the infringement covered the entire EEA, the Commission considers it appropriate that the proxy for the value of sales is based on the FX spot transactions of G10 currencies entered into with counterparties located in the EEA (i.e. the notional amounts traded against EEA-located clients). The Commission defines an EEA counterparty as any counterparty (legal entity) located in the EEA. This definition includes all subsidiaries located in the EEA of any parent companies, irrespective of whether their parent companies are located inside or outside the EEA.

(162) The following table summarises the annualised notional amounts retained for the full calendar months of each Addressee's participation in the infringement:

Table 1: Annualised notional amounts

Undertaking	Annualised notional amount (in EUR)
UBS	[…]
Barclays	[…]
RBS	[…]
HSBC	[…]

(163) It would not be appropriate to determine the proxy for the value of sales by reference to the 'net trading income' or 'net profit from financial operations' because these reflect the trading revenues netted against trading losses, and therefore provide for a

101 In a first step (to get annualised figures), only full calendar months of participation in the infringement are taken into account in the proxy. For example, if one Party's infringement begins on 12 February 2007 and ends on 21 October 2009, the relevant FX spot business activities of the months of March 2007 to September 2009 are taken into account (31 months) and subsequently annualised by multiplying the result by 12/31. For these purposes, the Commission has considered a period of partial immunity as a period during which the undertaking concerned had not participated in the infringement during such period (see judgment of 27 February 2014, *LG Display and LG Display Taiwan v Commission*, T-128/11, EU:T:2014:88, paragraph 201).

measurement of profit rather than an appropriate proxy for the value of sales under the Guidelines on fines.

(164) In contrast, the method applied by the Commission results in an appropriate proxy for the value of sales for each Addressee considering their entire economic activity covered by the scope of the cartel. Through the application of an adjustment factor, it reflects the value of the respective revenues earned from both the activities of (i) market making and (ii) trading on own account.

(c) Adjustment factor related to market making activities

(165) As FX spot transactions of G10 currencies involve the exchange of a specified notional amount[102] from one currency to another, the revenues made by the traders on such transactions are proportionate to the notional amounts exchanged[103].

(166) Therefore, in the FX spot activities of G10 currencies, notional amounts serve as a basis for the calculation of the revenues made by the undertakings concerned when acting as market makers.[104] Normally, market makers simultaneously quote two prices to their counterparties, a bid price and an ask price; these are the prices at which they are ready to respectively buy or sell one particular pair of G10 currencies, one against the other. The difference between the two is called the bid-ask spread.

(167) The revenues made on each transaction depend on the notional amount and the bid-ask spread. When a market maker finds two counterparties that are willing to take the opposite sides of the same FX spot transaction of G10 currencies, specifying the same notional amount and currency pair, the market maker can execute the transactions by, at the same time, buying at the bid price and selling at the ask price, the bid price being lower than the ask price. Conceptually, the revenues made by the market maker amount to the full bid-ask spread only when considering the two transactions together. It follows that, when one considers each of the two transactions individually, the revenues from market making activities conceptually amount to the notional amount multiplied by half the bid-ask spread.

(168) The Commission therefore determines the component of the proxy of the value of sales corresponding to market making revenues by multiplying the notional amount by […] of an appropriate bid-ask spread (see recital (167)). The factor reflecting the appropriate bid-ask spread for market making revenues is based on the ranges of bid-ask spreads deriving from the transactions evidenced in the case file during the whole infringement period of the Forex-Sterling Lads case (see recital (174)).

(169) The level of bid-ask spreads depends on many factors, including the currency pair (in general the more liquid the currency pair, the tighter the bid-ask spread), the transaction size (in general the larger the transaction size the higher the bid-ask spread) and the type of client.

(170) For any currency pair subject to an exchange, the first currency is known as the 'base' currency and the second currency is known as the 'cross' currency. The notional amount traded is conventionally expressed in the first currency of the

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102 See also recital (7). The notional amount can be recorded in the dealers' trading book in either of the currencies of the transaction.

