



EUROPEAN COMMISSION
Competition DG

CASE AT.40512 – Euro Denominated Bonds

(Only the English text is authentic)

CARTEL PROCEDURE Council Regulation (EC) No 1/2003

Article 7 Regulation (EC) 1/2003

Date: 22/11/2023

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Brussels, 22.11.2023
C(2023) 7811 final

COMMISSION DECISION

of 22.11.2023

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

(AT.40512 - Euro Denominated Bonds)

(Text with EEA relevance)

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

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

Having regard to the Commission Decision of 18 March 2019 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 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,²

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

² OJ L 123, 27.4.2004, p. 18.

1. INTRODUCTION

- (1) The addressees of this Decision have been involved in an infringement of Article 101 of the Treaty on the Functioning of the European Union ('Treaty') and Article 53 of the Agreement on the European Economic Area ('EEA Agreement').
- (2) The infringement took place in the period between 4 January 2006 and 24 February 2016 ('infringement period') and covered the whole of the European Economic Area ('EEA').³ The infringement consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the secondary market for the trading⁴ of (i) Euro-denominated Supra-Sovereign (Supra-national) bonds, Euro-denominated Foreign Sovereign bonds and Euro-denominated Sub-Sovereign/Agency bonds (collectively referred to as 'Euro-denominated SSA bonds'), and (ii) Euro-denominated Government Guaranteed bonds (altogether referred to as the 'relevant bonds' or 'Euro-denominated SSA and Government Guaranteed bonds').
- (3) The legal entities to which this Decision is addressed are collectively referred to as 'the addressees'.⁵ The undertakings subject to the investigation are collectively referred to as 'the parties'.⁶

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

- (4) This Section provides some background information about the bonds industry and its organisation.

2.1. Definition

- (5) A bond is a type of debt security which enables one party (the issuer of the bond) to raise cash by borrowing money from investors on fixed terms. In return, investors earn a fixed (or sometimes variable) interest payment (usually in the form of a coupon) for loaning money to the issuer. Most bonds have maturity dates at which point the issuer must pay back in full the amount borrowed (the principal amount) to the investor.

2.2. Types of bonds

- (6) Bonds are distinguished by reference to the identity of the issuer and the currency used. The issuer can be either a public (e.g. in the case of sovereign bonds) or a private entity (e.g. in the case of corporate bonds). The issuer and the currency also

³ 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 (see in this context recital (93)). Accordingly, any references made to the EEA in this Decision also include the United Kingdom (UK).

⁴ The concerned trading is trading made in the context of market-making (see recitals (32) and (33)) and proprietary trading (see footnote 55).

⁵ See section 7.2.

⁶ See section 3.

determine the trading desk⁷ at which those bonds are traded.⁸ Bonds can be further distinguished by the type of guarantor (government authority or financial institutions or other corporations), if any.

- (7) **Sovereign bonds** are debt securities issued by the central/national government of a given country and denominated in a local currency. Sovereign bonds include sovereign guaranteed securities with an explicit government guarantee or support from sovereign, principal or state governments. When a Eurozone Member State issues bonds denominated in euro, those Euro-denominated Sovereign bonds are classified collectively as European Government Bonds ('EGBs').⁹ Such bonds include the German Bund, the Obligations Assimilables du Trésor issued by the Agence France Trésor, and the Dutch State Loans issued by the Dutch Agentschap van het ministerie van Financiën.
- (8) **SSA bonds** form an umbrella category of different bonds that are typically traded by the dealers on a specific trading desk. SSA bonds encompass various products, which include the Supra-Sovereign (or Supra-national bonds), Foreign Sovereign and Sub-Sovereign/Agency bonds described in recitals (9), (10) and (11).
- (9) **Supra-Sovereign/Supra-national bonds** are debt securities issued by supranational institutions whose mandate extends across national borders, such as the European Investment Bank ('EIB'), the European Bank for Reconstruction and Development ('EBRD'), and the International Bank for Reconstruction and Development ('IBRD').¹⁰
- (10) **Foreign Sovereign bonds** are bonds issued by governments under a law different from the law of that country and/or in a currency different from the currency of that country.¹¹ Such bonds include for example euro-denominated bonds issued by Sweden or Denmark, rather than bonds denominated in the relevant local currency (that is, Swedish Krona and Danish Krone respectively).
- (11) **Sub-Sovereign/Agency bonds** are bonds issued by governmental or government-related entities below the level of the central government, such as regions, provinces, states or municipalities, or by institutions like government-owned banks, infrastructure development bodies, export financiers or social security facilities, usually with some form of public mandate and varying degrees of public ownership, backed by the State to which they are related, for example through a guarantee structure. They are denominated in a local currency.
- (12) **Covered bonds** are bonds issued by credit institutions that are secured by a protected pool of high-quality assets, such as mortgage loans or public sector debt. Covered bonds grant the holder privileged claims on the pool of cover assets upon default of the issuer. Such bonds can be issued directly by the depository institution, or a special purpose vehicle can be established to act as issuer or as guarantor.
- (13) **Government Guaranteed bonds** are bonds that offer a secondary guarantee of repayment of principal and interest by a government authority in case of default by

⁷ A trading desk is a physical location, within a sector or department of a financial institution, where transactions for buying and selling securities occur. Trading desks are usually organised by type of securities.

⁸ This reflects the risk profile of the relevant bonds. See [...]

⁹ See also [...].

¹⁰ See [...].

¹¹ See [...].

the issuer. Such bonds were issued for a limited period of time in response to the market conditions associated with the 2008 global financial crisis.¹²

- (14) Bonds can also be distinguished according to maturity, interest rate and frequency of coupon payments (annually, quarterly and so forth), type of interest paid (fixed rate or floating rate) or on the basis of perceived risk (reflected in the bond's rating).

2.3. Bond markets

- (15) The bond market (which is also known as the debt market or credit market) is a financial market where participants can issue new debt or buy and sell debt securities.
- (16) The issuance of new debt is known as the primary market, the market for the purchase of bonds that are issued (sold) to market participants for the first time by, or on behalf of, the issuing entity. Bonds are issued on the primary market by means of auctions, which are tendering processes, or by syndication, which is a private placement process.
- (17) After the initial issuance in the primary market, bonds are bought and sold between various market players, like any other negotiable instrument. The market for such transactions is known as the secondary market. The trade is organised in different trading desks according to the type of bonds.¹³ Secondary market issues can also be packaged in the form of pension funds, mutual funds and life insurance policies, amongst other product structures.
- (18) The main participants in bond markets are the issuers, the end-investors, the traders and sales representatives¹⁴ from financial institutions, and the brokers. The objective of the participants is to maximise their profits, while controlling the market risk.
- (19) SSA and Government Guaranteed bonds are traded in an over-the-counter ('OTC') market such that there is no centralised database or platform where all live buy and sell offers are matched against each other.¹⁵

2.3.1. Actors

2.3.1.1. Issuers

- (20) As stated in recital (5), the bond market allows issuers to raise cash from investors to fund investments. The objective for issuers is to get cheap funding (that is at a low effective interest rate) through highly liquid bonds.¹⁶ The effective interest rate that the issuer pays will depend on a number of factors and in particular current market rates and the rating (reflecting perceived risk) of the issuer.
- (21) The issuers of SSA bonds are supra-sovereign, foreign sovereign and sub-sovereign public institutions, and agencies. In recent years, the most important issuers of Euro-denominated SSA bonds were Germany's Kreditanstalt für Wiederaufbau ('KfW'), France's Caisse d'Amortissement de la Dette Sociale ('CADES'), the Netherlands' Bank Nederlandse Gemeenten N.V. ('BNG'), EIB, the European Financial Stability Facility ('EFSF') and the European Stability Mechanism ('ESM').¹⁷

¹² See [...].

