C/2024/4631

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Summary of Commission Decision

of 22 November 2023

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

(Case AT.40512 - Euro Denominated Bonds)

(Notified under document number C(2023) 7811 final)

(Only the English version is authentic)

(Text with EEA relevance)

(C/2024/4631)

On 22 November 2023, the Commission adopted a Decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union ('the Treaty') and Article 53 of the EEA Agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 [1], the Commission herewith publishes the names of the parties and the main content of the Decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

(1) The addressees of the Decision, Deutsche Bank and Rabobank [2], participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The infringement consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the secondary market for Euro-denominated SSA bonds and Euro-denominated Government Guaranteed bonds.

(2) Bonds are debt securities which enable entities to raise cash by borrowing money from investors on fixed terms. Bonds are issued on the primary market, mainly via auctions, and sometimes via syndications, and subsequently held as investment or traded like any other financial instrument on the secondary market.

(3) SSA bonds is an umbrella term which generally includes:

— Supra-Sovereign bonds issued by supranational institutions whose mandate extends across national borders, such as the European Investment Bank;

— Foreign Sovereign bonds issued by governments under a law different from their own and/or in a currency different from their own. These include, for example, Euro-denominated bonds issued by Sweden or Denmark;

— Sub-Sovereign/Agency bonds issued by governmental or government-related entities below the level of the central government, such as regions or municipalities, government-owned banks, infrastructure development bodies or social security facilities.

(4) Government Guaranteed bonds offer a secondary guarantee of repayment of principal and interest by a government authority in case of default by the issuer. These bonds were issued for a limited period of time in response to the market conditions associated with the 2008 global financial crisis.

[1] OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).
[2] See section 2.3. below.

2. CASE DESCRIPTION

2.1. Procedure

(5) On 30 May 2017, the Commission started its investigation on the basis of an immunity application from Deutsche Bank under the Leniency Notice ([3]), and on 18 March 2019 it initiated proceedings pursuant to Article 2(1) of Commission Regulation (EC) No 773/2004 against Deutsche Bank and Rabobank. By decision of the same date, 18 March 2019, the Commission granted Deutsche Bank conditional immunity pursuant to point 8(a) of the Leniency Notice. Rabobank cooperated and provided evidence in response to the Commission's request for information but did not apply for leniency.

(6) Upon Rabobank's suggestion and with Deutsche Bank's agreement, the Commission proposed the use of the settlement procedure as an appropriate way forward. On 1 December 2020, the Commission held a first settlement meeting with Deutsche Bank and on 3 December 2020 a first settlement meeting with Rabobank, following which both parties obtained access to the case file. Following those first settlement meetings, it became apparent however that it was unlikely that a common understanding would be reached with both parties regarding the scope of the potential objections. The Commission therefore concluded that it would be procedurally inefficient to continue with the settlement procedure and decided to revert to the ordinary procedure. In doing so, the Commission used its power under Article 10(a) of Regulation (EC) No 773/2004, and point 5 of the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003 in cartel cases ([4]), to decide at any time during the procedure to discontinue settlement discussions if it considers that procedural efficiencies are not likely to be achieved. On 20 April 2021, both Deutsche Bank and Rabobank were informed by email of the decision to discontinue the settlement procedure with both parties and of the fact that the case would continue within the framework of the ordinary procedure.

(7) On 6 December 2022, the Commission issued a Statement of Objections ('SO') ([5]) against Deutsche Bank and Rabobank. The parties were subsequently given access to the Commission's case file. Rabobank replied to the SO in writing and in the oral hearing held at its request on 19 April 2023. Deutsche Bank did not reply in writing to the objections raised in the SO but participated in the oral hearing to briefly reiterate that it was fully cooperating with the Commission.

(8) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 20 November 2023. The Hearing Officer issued her Final Report on 20 November 2023 and the Commission adopted the Decision on 22 November 2023.

2.2. Summary of the infringement

(9) The infringement took place in the period between 4 January 2006 and 24 February 2016 and covered the whole of the European Economic Area ('EEA') ([6]).

([3]) Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

([4]) Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1).

([5]) C(2022) 9153 final.

([6]) For the purposes of this Decision, references to the EEA should be understood as covering 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. 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. Accordingly, any references made to the EEA in this Decision also include the United Kingdom (UK).

(10) The infringement consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the secondary market for Euro-denominated SSA bonds and Euro-denominated Government Guaranteed bonds.