103 In the calculation of the proxy for the value of sales, all notional amounts have been converted into euros.

104 Since e-commerce transactions – as defined in footnote 5 –are out of the scope of the infringement, they are excluded from the basis of notional amounts to determine the proxy of the value of sales.

currency pair (the 'base' currency), while the bid-ask spread taken as reference generates a revenue expressed in the second currency of the currency pair (the 'cross' currency). In practice, to calculate the factor reflecting the applicable bid-ask spread, both the bid-ask spread and the notional amount traded have to be expressed in the base currency. In order to arrive to this, two data are required:

(a) The bid-ask spread level that generates a revenue expressed in the cross-currency. Such bid-ask spreads are retrieved from evidence on the file (see recital (174));

(b) The foreign exchange reference rate, available daily on the ECB website.[105]

(171) To illustrate this, taking for example, a EUR/USD currency pair, the EUR is the base currency and the USD is the cross currency. The bid-ask spread on a EUR/USD trade will generate a revenue expressed in USD. If the bid price is 1.1560 USD per EUR and the ask price is 1.1580 USD per EUR, then the bid-ask spread is the difference between the ask price and the bid price, being (1.1580 - 1.1560) = 0.0020, still expressed in USD per EUR. If a trader simultaneously buys and sells EUR 1 000 000 against USD to two different counterparties, that trader will pay USD 1 156 000 for the first trade and receive USD 1 158 000 for the second one. Hence, the trader's revenue will be USD 2 000, a revenue expressed in USD (the cross-currency) for a notional amount traded of EUR 1 000 000, expressed in EUR (the base currency).

(172) Assuming that on the day of the transaction, the EUR/USD foreign exchange reference rate is 1.1578 (this rate does not need to be equal to the mid-point of the transaction described above), the trader's revenue expressed in EUR will be (2 000 / 1.1578) = EUR 1 727.41. This revenue relates to a notional amount of EUR 1 000 000.

(173) The bid-ask spread can now be expressed as a ratio between the revenue generated and the notional amount, both expressed in the same currency (EUR, the base currency). In the above example, the bid-ask spread is therefore equal to (1 727.41 / 1 000 000) = 0.173% or 17.3 basis points[106].

(174) All the extracts within the STG Lads chatroom involving an exchange of information on bid-ask spreads have been examined[107]. Within that set of evidence, the Commission exercised its discretion to only select for the purposes of calculating the proxy of the value of sales the exchanges concerning transactions with a size expressed in the base currency of 500 million or below. Bid-ask spreads derived from chatroom extracts where the transaction size expressed in the base currency exceeds 500 million are not selected because they are considered as unrepresentative outliers.[108]

(175) From the selected transactions, the minimum spread (the minimum quote mentioned by one of the traders) and the maximum spread (the maximum quote mentioned by one of the traders) provided the basis to calculate the following four metrics:

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105 https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/.

106 One basis point is equal to 0.01%.

107 See […] for transaction sizes up to 500 million of the base currency. See […] for transaction sizes above 500 million of the base currency.

108 In that respect, if the extracts including transactions discussed having a size above 500 million of the base currency were to be taken into account, the bid-ask spreads would have been determined within significantly wider ranges than those the Commission uses.

(a) the average of the minimum spreads;

(b) the median of the minimum spreads;

(c) the average of the maximum spreads and

(d) the median of the maximum spreads.

(176) To determine the bid-ask spread range within which the bid-ask spread that serves in the calculation of the proxy for value of sales is selected, the Commission sets the lower end of the bid-ask spread range at the lowest of the average (1) and the median (2) of the minimum spreads. The higher end of the range is set at the highest of the average (3) and the median (4) of the maximum spreads[109].

(177) The methodology described above, as applied to the bid-ask spreads from the transactions that result from the available evidence on file regarding currency pairs involving any combination of G10 currencies involving at least one EEA currency (EUR, GBP, NOK, SEK, DKK), yields bid-ask spreads ranging between […] and […] basis points for all the Addressees.

(178) From this range, the Commission retains an applicable bid-ask spread of […] basis points, a level that lies close to the middle of the aforementioned bid-ask spread range. Moreover, the retained applicable bid-ask spread was accepted by all the Addressees during the settlement discussions.

(179) As described in recital (167), the Commission considers that the appropriate adjustment factor related to the market making activities can be estimated at […] of the applicable bid-ask spread, which results in an adjustment factor at […] basis points ([…] of the applicable bid-ask spread of […] basis points).