¹³ See recitals (7)-(13).

¹⁴ Sales representatives are most commonly referred to as 'Sales'.

¹⁵ See [...].

¹⁶ See Section 2.3.5 for an explanation of liquidity.

¹⁷ See [...].

- (22) The issuers of Government Guaranteed bonds were financial institutions which benefited from guarantees from the State in which those entities were headquartered. The largest issuers of Euro-denominated Government Guaranteed bonds included ING Bank NV, ABN AMRO Bank NV, Barclays Bank Plc, BNP Paribas SA, SNS Bank and Dexia.¹⁸ According to Bloomberg data, on 31 December 2017, the six largest issuers still present in Euro-denominated Government Guaranteed bonds with outstanding volumes were as follows: Dexia Credit Local SA, Caisse Centrale du Credit Immobilier de France SA, Heta Asset Resolution AG, Comboios de Portugal EPE, K.A Finanz AG and Attica Bank SA.

2.3.1.2. End-investors

- (23) End-investors purchase bonds in order to invest their cash surplus in a relatively secure revenue-generating asset. The aim for end-investors is to earn a higher yield than for example on a savings account while keeping the overall risk of their portfolio fairly low.
- (24) The most important types of end-investors for Euro-denominated SSA and Government Guaranteed bonds are money market funds, asset management companies, insurance companies and banks, including central banks.¹⁹

2.3.1.3. Dealers, traders and sales representatives

- (25) The dealers are the financial institutions trading the bonds. Dealers set up specific desks where individual traders trade a specific type of bonds.²⁰
- (26) The traders are the employees of the financial institutions who actually trade the bonds on a specific dealing desk.²¹ They hold a ‘book’, meaning a portfolio of bonds that they are ready to buy from or sell to end-investors (they sometimes call this book their ‘balance sheet’).
- (27) The sales representatives are the interface between the traders and the end-investors. End-investors may trade either directly with traders or through their sales representatives.²²
- (28) The objective for both traders and sales representatives is to earn a maximum of revenues from their trading activity with end-investors (or other traders) while keeping the risk of their overall trading portfolio as low as possible and within certain limits. Traders make money by selling bonds at a higher price than that at which they bought the bonds. Trading revenue therefore depends on the amount of volume traded and on the difference between the purchase price and the sale price of the same bond (the ‘price spread’).²³ To maximise the difference between the purchase price and the sale price, traders may hold a particular position in a bond in their book (long or short) in anticipation of better trading conditions at a later stage.²⁴
- (29) Amongst the traders, there is a sub-category of traders who engage in the practice of financial arbitrage on the bond markets. The traders engaging in financial arbitrage

¹⁸ See [...].

¹⁹ See [...].

²⁰ See recitals (17) and (521).

²¹ The terms ‘dealers’ and ‘traders’ are used inter-changeably in practice. In this Decision, the term ‘dealer’ refers to the trading desk of the financial institution, whereas the term ‘trader’ is used for the physical person(s) employed by the desk who negotiate(s) and agree(s) the trades.

²² See recitals (41)-(53).

²³ See recital (38).

²⁴ See recitals (72)-(73) for an explanation of long and short positions.

are known as ‘arbitrageurs’ or ‘arbitrage traders’. Arbitrage traders usually work for financial institutions and usually trade a substantial value of bonds. Their objective is to make a profit by buying bonds from one financial institution and very quickly or even simultaneously selling them on to another, in circumstances where the purchase price paid to the first institution is lower than the selling price achieved with the second institution.

2.3.1.4. Brokers

- (30) The brokers or inter-dealer brokers (‘IDBs’) are financial intermediaries who facilitate transactions between dealers and make deal settlement easier and more reliable than a direct dealer-to-dealer (‘D2D’) transaction.²⁵ Although the distinctions between brokers and IDBs have become less clear in general,²⁶ brokers execute trades between all types of market participants, whereas IDBs perform the same task but transact exclusively with market-makers. A broker’s revenue is proportional to the total value of bonds traded, on the basis of a percentage fee on any transaction that is fairly constant. Its revenue is not, on the other hand, affected by the price spread underlying the transactions.
- (31) During the infringement period, Euro-denominated SSA and Government Guaranteed bonds transactions were facilitated through brokers or IDBs. Major brokers, including IDBs active in these Euro-denominated markets via electronic trading platforms during the infringement period, included ICAP, Liberty, Tullet Prebon, Tradition, GFI and BGC Partners.²⁷

2.3.1.5. Market-makers

- (32) Article 4(1), point (7), of Directive 2014/65/EU of the European Parliament and of the Council²⁸ defines a ‘market-maker’ as *‘a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person’s proprietary capital at prices defined by that person’*. More generally, the term ‘market-maker’ refers to a firm or individual who actively quotes two-way prices in a particular security, providing bids and offers (known as asks) along with the market size of each.²⁹ The role of market-makers is to maintain a good level of supply and demand for the relevant bonds by buying and selling them in the secondary market. In this regard, a market-maker is generally expected to enter into a trade with a client irrespective of whether the market-maker holds or is able to find, an opposing matching interest.³⁰ In other words, market-makers must be able and willing to sell or buy financial products at prices determined by them generally and continuously (through firm bids and offers), rather than in respect of each particular transaction. This ‘matching service’ is important in an OTC market such as the market for Euro-denominated SSA and Government Guaranteed bonds, where there is no centralised database or platform where all live buy and sell offers are matched against each other.

²⁵ See recitals (57)-(65) for an explanation of the services offered by brokers.

²⁶ See [...].

²⁷ See [...].

²⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.06.2015, p. 349).

²⁹ See <https://www.investopedia.com/terms/m/marketmaker.asp> (last accessed on 2 May 2022).

³⁰ See [...].