(11) The anticompetitive communications between the relevant traders of Deutsche Bank and Rabobank took place by means of Bloomberg emails, instant messages and chatroom communications. The instant messages and emails consisted of unilateral messages or exchanges of messages on a specific subject (such as a trade, a bond, a client), while the chatrooms were opened by the parties to allow an exchange of instant messages over a limited period of time, usually one day.

(12) The cartel can be described as one single and continuous conduct that had several elements that were interrelated and overlapping as follows:

a) Bilateral exchange of commercially sensitive information in relation to the parties' trading activities and strategies, which included current and future prices for specific bonds and maturities, spreads, positions, volumes, current and future trade flows, the identification of counterparties and the disclosure of their trading requirements;

b) Coordination of trading and pricing strategy in relation to specific counterparties, including arbitrage traders, and in relation to the market more generally. This was done through the adjustment of prices shown on screen or in response to trading enquiries, through combining the parties' positions for onward sale to counterparties at pre-agreed prices or through agreement to remove the access rights of specific counterparties to the parties' trading systems. The parties also agreed on occasion that one would adjust their price so that the other would obtain the trade, refrain from bidding or offering, or remove a bid or offer from the market when the parties might come into competition or otherwise interfere with one another.

(13) The conduct formed part of a common plan by the parties to restrict or distort competition on the secondary market for Euro-denominated SSA bonds and Euro-denominated Government Guaranteed bonds, with a view to maximise their profits ([7]), while reducing uncertainties and mitigating risks inherent to bond trading.

2.3. **Addressees**

(14) The Decision is addressed to Deutsche Bank AG ('Deutsche Bank'), Taunusanlage 12, 60325 Frankfurt am Main, Germany, and to Coöperatieve Rabobank U.A. ('Rabobank'), Croeselaan 18, 3521 CB Utrecht, The Netherlands.

2.4. **Remedies**

(15) The Decision applies the Guidelines on fines ([8]). The Decision imposes a fine on Rabobank while ultimately granting immunity from fines to Deutsche Bank.

2.4.1. Basic amount of the fine

(16) The basic amount of fines to be imposed on the undertakings concerned is to be set by reference to the value of sales, the duration and geographic scope of the cartel and the fact that the infringement, in involving price fixing and market sharing, is by its very nature amongst the most harmful restrictions of competition.

([7]) While profit maximisation can have different meanings, in this case, this term relates to preserving or improving the parties' trading positions through the exchange of commercially sensitive information or coordination of pricing and trading strategies with the aim of ultimately increasing the parties' profits at least in the long run.

([8]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ C 210 of 1.9.2006, p. 2).

(17) Financial products such as Euro-denominated SSA bonds and Euro-denominated Government Guaranteed bonds do not generate sales in the usual sense, as the same bonds are both bought and sold by the dealers and revenues are derived from the difference between the purchase price and the sale price of each bond acquired and then sold by the traders. For this reason, the Commission considers it appropriate in this case to use a specific proxy for the value of sales based on the notional amounts traded by each bank with counterparties located in the EEA as a starting point for its determination of the fines.

(18) It is the Commission's consistent practice in cartel cases in the financial sector ([9]) not to determine the proxy for the value of sales by reference to the 'net trading income' or 'net profit from financial operations'. Those methods reflect trading profits netted against trading losses which can vary significantly between undertakings and are not necessarily proportionate to trading volumes. They are comparable to a measurement of gross profit rather than constituting an appropriate proxy for the value of sales under the Guidelines on fines ([10]). They run counter to the logic applied in the Guidelines on fines and the setting of the basic amount of the fines by reference to the value of sales as the use of trading profits does not adequately reflect the economic importance of the infringement or the relative weight of each undertaking in the infringement and may not create a sufficient deterrent effect.

(19) Instead, in light of the nature of Euro-denominated SSA bonds and Euro-denominated Government Guaranteed bonds and the trading thereof, the Commission finds in its Decision that it is appropriate in this case to use a specific proxy for the value of sales based on the notional amounts of the Euro-denominated SSA bonds and Euro-denominated Government Guaranteed bonds that the parties traded with counterparties located in the EEA during the infringement period. These notional amounts are then subjected to an adjustment factor based on bid-ask spreads (that is a value reflecting the difference between the buying and selling prices of those bonds), calculated using the end-of-day BGN Bloomberg prices ([11]). This methodology was used because the revenues made by the parties are proportional to the notional amounts of bonds traded and are represented by the difference between the purchase price and the sale price of those bonds.