(d) Adjustment factor related to trading on own account

(180) The situation described in recital (167) is a theoretical situation where the market maker does not have any open risk position, as the currency amount bought from a first counterparty has been immediately matched by a sale of that currency amount to a second counterparty and therefore "passed through" to that second counterparty. However, the infringement involved notably the exchange by the Addressees of information on their open risk positions (see recital (54)). Therefore, the Addressees were not only acting as market makers but also trading on their own account, by running open risk positions, that is to say devising certain strategies for seeking to obtain some benefit on their portfolio from the variation of the mid-point price[110] of the currencies traded over time. This activity generates trading revenues in addition to the market making revenues[111].

(181) In determining the applicable proxy for the value of sales, the Commission takes into account the trading revenues that the traders running open risk positions have generated from trading on their own account.

(182) As none of the Addressees has been able to provide the data necessary to estimate those trading revenues and given the technical challenges involved in the calculation

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109 Both metrics, the average and the median, are taken into account as the data might be heterogeneous due, for example, to the presence of outliers. In case of heterogeneous data, the median is usually more representative that the average.

110 The mid-point price or mid-price is the average between the bid price and the ask price.

111 See also recital (10) for a description of trading on own account.

of the proxy for revenues from trading on own account, the Commission exercises its margin of discretion and, in order not to overestimate revenues from trading on own account, considers appropriate to calculate it by multiplying the notional amount by […] of an appropriate bid-ask spread. The factor of […] is considered to reflect the additional revenues resulting from the trading on own account activities, which are separate from the market making revenues but depend on the trading opportunities procured by the currency positions held by traders following their market making operations.

(183) Against this background, and considering that trading on own account mostly occurs via the interdealer market (and so not through trades with end-customers), the Commission bases the bid-ask spread level for the proxy for trading revenues on public sources related to interdealer trades.[112] Based on such sources, the Commission considers it appropriate, in its discretion, to set the bid-ask spread at a level comprised between […] and […] basis points for all parties to the proceedings. On this basis the applicable bid-ask spread is set at […] basis point.

(e) Total adjustment factor

(184) In view of the above, in determining the proxy for the value of sales for the infringement, the Commission applies to the notional amounts of each Addressee an adjustment factor of […] basis points, being the sum of:

- […] basis point representing […] of […] basis points, the bid-ask spread level supported by the evidence on the file based on an objective methodology, as a proxy for market making revenues; and
- […] basis point representing […] of […] basis point, the bid-ask spread level observed on the interdealer segment of the market based on public sources, as a proxy for trading on own account revenues.

(185) The Commission considers that the concepts of market making revenues and trading on own account revenues are inherently interlinked. If not hedged immediately, a FX spot transaction of G10 currencies for which a market maker has earned half of the bid-ask spread generates an open risk position that can further generate additional trading revenues. Conversely, an open risk position generating trading revenues may be hedged by entering into a FX spot transaction of G10 currencies generating additional market making revenues.

(186) The adjustment factors selected for both market making and trading activities are considered the most appropriate and reasonable because they follow the Commission's practice in previous decisions concerning the same financial activity, FX spot trading of G10 currencies, and adopted in the framework of the same file.[113] Moreover, these adjustment factors were considered reasonable and therefore expressly accepted by all the settling parties in both those procedures and also in the settlement procedure followed in parallel to the procedure concerned by this decision.

(f) Conclusion of the proxy for the value of sales

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112 See for instance *Understanding FX Liquidity (The Review of Financial Studies*, Volume 28, Issue 11, 1 November 2015, Pages 3073–3108), page 3080.

113 Commission Decisions of 16 May 2019 in cases AT 40135 – *Forex (Essex Express)* and *Forex (Three Way Banana Split)*.

(187) For all Addressees, the Commission takes into account an annualised proxy of value of sales. This proxy is obtained by applying to the notional amounts retained a factor of […] basis points. Each of the Addressees confirmed this in their respective formal settlement submissions for the infringement.