- (33) Market-making therefore has an important role in providing liquidity to the market. For the market to function, market-makers must source liquidity, such as purchasing additional bonds from another trader in order to fulfil a large buy order from a customer. Sourcing liquidity can also be used in the sense of hedging or reducing risk, such as a subsequent sale of bonds to another trader after fulfilling a sell order from a customer (in order to reduce the risk of holding a large number of the bonds).³¹ Liquidity describes the degree to which an asset or security can be quickly bought or sold in the market without affecting the asset's or security's price. The main objective of a market-maker is to try to earn the spread between the offer price and bid price. Market-makers may be officially designated by an issuer and assume the obligations to quote two-way prices at the request of a potential customer or to the market at terms agreed with the issuer.³² A non-designated market-maker may assume the role of market-making without committing to those obligations.

2.3.1.6. Counterparties

- (34) The term 'counterparties' refers to a relationship between two parties trading with each other, one as a buyer and one as a seller.

2.3.2. Bond trading

2.3.2.1. Bond characteristics

- (35) Bonds are commonly priced as a percentage of their notional amount.³³ At issuance, a bond's price is usually around 100.00 %³⁴ of its notional amount. Throughout its lifetime, the price of a bond will evolve and potentially depart from its issuing price, depending on various factors (the general interest rate evolution in the market or issuer-specific factors such as *inter alia* the perceived risk, the liquidity and the availability of newer issues). Eventually, at maturity, the bond price will revert to 100.00 %.
- (36) Bonds can be traded based on an absolute price, but more commonly, this is done by reference to the corresponding yield of the bond. The yield on the bond (or yield to maturity) is a measure of the investor's expected earnings generated by investing in the bond over a particular period of time if it holds it to maturity. The yield is expressed as a percentage, calculated by reference to the bond's price, coupon (or interest rate), and tenor (or length of time to maturity).^{35,36}

³¹ See Commission Decision of 28 April 2021 in Case AT.40346 – SSA Bonds, recital (52).

³² See [...].

³³ The notional amount of the bond is the amount an issuer owes the bondholder at maturity. For example, a specific issuer issues a bond with a notional amount of EUR 2 billion, a yearly coupon of 3%, a maturity of 5 years and at a price of 99%. At issuance, the issuer will get from bond purchasers 99% of EUR 2 billion or EUR 1 980 000 000 (note here that the amount received by the issuer, in this case EUR 1 980 000 000, may differ from the amount that this issuer has to pay back to investors at maturity, in this case EUR 2 billion). Correspondingly, a bond purchaser wishing to buy EUR 1 million of nominal amount will pay EUR 990 000 to the issuer. At each coupon date, the issuer will have to pay a coupon of 3% of the notional amount held by each bond holder. For example, the issuer will pay 30 000 euro to a bond holder holding EUR 1 million of notional amount. At maturity, the issuer will have to pay bond holders a total of EUR 2 billion (plus a coupon of EUR 60 million if the maturity date is a coupon date too).

³⁴ In the day-to-day pricing of bonds, the '*%-of-notional-amount*' is omitted. Hence, we see prices around 100.00, most of the time between 80.00 and 120.00. A price equal to 100.00 is also called 'at par'. A price lower than 100.00 is 'below par'. A price higher than 100.00 is 'above par'.

³⁵ See [...].

³⁶ In the example in footnote 34, the yield of the bond (when issued) will be 3.22%. A bond purchaser buying a notional amount of EUR 1 million at 99% will pay EUR 990 000 now. He will then earn a

- (37) For a specific bond, each price has a corresponding yield. A bond's price always moves in the opposite direction of its yield: a lower price is equivalent to a higher yield and a higher price is equivalent to a lower yield.³⁷ The price of a bond in the secondary market at a given moment is generally determined by reference to the yield and influenced by the level of supply and demand for the bond, which can be subject to various factors such as the volume of bonds available and the price and availability of comparable bonds. A change in market interest rates, or a change in the credit quality of the issuer, may also affect the price at which a bond will trade on the market generally.
- (38) The yield of a given bond is usually quoted by reference to the difference ('spread') between this yield and the yield of a comparable benchmark.³⁸ Everything else equal, the higher the perceived risk of a bond (and therefore lower the rating) the higher the spread, as investors require higher compensation in return for increased risk. When quoting in terms of spread, the trader aims to buy at a higher or wider spread (equivalent to a lower price), and sell at a lower or narrower spread (equivalent to a higher price).
- (39) Bond traders may quote (or 'show') 'one way' either a purchase (buy) price (i.e. the 'bid' price) or a sale (offer) price (i.e. the 'ask' price) or may quote both prices (i.e. a 'two-way' price). The difference between the two prices is the 'bid/ask spread' on which the trader makes a profit. These prices are often shown to other traders (generally on an anonymous basis) via an IDB's screen, and to end-investors (that is, investment funds/individuals holding or wishing to purchase or sell bonds) via the sales desks³⁹ or on electronic trading platforms which can show prices from a number of financial institutions.
- (40) The point halfway between the bidding price and the offering price is known as the 'mid-price' or 'mid' and is an important reference point in the secondary market. Individual mid-prices offered by a bank or financial institution are not posted on broker screens, nor are they made visible to investors and other customers. The average market mid-prices, on the other hand, are available on brokers' screens.

2.3.2.2. Market dynamics

- (41) Clients may choose to approach market-makers to execute a trade through various methods:
- (a) directly asking the relevant bank's sales desk for a request for quote ('RFQ') by telephone or electronic communication (Bloomberg chat or email);
- (42) In this case, clients communicate their buying or selling interest via the bank's sales desk rather than directly with the traders. Clients may request either an individual bid or an offer, or they may request a two-way quote (simultaneous bid and offer prices for a specific bond). Clients with established relationships with a dealer/trader may regularly receive from the sales desk an 'axe sheet' (a list of a trader's interest to

yearly coupon equal to 3% of the notional amount he holds (EUR 30 000) and will book a gain equal to the difference between the original purchasing price (99% of EUR 1 million or EUR 990 000) and the redeemed notional amount at the maturity date (EUR 1 million, the gain being equal to EUR 10 000).

³⁷ In the example in footnotes 34 and 37, if the bond purchaser had bought the same bond at a price of 98%, the yield would have been 3.44%. Conversely, if the bond purchaser had bought the bond at a price of 101%, the yield would have been 2.78%.

³⁸ For examples of what type of bonds are considered benchmark bonds, see recital (70).

³⁹ The sales desk is the desk where sales representatives facilitate the trade between end-investors and traders. See also recital (27).

buy/sell particular bonds) put together by the trader and sent to the sales desk for distribution to clients. The enquiries from clients may or may not be a direct response to the axe sheet.