(20) When calculating the basic amount of the fine, the Commission will normally take the value of sales made by the undertaking during the last full business year of its participation in the infringement. In view of the long infringement period (more than 10 years), the constantly changing market circumstances and the fact that the trading pattern of the parties in the relevant bonds may have varied significantly over that period, it would be inappropriate to calculate a proxy based on the trades made by each party during the last full business year of participation in the infringement only. Thus, in its Decision, the Commission considers it appropriate to base the proxy for the value of sales on the notional amounts of the relevant bonds actually traded by each party's relevant desk during the entire infringement period. These total notional amounts, adjusted by the respective bid-ask spreads, are then annualised to compute the proxy of the value of sales.

([9]) See AT.39924 – Swiss Franc Interest Rate Derivatives (Bid Ask Spread Infringement) (Commission Decision of 21 October 2014, C(2014) 7602); AT.39924 – Swiss Franc Interest Rate Derivatives (CHF LIBOR) (Commission Decision of 21 October 2014, C(2014) 7605); AT.39861 – Yen Interest Rate Derivatives (Commission Decision of 4 December 2013 C(2013) 8602); AT.39914 – Euro Interest Rate Derivatives (Commission Decision of 4 December 2013, C(2013) 8512 and Commission Decision of 7 December 2016, C(2016) 8530); AT.40135 – Forex-Three Way Banana Split (Commission Decision of 16 May 2019, C(2019) 3521); AT.40135 – Forex-Essex Express (Commission Decision of 16 May 2019, C(2019) 3521); AT.40346 – SSA Bonds (Commission Decision of 28 April 2021, C(2021) 2871); AT.40324 – European Government Bonds (Commission Decision of 20 May 2021, C(2021) 3489 final); and AT.40135 – Forex-Sterling Lads (Commission Decisions of 2 December 2021, C(2021) 8612 and C(2021) 8613).

([10]) Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, ECLI:EU:T:2019:675, paragraph 322.

([11]) The Bloomberg Generic Price ('BGN') is a real-time composite price for corporate and Government bonds, based on executable and indicative quotes from multiple dealers.

(21) The Commission considers that it is appropriate to set the proportion of the value of sales to be taken into account for calculating the variable part of the basic amount of the fine at 16 % and the percentage to be applied for the purposes of calculating the additional amount at 16 % of the proxy for the value of sales. In its Decision, the Commission also takes into consideration the duration of the infringement in the calculation of the variable part of the basic amount by multiplying the applicable proxy of the value of sales by the number of years of the undertaking's participation in the infringement. In this case, the duration multiplier is 10.14 years.

2.4.2. Adjustment of the basic amount: aggravating and mitigating circumstances

(22) In its Decision, the Commission considers recidivism an aggravating circumstance for Deutsche Bank given that it was found liable by two previous Commission decisions adopted in 2013 for infringements of Article 101 of the Treaty in relation to collusive conducts in the market for trading financial products in cases AT.39861 and AT.39914 ([12]). In both these cases, Deutsche Bank was a direct participant in the infringement and thus an addressee of both these decisions. For these reasons, the Commission considers that it is appropriate to apply an increase of 60 % to the basic amount of the fine that would have otherwise been imposed on Deutsche Bank had it not been an immunity applicant.

(23) There are no mitigating circumstances.

2.4.3. Specific increase for deterrence

(24) In order to ensure that fines are sufficiently deterrent, 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. On this basis, the Commission considers that it is appropriate to apply a deterrence multiplier of 1.1 to the fine that would have otherwise been imposed on Deutsche Bank had it not been an immunity applicant.

2.4.4. Application of the 10 % turnover limit

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

(26) In this case, none of the fines imposed exceeds 10 % of the relevant addressees' total turnover relating to the business year preceding the date of the Decision.

2.4.5. Application of the Leniency Notice

(27) In its Decision, the Commission considers that Deutsche Bank is entitled to immunity from any fines that would otherwise have been imposed on it for its involvement in the infringement that is the subject of this Decision.

3. **CONCLUSION**

(28) In view of the conduct described in the Decision (as summarised above in sections 1. and 2.2.), the Decision finds that Deutsche Bank and Rabobank have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, orders them to immediately bring this infringement to an end, insofar as they have not already done so, and to refrain from repeating it and from any act or conduct having the same or similar object or effect.

([12]) Commission Decision of 4 December 2013 in Case AT.39861 – Yen Interest Rate Derivatives (YIRD), C(2013) 8602, and – Commission Decision of 4 December 2013 in Case AT.39914 – Euro Interest Rate Derivatives (EIRD), C(2013) 8512.

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

(a) Deutsche Bank AG: EUR 0

(b) Coöperatieve Rabobank U.A.: EUR 26 647 000