Table 2: Confirmed proxies of the values of sales

Undertaking	Confirmed value of sales (in EUR)
UBS	[…]
Barclays	[…]
RBS	[…]
HSBC	[…]

(188) The fine ranges disclosed to UBS, RBS and Barclays, who introduced three settlement submissions within Case AT. 40135 – *Forex*, included reductions of fines distributed pro-rata amongst the infringements when the latter overlapped in terms of product scope and geographic area for a period. To avoid a potentially disproportionate outcome in such a scenario, the Commission in its discretion decided to apply an objective correction factor reflecting the degree of temporal overlap. This correction factor, which was subsequently applied in the Decisions of 16 May 2019 concerning the infringements Three Way Banana Split and Essex Express, is applied to the relevant settling parties in this Decision concerning the Sterling Lads infringement. In the specific circumstances of the case, the Commission considers appropriate to apply a correction factor of 3/4 to the value of sales of the infringement when it overlaps with one other infringement and of 2/3 to the value of sales of the infringement when it overlaps with two other infringements.[114] This leads to an average correction factor of […] to the confirmed value of sales of UBS, of […] for Barclays and of […] for RBS. In light of the foregoing, the Commission uses the value of sales set out in Table 3 below for the purposes of calculating the variable and additional amounts of the fines.

Table 3: Retained proxies of the values of sales

Undertaking	Retained value of sales (in EUR)
UBS	[…]

[114] For the sake of clarity, no correction factor is applied to the value of sales that do not overlap with any alleged infringement identified in the other settlement submissions. Such value of sales is therefore counted at 100%. For example, the value of sales for Party X is EUR 60 000 000 per month during 12 months. During the first 6 months the value of sales does not overlap with any other alleged infringement, during the next 3 months, the value of sales overlaps with one other alleged infringement and during the last 3 months, the value of sales overlaps with two other alleged infringements. The confirmed value of sales (before the application of a correction factor) would be 12 x EUR 60 000 000 = EUR 720 000 000. The retained value of sales (after the application of a correction factor) would be 6 x 60 000 000 + 3 x (60 000 000 x 3/4) + 3 x (60 000 000 x 2/3) = EUR 615 000 000. In this example, the average correction factor would amount to 1 - (615 000 000/720 000 000) = 14.6%.

Undertaking	Retained value of sales (in EUR)
Barclays	[…]
RBS	[…]
HSBC	[…]

8.2.1.2. Determination of the basic amount

(a) Gravity

(189) In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and to whether or not the infringement has been implemented.[115]

(190) In its assessment, the Commission takes into account the fact that the infringement is, by its very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for the infringement is set at the higher end of the scale.[116]

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

(192) Accordingly, the Commission considers that the proportion of the value of sales to apply is 16%.

(b) Duration

(193) In determining the fine to impose on each undertaking, the Commission also takes into consideration the duration of the infringement by multiplying for each undertaking, as described in Section 6, the applicable proxy of the value of sales by the number of years of participation in the infringement.

(194) To determine the appropriate multipliers, the Commission took note of the fact that Barclays was the first undertaking to submit compelling evidence that the Commission used to establish facts that permitted to increase the duration of the infringement, by one or several periods. Pursuant to Point 26 of the Leniency Notice, the Commission should not take such additional periods into account when determining the fines applicable to those undertakings that provided the compelling evidence to extend the infringement to such additional periods (partial immunity).

(195) In order to assess if an applicant has submitted compelling evidence pursuant to Point 26 of the Leniency Notice, the Commission takes into account the specific nature and functioning of the infringement at stake as described in the present decision, notably that it manifested itself through, and therefore is proven by the existence of, an extensive, recurrent and reciprocal sharing of information in a multilateral private chatroom relating to FX trading of G10 currencies. As a consequence, the Commission considers that, for a reduction of a fine applicant to have submitted compelling evidence that proves facts adding duration to the

115 Points 20-22 of the Guidelines on fines.
116 Point 23 of the Guidelines on fines.

infringement, this applicant should have provided before any other applicants several daily-stamped […] transcripts of electronic communications ("chats") evidencing a period of infringement for which the Commission previously had no evidence of. To fully reflect the extensive and recurrent functioning of the infringement, this period should at least be of 15 consecutive calendar days and, within this time period, no time gaps between two consecutive time stamps of the electronic communications provided (that were previously unknown to the Commission) should be longer than two weeks. By means of such pieces of evidence, the Commission considers that it is in a position to prove the infringement for that period of at least 15 days, from the time it had this evidence in its possession. Those time periods of infringement should then, pursuant to Point 26 of the Leniency Notice, not be taken into account while calculating the fine of this applicant.

(196) Moreover, the Commission considers that the applicants that have provided compelling evidence, which allows the Commission to identify, at the date of its submission, a starting or provisional ending date(s) of the infringement that was at that time unknown to the Commission, should also benefit from Point 26 of the Leniency Notice.