- (43) For example, a client may simultaneously contact the sales representatives of several banks and inform them of a trade intention for a particular bond and for a particular volume, although the client is not obliged to specify the volume or if he is intending to buy or sell. The sales desk then informs the trader of the client's request, and the trader makes an offer to the sales representative (a price usually expressed as the yield spread), who in turn passes it on to the client. On that basis a short negotiation, typically a few minutes long, takes place on the final terms. The trader is free to update his terms, based on his observation of movements in the market, until the negotiation is concluded and any resulting trade is agreed. The client invariably chooses to trade with the trader showing the best price, that is the lowest price (or highest yield or widest spread) in the case of a bond purchase, and the highest price (or lowest yield or tightest spread) in the case of a bond sale.
- (44) Clients expect market-makers to provide favourable and transparent pricing and liquidity conditions for bonds within their investment universe. In exchange for that service, they are ready to pay the 'price spread' (see recital (39)). This difference between the 'bid' and 'offer' price, that is the trader's profit, should not be confused with the yield spread.
- (b) trading via an electronic trading platform which involves two scenarios: (i) sending an RFQ simultaneously to several market-makers, or (ii) sending an order to the market-maker to trade at a price quoted on the platform (screen price).
- (45) The electronic trading platforms can be single-dealer proprietary platforms provided by a single dealer to its clients, or multi-dealer platforms, such as Bloomberg, MarketAxess and TradeWeb, which enable clients to request quotes from one or several dealers electronically.
- (46) In scenario (i), a client sends simultaneously an RFQ to several market-makers who may respond by providing a price which may not necessarily be the indicative price shown on the screen. By sending an RFQ to several market-makers, the client puts them in direct competition with each other.
- (47) RFQ via the Bloomberg platform (and other electronic platforms) is the most common way for clients to initiate trades. One function of the Bloomberg platform that facilitates trades between clients (such as Asset Managers, Insurers, Pension Funds, Hedge Funds and Central Banks) and dealers is the Bloomberg AllQ ('all quotes') function.
- (48) Bloomberg AllQ ('AllQ') is a dealer-to-client ('D2C') platform whose primary function is to facilitate trades between traders and their clients by providing easy access to the traders' indicative pricing information and allowing for the possibility of direct trades via the platform.⁴⁰ The indicative prices are not firm, meaning that the traders are not obliged to trade at the price (or volume) indicated on the AllQ screen.⁴¹

⁴⁰ See [...].

⁴¹ See [...].

- (49) By selecting the AllQ function, the client types in the International Securities Identification Number ('ISIN')⁴² of the bond, in which he or she is interested, and selects to view the AllQ results. On the results page the client can then see all prices quoted by traders for the selected bond. The list would comprise prices from traders who had permitted the client in question to view their quoted price for that particular bond. The client sends an RFQ simultaneously to multiple traders (typically between two and six banks at once)⁴³ who posted the price on AllQ. On being checked for an RFQ, the trader is informed about the client's identity, the bond and volume the client is seeking to trade, as well as the number, but not the identities, of the other traders that received the RFQ.⁴⁴ Knowing the number of other traders that received the same RFQ allows the respective trader to determine the level of competition for that RFQ. The trader is not informed about the prices offered by other traders in response to the same RFQ. The trader can then decide to accept the RFQ at the price quoted on AllQ or send back a revised trading request (that is, with a different price and/or volume).⁴⁵ The trader whose trade is accepted is also informed about the prices submitted by other traders that received the RFQ (but not their identities). This information is also provided to the trader that had come second (also known as 'cover'; the price quoted by the second best is known as 'cover price'). All other unsuccessful banks are informed only that the trade has taken place.⁴⁶ Once accepted, the trade is automatically booked to both market participants' trading books, since these are linked to the Bloomberg system.⁴⁷
- (50) Compared to other platforms, such as Tradeweb, where only the bond and the best bid/offer price are shown, but not the identity of the counterparties, the AllQ electronic trading platform provides participants the possibility to show real-time prices to other market participants including other banks.⁴⁸
- (51) AllQ can generally be used by everyone with a Bloomberg account, and everyone with a trading book linked to Bloomberg can generally also execute trades via AllQ. However, the extent to which an AllQ user can make use of the platform in practice (including the execution of trades) depends on the access rights granted to such user by other institutions.⁴⁹
- (52) Access can be granted on a bond-by-bond basis and/or on a segment basis (e.g. EUR SSA bonds).⁵⁰ These viewing rights in AllQ may come with or without trading rights. If trading access is enabled, it is possible for a client to submit an RFQ to the trader quoting the relevant price and volume. It is at the discretion of the market-maker to grant or remove (at the level of trader, not the firm) access rights to clients.⁵¹ In other words, traders on AllQ choose whether they will either give everyone access to their indicative bid-ask prices, or exclude only particular actors

⁴² ISIN is a code used to standardise the identification of securities and other financial instruments via a unified system and a uniform classification.

⁴³ Fermanian, J-D., Gueant O., Arnaud R., *'Agents' Behaviour on Multi-Dealer-to-Client Bond Trading Platforms'*, page 17, available at <https://crest.science/RePEc/wpstorage/2015-11.pdf> (last accessed on 25 April 2022).

⁴⁴ See [...].

⁴⁵ See [...].

⁴⁶ Fermanian, J-D., *et.al*, *o.c.*, pages 4 and 9.

⁴⁷ See [...].

⁴⁸ See [...].

⁴⁹ See [...].

⁵⁰ See [...].

⁵¹ See [...].

(usually competing dealers), or allow only specified institutions to have access to it. Information on *individual prices* for bonds traded over-the-counter either on D2D platforms or on D2C platforms (such as AllQ) is not public, only the indicative average prices are available on screen. The view access to indicative prices therefore does not allow to determine the actual individual price offered by a specific bank. Some D2C platforms may show an indicative or average price per dealer for a specific bond. The indicative prices shown on screen are not firm, so the final price for each transaction for a specific bond may vary according to the client.⁵²

- (53) In scenario (ii), the client sends an order to a single trader to trade at the price quoted on the platform (screen), as opposed to putting traders in competition through an RFQ. In this case, the trade may auto-execute or the trader will reflect on the order before execution. This scenario is much rarer than scenario (i) (RFQ).⁵³
- (54) Traders make pricing and other strategic decisions based on various sources of information. These include market commentary and flows from the sales desk or other desks on the trading floor; information received from brokers via telephone, chatroom or through the screens of the broker platforms; the bank's own aggregation software, or other news and market platforms such as Bloomberg and Reuters. The price at which a trader is willing to buy or sell a bond in an individual transaction may also be influenced by factors such as the identity of the counterparty (for instance, where a bank has a long-standing relationship with a particular client) or the volume of the transaction.
- (55) After a trade, a trader may find himself with a long (positive balance) or a short (negative balance) position in a specific bond. He might decide to hold this position, subject to risk limits imposed by the employing institution. Alternatively, he might buy or sell the bond back (to clients or other traders) in order to lower or offset his exposure. Trading includes market-making⁵⁴ and proprietary trading⁵⁵ subject to risk limits.
- (56) Traders may choose to trade with each other either indirectly or directly:
 - (a) indirectly, through the use of brokers, which ensures the anonymity of the parties to the trade since traders do not want to share information with other traders;
- (57) IDBs run electronic platforms showing bids and offers placed by traders with each broker in real time. Traders have multiple screens on their desks, providing them with direct access to the major broker platforms. A typical broker screen will show the name, coupon and maturity date of a bond, the size (that is the notional amount, usually expressed in million of the relevant currency) of each bid and offer for that bond and may show the yield spread relative to a benchmark bond.⁵⁶ The bid and offer prices shown on the screen at any one time will be the 'best', that is the most competitive, available at that time. A trader seeing a particular bid to purchase bonds

⁵² See Commission Decision of 20 May 2021 in Case AT.40324 - European Government Bonds (EGB), recitals (40) and (41).

⁵³ See [...].

⁵⁴ See recitals (32) and (33).

⁵⁵ Proprietary trading is done for own account without providing a service for others. It refers to the activity of a trader who, on behalf of his financial institution or commercial bank, buys bonds or stocks if he thinks the price for the bonds or the stocks will go up or sells bonds if he thinks the price will go down. This trading activity is motivated by making a profit from market activity rather than satisfying a customer order.

⁵⁶ For examples of what type of bonds are considered benchmark bonds, see recital (70).

or a particular offer to sell bonds on a broker screen may decide to ‘hit’ the bid (thereby selling bonds to the bidder) or to ‘lift’ the offer (thereby buying bonds from the seller), thus agreeing to trade on the terms shown on the screen. Depending on the role and perspective of the trader in the transaction at stake these terms can be used either in active or passive form: ‘I hit the bid’ means ‘I sold bonds’ (active), whereas ‘I lifted the offer’ means ‘I bought bonds’ (active). In colloquial terms, when a trader indicates that he or she ‘got hit’, it means that their bid to purchase bonds was accepted and they thus bought bonds (passive).⁵⁷ On the other hand, when a trader says that they ‘got lifted’, it means that their offer to sell bonds was accepted and they thus sold bonds (passive).⁵⁸ On the major broker platforms, when either of these events occurs, the relevant bid/offer will flash, making the fact of the trade (but not the identity of the counterparties) visible to all traders.⁵⁹

- (58) Alternatively, a trader interested in a potential trade shown on a broker screen could call the broker for some additional ‘colour’, meaning any additional facts known to the broker which may help the trader to assess the terms of that trade (for example, the volume of flows in that bond at the time, whether additional size is available or updates on bids or offers in real time). In fact, traders often hold continuous active chats on Bloomberg or other instant messaging platforms, separately with several brokers.
- (59) If the trader is interested, a short negotiation may then take place off-screen (by phone or chat) in which the broker will act as an intermediary between the two traders with a view to reaching an agreement on the final price and size of the trade. The broker earns a commission on each executed trade, normally paid by the trader who ‘hit’ the bid, that is, sold the bonds.
- (60) Brokers are therefore an important source of liquidity in the market by virtue of facilitating trades between traders. Brokers do not reveal the identity of traders involved in a particular trade. The use of a broker therefore ensures anonymity for the traders and prevents them from obtaining information about a given trader’s position or trading intentions, and from using that knowledge to their advantage or to trade against that trader’s interests.
- (61) The use of a broker offers other advantages as well. Brokers ensure reliable settlement of trades as they know the correct counterparty name through which trades should be executed, and carry out efficient delivery. The use of a broker’s back-office infrastructure may also be simpler and easier for a trader than the execution of a trade bilaterally.
- (62) In light of these advantages, it is generally accepted that the benefits for dealers of trading with each other via brokers outweigh the brokerage fee the broker charges to execute each trade.
- (63) While remaining competitors, two traders (A and B) can get in touch and agree to trade with each other via a broker. In that case, whereas the traders trade *de facto* with each other, technically they will not be direct counterparties, as two separate trades will be recorded by the broker: trader A selling to the broker, and trader B buying from the same broker.

⁵⁷ That is, a counterparty hit this trader’s bid (quote), which means this counterparty sold bonds to this trader and this trader thus bought bonds from this counterparty.

⁵⁸ I.e., a counterparty lifted this trader’s offer (quote), which means this counterparty bought bonds from this trader and this trader thus sold bonds to this counterparty.

⁵⁹ [...].

- (64) When negotiating to trade with each other via a broker, traders will exchange information for the purposes of price discovery (that is, the determination of a price that suits them both), such as the number of bonds they wish to buy or sell and the price range likely to be acceptable. This case does not concern communications between the relevant traders 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 comments about market colour.
- (65) As the markets for Euro-denominated SSA and Government Guaranteed bonds are OTC in nature, brokers play a role in facilitating trades. In the beginning of the infringement period the use of brokers took place primarily via ‘voice’, while later several brokers developed in-house electronic trading platforms.⁶⁰ Brokers have their own trading screens and usually do not execute trades via the AllQ platform. They may use the AllQ platform to view the indicative prices of traders.
- (b) directly with another trader either by: (i) approaching another trader’s sales desk to facilitate a trade or (ii) approaching the other traders directly via phone or Bloomberg instant messaging.
- (66) Where a trade is agreed by either method (i) or (ii), it can be booked manually or by submitting an enquiry via the relevant trader’s electronic screen (e.g. Bloomberg) or by sending a VCON (Bloomberg’s voice trade confirmation system).⁶¹ Where a trade is executed via AllQ, it is automatically booked into the institution’s system via Bloomberg. However, direct contact between traders is rather rare and trading rights on AllQ between competing traders were normally not granted during the infringement period.⁶² Therefore, AllQ would usually not be used to execute trades between market-makers during the infringement period.⁶³

2.3.3. Terminology⁶⁴

- (67) In their communications, traders use professional jargon and abbreviations to refer to prices (bid, offer or mid-prices), positions, spreads, yields and maturities. This terminology is briefly explained in the following recitals.⁶⁵
- (68) *Maturity of the bond*: traders often identify the bonds they are discussing by specifying (in addition to the issuer) the month or year on which the bond matures. A KfW 05/14 or 5/14 bond, for example, refers to a bond issued by KfW that matured in May 2014, whilst the term ‘16s’ will refer to bonds which matured at some point in 2016, but for which the traders do not need to specify the month to know that they are talking about the same bond. Traders may also refer to ‘3yrs’ or ‘5yrs’, which refers not to the maturity date but the remaining time to maturity of the bond. In these circumstances, traders use these terms as shorthand when it is clear to each other that they are discussing the same bond.
- (69) *Volumes*: traders will refer to the actual amount of bonds that they want to buy or sell. 1 bond equals 1 000 euro at face value. Most often, they refer to the volume as ‘mm’ (million), as in ‘sold 50 mm AFDB 2/13’ (meaning the trader sold EUR 50

⁶⁰ See [...].

⁶¹ See [...].

⁶² See [...].

⁶³ See [...].

⁶⁴ See Commission Decision of 28 April 2021 in Case AT.40346 – SSA Bonds, Section 2.1.5.