(197) Barclays was the first applicant for a reduction of a fine to provide compelling evidence of facts previously unknown to the Commission, which allowed the Commission to identify the starting date of the infringement as the 25 May 2011, instead of the 30 May 2011 as was previously known. The evidence submitted in that respect was transcripts of electronic communications with time stamps anterior to the date 30 May 2011. These additional facts allow the Commission to increase the duration of the infringement for the period 25 May 2011 – 29 May 2011. Moreover, Barclays was the first undertaking to provide compelling evidence that adds duration to the infringement that covered the infringing period 01 June 2011 – 04 August 2011. This evidence was provided on a continuous basis, with no time gaps superior to two weeks between the time stamps of the consecutive daily communications and before any submission of other applicants in relation to this period of infringement for which, previous to the submission of the evidence, the Commission lacked evidence. As a result, the Commission will not take into account the two following periods for the calculation of Barclays' fine:

– 25 May 2011 – 29 May 2011;

– 1 June 2011 – 4 August 2011.

(198) Based on the criteria explained above, the applicable duration multipliers to be taken into account for the purposes of calculating the fine to be imposed on each Addressee are set out in the table below:

Table 4: Duration multipliers

Undertaking	Duration Multiplier
UBS	1.13
Barclays	0.94
RBS	0.93
HSBC	1.09

(c) Additional amount

(199) The Commission includes in the basic amount a sum of between 15% and 25% of the value of sales to deter the undertakings from entering into such illegal practices on the basis of the criteria listed above with respect to the variable amount.[117]

(200) Taking into account the factors above, the percentage to be applied for the purposes of calculating the additional amount is 16% to the value of sales amount determined in recital (188).

(d) Calculations and conclusions on basic amounts

(201) Based on the criteria explained above, the basic amount per undertaking is presented in Table 5.

Table 5: Applicable basic amounts for the infringement

Undertaking	Basic amount (in EUR)
UBS	[…]
Barclays	[…]
RBS	[…]
HSBC	[…]

8.2.1.3. Adjustment to the basic amount:

(a) Aggravating or mitigating circumstances

(202) The Commission may consider aggravating or mitigating circumstances resulting in an increase/decrease of the basic amount,[118] as listed in a non-exhaustive way in points 28 and 29 of the Guidelines on fines.

(203) The Commission considers that no aggravating or mitigating circumstances apply to the addressees of the present Decision.

(b) Deterrence multiplier

(204) In determining the amount of the fines, the Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, the Commission may increase the fines to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.[119]

(205) In this case, the total worldwide net turnover[120] of HSBC for the business year 2020 was EUR […]. It is therefore appropriate, in order to set the amount of the fines at a level which ensures that it has a sufficient deterrent effect, to apply a multiplication

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117 Point 25 of the Guidelines on fines.

118 Points 28-29 of the Guidelines on fines.

119 Point 30 of the 2006 Guidelines on fines.

120 The sum of the following income items: Interest receivable and similar income, Interest payable and similar charges, Income from securities, Commissions receivable, Commissions payable, Net profit or net loss on financial operations and Other operating income.

factor to the fine to be imposed on HSBC. On this basis, it is appropriate to apply a multiplier to the fines to be imposed of 1.1 on HSBC.

(c) Application of the 10% turnover limit

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

(207) In this case, none of the fines exceeds 10% of the undertaking's total turnover relating to the business year preceding the date of this Decision.[121]

(d) Application of the 2006 Leniency Notice

(208) On 2 July 2014, UBS was granted conditional immunity from fines in relation to the present infringement pursuant to point 8(a) of the Leniency Notice. There are neither indications that UBS has failed to fulfil its cooperation obligations under point 12 of the Leniency Notice, nor that it has taken steps to coerce other undertakings to join the infringement or to remain in it. Therefore, the Commission considers that UBS should be granted immunity from fines for the present infringement.

(209) The Commission also received applications for reduction of fines from RBS, Barclays and HSBC. In accordance with point 29 of the Leniency Notice, the Commission came to the preliminary conclusion on 27 October 2016 that the evidence submitted by RBS, Barclays and HSBC constituted significant added value within the meaning of points 24 and 25 of the Leniency Notice and that the undertakings have so far met the conditions of points 12 and 27 of the same Notice.