⁶⁵ Traders also use trade related slang jargon when communicating with each other, which is explained where relevant in the chronological overview of events in Section 5.2.

million of bonds issued by the African Development Bank maturing in February 2013).

- (70) *Yield spread* (usually denominated in basis points ('bps' or 'bp')): as noted in recital (38), the yield spread is the difference between the yield of two bonds, typically referring to the difference between the yield of the bond under discussion and the yield of a comparable benchmark. For example, if one bond is yielding 4% and another bond is yielding 5%, the yield spread between the two bonds is 1%, or 100 basis points (bps). The yield spread may be considered the return an investor may receive over and above the rate represented by the benchmark (also known as 'the risk free rate').⁶⁶ For Euro-denominated SSA and Government Guaranteed bonds, the benchmark will typically be a Sovereign bond, such as the German Bund, or the Interest Rate Swaps. For a few Euro-denominated local agency bonds, such as the French agency bonds, the benchmark will typically be the French Sovereign bond.
- (71) *Prices*: traders may discuss prices by reference to the yield spread between the bond in question and the relevant benchmark expressed in basis points, but also by reference to a percentage of the concerned bond's notional amount.⁶⁷ For instance, a trader showing for a specific bond a bid price of 100.48 indicates the highest price the trader is willing to pay for the bond, and an offer (ask) price of 100.55 indicates the lowest price at which the trader is willing to sell the bond. A two-way price indicates both the bid price and the ask price of a bond during a trading day, and the difference between these prices represents the bid-ask spread.⁶⁸ In our example, the bid-ask spread is 0.07%, that is 7 basis points.
- (72) *Long*: a long position is where the trader owns the bond in question (and would realise a gain if the price goes up). If a trader is 'long 50 million', he currently owns a quantity of 50 million of the bond and, depending on his view of the future development of the bond's price, may seek to sell off that quantity (thereby closing that position or going 'flat' and booking his profit or loss), or he could seek to buy additional volumes and augment his long position and then sell off at a later date.
- (73) *Short*: a trader enters into a short position when he has sold a volume of bonds greater than that which he owned, and then has to purchase bonds on the market to close his position. A trader may do this as a trading tactic in the expectation that the price of the bond will go down, enabling him to make a profit when he buys them back; or, for example, in order to satisfy a request from an important customer.

2.3.4. *Market value*

- (74) The total outstanding volume of Euro-denominated SSA bonds within the EEA as of May 2020 was an estimated EUR 9.1 trillion.⁶⁹ Within the EEA, the Euro is the most common currency in which SSA bonds are denominated.
- (75) The total outstanding volume of Euro-denominated Government Guaranteed bonds within the EEA as of January 2015 was an estimated EUR 141.8 billion, decreasing to EUR 37.5 billion by 31 December 2017. In September 2021, few issuers remained with outstanding volume (about EUR 27 billion in total) and the vast majority of that outstanding volume was issued by one issuer (EUR 22.8 billion).⁷⁰ Within the EEA,

⁶⁶ See [...].

⁶⁷ See recitals (35) and (36).

⁶⁸ See also recital (39).

⁶⁹ See [...].

⁷⁰ See [...].

the Euro is the most common currency in which Government Guaranteed bonds are denominated.

2.3.5. *Liquidity of the relevant bonds*

- (76) In general terms, it is noted that the global financial crisis occurred during the infringement period. Before the financial crisis of 2008-2009, liquidity in the financial markets was very high. However, with the advent of the crisis, liquidity in the financial markets dropped very significantly until it began to pick up again with the implementation of the European Central Bank's purchasing programmes in 2009. It is further noted that liquidity has remained at a somewhat lower level since 2011 and that this drop in liquidity also affected SSA bonds.
- (77) There are a number of variable factors that determine liquidity such as the identity of the issuer, the sector, the terms of the issue, in particular the size of the issue, the maturity of the specific bonds as well as of other bond issues of the borrower and the general market conditions. This means that liquidity will vary from issue to issue and from time to time⁷¹ and a comparison of the level of liquidity between different types of bonds should be done on a case-by-case basis. However, it can be noted that typically, a bond's liquidity is at its highest when the bond is first issued and higher volumes are being traded in the market. Over time, liquidity will decline as the bond becomes increasingly held by investors who intend to retain the bond until maturity.⁷²
- (78) Within SSA bonds, there are substantial differences in liquidity between issuers.⁷³ Certain SSA bonds, such as supra-national EIB or IBRD bonds, as well as the German agency KfW bonds have a high liquidity. KfW are explicitly guaranteed by the German Government and serve as a benchmark. Government Guaranteed bonds were primarily issued during and in the years shortly after the financial crisis. Their level of liquidity is generally lower than SSA bonds, given that the outstanding volume of those bonds in the EEA has decreased significantly over the years.

3. THE PARTIES

3.1. Undertakings subject to the proceedings

- (79) The undertakings covered by this Decision are Deutsche Bank AG ('Deutsche Bank') and Coöperatieve Rabobank U.A. (abbreviated and referred to as 'Rabobank' or 'CRUA'). Throughout the infringement period, both undertakings (collectively referred to as 'the parties') were active as dealers of Euro-denominated SSA bonds and Euro-denominated Government Guaranteed bonds on the secondary market.

3.1.1. *Deutsche Bank*

- (80) Deutsche Bank is the parent company of a German multinational investment bank and financial services undertaking established under German law and headquartered in Frankfurt am Main, Germany. Deutsche Bank is active across fifty eight countries globally and has a strong presence in the EEA. It is the largest German banking institution, and it is a component of the DAX stock market index. As a universal bank, it has four major divisions; the Corporate Bank, the Investment Bank, the Private Bank, and Asset Management (DWS).

⁷¹ See [...].

⁷² See [...].

⁷³ See [...].

- (81) Deutsche Bank generally acts as a non-designated market-maker in the markets for the relevant bonds, but does not exclude that for certain bond issues issued before or in the beginning of the infringement period and with a maturity not yet expired, there may be existing obligations which the bank entered into with certain issuers as a designated market-maker.⁷⁴
- (82) The relevant traders ([Deutsche Bank employee], [Deutsche Bank employee] and [Deutsche Bank employee]) were employed directly by Deutsche Bank at Frankfurt am Main, within the ‘Global Market – Global Rates – Fixed Income Domestic Trading’ department, throughout the infringement period.⁷⁵
- (83) [Deutsche Bank employee] was assigned to the EUR SSA desk⁷⁶ where [...] traded Euro-denominated SSA bonds,⁷⁷ and to a lesser extent Euro-denominated Government Guaranteed bonds. [Deutsche Bank employee] was a trader on the USD SSA desk and acted as back-up for [Deutsche Bank employee] on the EUR SSA desk when [...] was away.⁷⁸ [Deutsche Bank employee] was engaged in the trading of EUR SSA bonds until October 2015 and acted as a back-up for [Deutsche Bank employee].⁷⁹