(210) RBS was the first undertaking to submit an application for reduction of fines which both referred to the existence of the STG Lads chatroom and accompanied it with […]. Furthermore, RBS provided, before any other applicant did, comprehensive explanations of some communications among traders that detailed their anticompetitive nature.

(211) For these reasons, RBS' reduction of fines application adds significant added value to the Commission's investigation in this case. RBS also met the requirements of points 12 and 27 of the Leniency Notice. As a result the fine to be imposed on RBS is reduced by 50 %.

(212) Barclays was the second undertaking to submit an application for reduction of fines in relation to the STG Lads infringement and did so at an early stage of the investigation. Barclays provided evidence relating to the infringement that was not previously in the Commission's possession as well as explanations on the anticompetitive behaviour in general.

(213) For these reasons, Barclays' reduction of fines application adds significant added value to the Commission's investigation in this case. Barclays also met the requirements of points 12 and 27 of the Leniency Notice. As a result the fine to be imposed on Barclays is reduced by 30 %.

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[121] The Commission requested the banks to provide their total turnover on both a gross and a net basis. The fines do not exceed 10% of the total turnover for any of the undertakings concerned irrespective of the total turnover used (gross or net).

(214) HSBC was the third undertaking to submit an application for reduction of fines in relation to the STG Lads infringement. HSBC provided […] relating to the infringement that was not previously in the Commission's possession, even though this […] was submitted at a late stage of the investigation and is quantitatively less significant than the one provided by the other leniency applicants.

(215) For these reasons, HSBC's reduction of fines application adds significant added value to the Commission's investigation in this case. HSBC also met the requirements of points 12 and 27 of the Leniency Notice. As a result the fine to be imposed on HSBC is reduced by 15 %.

(e) Application of the Settlement Notice

(216) In accordance with point 32 of the Settlement Notice, the reward for settlement is a reduction of 10% of the amount of the fine to be imposed on an undertaking after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement is added to their leniency reward.

(217) Pursuant to the Settlement Notice, the amount of the fines to be imposed on the Addressees of the proceedings should be reduced by 10% and that such reductions should be added to any leniency reward granted.

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

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

Table 6: Fines amounts for the infringement

Undertaking	Fines (in EUR)
UBS	0
Barclays	54 348 000
RBS	32 472 000
HSBC	174 281 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings 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 foreign exchange spot trading of G10 currencies covering the entire EEA:

(a) UBS AG, from 25 May 2011 until 12 July 2012.

(b) Barclays PLC, Barclays Execution Services Limited and Barclays Bank PLC, from 25 May 2011 until 12 July 2012.

(c) NatWest Group plc and NatWest Markets Plc, from 5 August 2011 until 12 July 2012.

(d) HSBC Holdings plc and HSBC Bank plc from 25 May 2011 until 26 June 2012.

Article 2

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

(a) UBS AG: EUR 0.

(b) Barclays PLC, Barclays Execution Services Limited and Barclays Bank PLC, jointly and severally liable: EUR 54 348 000.

(c) NatWest Group plc and NatWest Markets Plc, jointly and severally liable: EUR 32 472 000.

(d) HSBC Holdings plc and HSBC Bank plc jointly and severally liable: EUR 174 281 000.

The fines shall be credited, in euros, within six 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.: EC/ BUFI/AT.40135

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046.[122]

Article 3

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

Article 4

This Decision is addressed to

(a) UBS AG with registered offices at Bahnhofstraße 45, 8001 Zürich, Switzerland;

(b) Barclays PLC with registered offices at 1 Churchill Place, London, E14 5HP, United Kingdom;

(c) Barclays Execution Services Limited with registered offices at 1 Churchill Place, London, E14 5HP, United Kingdom (formerly, "Barclays Capital Services Limited");

(d) Barclays Bank PLC with registered offices at 1 Churchill Place, London, E14 5HP, United Kingdom;

(e) NatWest Group plc with registered offices at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom;

(f) NatWest Markets Plc with registered offices at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom.

(g) HSBC Holdings plc with registered offices at 8 Canada Square, London, E14 5HQ, United Kingdom; and

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122 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, of 30.7.2018, p.80).

(h) HSBC Bank plc with registered offices at 8 Canada Square, London, E14 5HQ, United Kingdom.

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

Done at Brussels, 2.12.2021

For the Commission
Margrethe VESTAGER
Executive Vice-President