3.1.2. *Rabobank*

- (84) Rabobank is a Dutch cooperative bank incorporated under Dutch law, with a corporate seat in Amsterdam and its registered office in Utrecht, the Netherlands. Rabobank offers financial services in the EEA and beyond. Its products and services include banking, lending, capital management, leasing, insurance and real estate services. Rabobank has more than one hundred local branch offices in the Netherlands. It also generates revenue from international banking operations in various countries, including the United Kingdom. These international operations focus on international business and rural activities in general and on the food and agricultural sector in particular.
- (85) Before 1 January 2016, Rabobank operated under the name Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (‘CCRB’) and each local Rabobank had separate legal personality as a cooperative entity with excluded liability (‘U.A.’) and was an individual member of the central cooperative entity. In 2016, all local Rabobanks merged into the central entity CCRB, which name was subsequently changed to Coöperatieve Rabobank U.A. (‘CRUA’). Consequently, as of 2016, all local Rabobank branches are parts of Coöperatieve Rabobank U.A., with one banking licence and one set of financial instruments. The international branch in London, Rabobank London (formerly referred to as Rabobank International, London) was throughout the infringement period, as a branch, an integral part of and within the same legal structure as CRUA/CCRB.

⁷⁴ See [...].

⁷⁵ See [...].

⁷⁶ During the infringement period, the EUR SSA desk in Frankfurt am Main was designated within Deutsche Bank to trade SSA and Government Guaranteed bonds. See [...].

⁷⁷ [...] Euro-denominated SSAs issued by a variety of institutions at any level of government below central level (e.g. Spanish or Italian regions), Government owned banks, infrastructure development bodies, export financiers, or social security facilities (e.g. KFW, CADES, BNG, ICO or Rentenbank), Supra-national entities such as EIB or EFSF.

⁷⁸ See [...].

⁷⁹ See [...].

- (86) Rabobank, trading as Rabobank London, was the employer on behalf of which the relevant bond traders [Rabobank employee] and [Rabobank employee] ('the relevant Rabobank traders') traded the relevant bonds during the infringement period.⁸⁰
- (87) The relevant Rabobank traders were assigned to the Investment Grade Bonds desk ('IGB desk')⁸¹ at Rabobank's London branch,⁸² previously known as the 'Eurobonds desk', where they traded, among other bonds, Euro-denominated SSA and Government Guaranteed bonds.⁸³ Since 2014, the IGB desk has been part of Rabobank's Debt Trading group, which in turn was part of its Markets division, a global business line under Global Wholesale Product Clients. Between 2009 and 2013 the desk was part of Client Trading and Money Markets (which was part of the Global Financial Markets division), previously known as Position Management within the same Global Financial Markets division.
- (88) The relevant Rabobank traders assumed the function as market-makers for bonds traded at the relevant IGB desk on a voluntary basis.⁸⁴ According to Rabobank, there are no official designated market-makers for Euro-denominated SSA and Government Guaranteed bonds.⁸⁵
- (89) Rabobank is a bank with international operations, while it is a smaller player on the bonds market compared to Deutsche Bank. In this regard, Rabobank submits that it regards Deutsche Bank as a 'tier 1' market operator in the bonds market, consistent with its activity in the primary issuance market. On the other hand, Rabobank regards itself as a 'tier 2' market operator,⁸⁶ which specialises in particular sectors and geographic areas in line with its clients' needs.

3.2. The Parties' clientele

- (90) It is noted that Deutsche Bank is a multinational investment bank with clients all over the world. Throughout the infringement period, the main clients of Deutsche Bank's EUR SSA desk were usually central banks, pension funds, hedge funds, insurance companies and smaller financial institutions.⁸⁷ Rabobank has indicated that it has a particular focus on clients in the Netherlands, Belgium, Luxembourg and Germany. These include central banks, investment banks, other private banks, brokers, asset management companies, stockbrokers and pension funds. On the other hand, Rabobank has noted that Deutsche Bank would have a much broader client base. In any event, throughout the infringement period, Deutsche Bank and Rabobank had many common clients within the EEA.⁸⁸

⁸⁰ See [...].

⁸¹ During the infringement period, the IGB desk in London was designated within Rabobank to trade SSA and Government Guaranteed bonds in a market-making context. See [...].

⁸² See [...].

⁸³ In this regard, Rabobank explained '*that the IGB desk generally considered that SSA bonds comprised*' Supra-national bonds (whose issuers include EBRD, IBRD or World Bank, EIB and the Inter-American Development Bank 'IADB'), Agency bonds (such as CADES, KFW, BNG and Spain's Instituto de Credito Oficial 'ICO') and Sub-Sovereign bonds (such as those issued by the German Länder). The IGB Desk also occasionally traded Sovereign bonds issued in Euro by non-Eurozone countries such as Sweden or Denmark, as well as Government Guaranteed bonds and, to a lesser extent, Covered bonds.

See [...].

⁸⁴ See [...].

⁸⁵ See [...].

⁸⁶ See [...].

⁸⁷ See [...].

⁸⁸ See [...].

4. PROCEDURE

4.1. The Commission's investigation

- (91) On 30 May 2017, Deutsche Bank applied for immunity under Section II of the Notice on immunity from fines and reduction of fines in cartel cases ('Leniency Notice')⁸⁹ [...].⁹⁰
- (92) By decision of 18 March 2019, the Commission granted Deutsche Bank conditional immunity pursuant to point 8(a) of the Leniency Notice.⁹¹
- (93) On the same date, 18 March 2019, the Commission initiated proceedings pursuant to Article 2(1) of Regulation (EC) No 773/2004 against Deutsche Bank and Rabobank.
- (94) Deutsche Bank continued to cooperate and provided the Commission with further information and evidence relating to the cartel [...].⁹²
- (95) Rabobank cooperated and provided evidence in response to the Commission's request for information ('RFI') but did not apply for leniency. Rabobank inquired about the possibility of entering into a settlement procedure. Further to this and with Deutsche Bank's agreement, the Commission proposed the use of the settlement procedure as an appropriate way forward.
- (96) 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.
- (97) 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 .
- (98) Pursuant to Article 10(a) of Regulation (EC) No 773/2004, and point 5 of 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,⁹³ the Commission may decide at any time during the procedure to discontinue settlement discussions if it considers that procedural efficiencies are not likely to be achieved. In this case, given the circumstances described, the Commission concluded that it would have been procedurally inefficient to continue with the settlement procedure and therefore decided to revert to the ordinary procedure.
- (99) 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.⁹⁴
- (100) The Commission issued a Statement of Objections ('SO') on 6 December 2022,⁹⁵ following which the addressees of the SO were given access to the Commission's investigative file between 14 December 2022 and 22 December 2022.⁹⁶

⁸⁹ Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

⁹⁰ [...].

⁹¹ [...].

⁹² [...].

⁹³ 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).

⁹⁴ [...].

- (101) On 21 February 2023, Rabobank replied in writing to the objections raised. It also presented its views orally during an 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 is fully cooperating with the Commission. Deutsche Bank also reported during the oral hearing that the evidence it had provided in the context of its immunity application had been carefully vetted and analysed by individuals with specific market knowledge.

4.2. The evidence relied on

- (102) This Decision is based on: (i) contemporaneous records of communications between the relevant traders; (ii) [...]; and (iii) replies to requests for information, including annexes.
- (103) The relevant traders operated in a working environment in which a considerable volume of their communications was recorded. The main evidence relied on are various Bloomberg communications, such as email, instant messages and chatroom communications. As the contemporaneous evidence is characterised by a significant amount of industry jargon, shorthand and indirect references, this Decision also relies on explanations [...].

5. DESCRIPTION OF THE EVENTS

- (104) In this Section 5, the Commission first provides a general overview of the cartel, including its scope and general characteristics, followed by a chronological overview of the events taken into account for this Decision.
- (105) Section 5.2 sets out, in chronological order, emails, instant messages and chatroom communications between the parties that took place between 4 January 2006 and 24 February 2016 ('anticompetitive trader communications').

5.1. Overview of the cartel

5.1.1. Scope of the cartel

- (106) The conduct related to the trading of the Euro-denominated SSA and Government Guaranteed bonds in the secondary market.
- (107) The geographic scope of the cartel was EEA-wide.
- (108) The relevant traders were employed by the two parties to the infringement, which are both large multinational financial institutions doing business worldwide and with a physical presence in the EEA. The evidence in the Commission's file contains numerous references to customers located within the EEA.

5.1.2. General characteristics of the cartel

- (109) The conduct at issue pertains to ongoing bilateral exchanges of commercially sensitive information and coordination of trading and pricing strategies with respect to Euro-denominated SSA and Government Guaranteed bonds in the secondary market between London-based traders at Rabobank London and Frankfurt am Main-based traders at Deutsche Bank between 4 January 2006 and 24 February 2016.

⁹⁵ C(2022) 9153 final.

⁹⁶ Access to file was granted to Rabobank on 14 December 2022 by DVD and between 15 December 2022 and 22 December 2022 at EC premises (through the eLeniency tool). Access to file was granted to Deutsche Bank on 16 December 2022 by DVD only.

- (110) The conduct involved the [...] traders (namely, [Deutsche Bank employee] employed by Deutsche Bank and [Rabobank employee] employed by Rabobank) during the entire period of the infringement. On rare occasions, a very limited number of other traders (namely [Deutsche Bank employee] and [Deutsche Bank employee] at Deutsche Bank, and [Rabobank employee] at Rabobank) were also involved in bilateral discussions with either [Deutsche Bank employee] of Deutsche Bank or [Rabobank employee] of Rabobank. The relevant traders had exchanges at their respective desks (that is, the EUR SSA desk for Deutsche Bank and the IGB desk for Rabobank) in relation to the trade of Euro-denominated SSA and Government Guaranteed bonds.
- (111) The anticompetitive trader communications took place by means of Bloomberg emails, instant messages and chatroom communications. Instant messages and emails were unilateral messages or exchanges of messages on a specific subject (such as a trade, a bond, a client), while chatrooms were opened by the parties to allow an exchange of instant messages over a limited period of time, usually one day. The relevant traders entered into one-off chatrooms with each other on a regular basis. The chatrooms were created on the date and time as indicated in the evidence provided to the Commission.
- (112) During the infringement period, the parties traded respectively at their EUR SSA and IGB desks Euro-denominated SSA bonds, and to a lesser extent Euro-denominated Government Guaranteed bonds, with clients via the Bloomberg AllQ platform. AllQ allows clients to have access to indicative bid-ask prices of traders and to execute the trades directly with these traders. The relevant traders used AllQ to engage in anticompetitive behaviour: first, the parties exchanged commercially sensitive information; and second, the parties coordinated pricing and trading strategies with respect to specific counterparties and to the market in general. The conduct was facilitated by mutual shared access to screens on AllQ.
- (113) [...], given the specific qualities of Euro-denominated SSA bonds, for which bid-ask spreads⁹⁷ are wider and liquidity is lower (as compared, for example, with Euro-denominated Sovereign bonds), it was not common to provide such mutual shared access rights to competitors during the infringement period. This is because [...] if a trader knows the prices of another trader at a competing bank, he/she could use that information to undercut the other trader [...].⁹⁸
- (114) [...] Rabobank and Deutsche Bank mutually enabled access rights between the relevant traders in the infringement period.⁹⁹
- (115) Rabobank has stated that it does not believe that there is any standard practice in relation to granting access rights among market-making banks, but that it is rather a matter for each bank to determine itself, in line with its business. Rabobank has indicated that the approach of the relevant (IGB) desk throughout the infringement period was to generally grant access rights to other market participants, including market-makers, at least to view prices.¹⁰⁰
- (116) In general, the reason why traders may choose to exclude competitors from having access to their indicative prices is twofold: (i) knowing the prices of the competitors, traders can use that information to consistently undercut their competitors so that

⁹⁷ See recital (39).

⁹⁸ See [...].

⁹⁹ See [...].

¹⁰⁰ See [...].

they would miss out on trades;¹⁰¹ and (ii) traders trade with each other normally via brokers where the information is aggregated and anonymised and where the bid-ask spread is tighter than the spread shown on a D2C platform such as AllQ. The anonymity provided by brokers ensures that competitors do not obtain commercially sensitive information such as positions and trading intentions which can be used to their advantage.¹⁰² In addition, traders rarely trade with each other solely on the basis of prices quoted on a D2C platform such as AllQ. They choose instead to trade with each other via brokers who can provide them with additional market colour to help them assess the trade.¹⁰³ The benefits of trading via a broker are thus larger than trading with each other based on the indicative prices shown on AllQ screens.¹⁰⁴ A trader thus does not have to grant access to his/her AllQ prices/quotes to a competitor for them to enter into trade negotiations, as they would trade via brokers anyway. Granting access to his/her AllQ prices/quotes however facilitates the two competitors' coordination of their prices and trading strategies vis-à-vis potential counterparties.

- (117) The parties' anticompetitive conduct was twofold. First, the parties exchanged commercially sensitive information, such as prices, volumes, positions, current and future trading strategies, the counterparties' identities and their trading intentions, i.e. information that was not publicly available. This helped the parties reduce uncertainties inherent to the bond trading market in which risk and uncertainty management is one of the key parameters of competition and enabled them to coordinate their pricing and trading strategy. Rather than acting independently, this transparency helped the parties to position themselves better than their competitors in response to trading enquiries. For example, knowing the number of competitors that received the same RFQ allows the respective trader to determine the level of competition for that particular RFQ. In this case, up to six banks would simultaneously receive one and the same RFQ,¹⁰⁵ so an exchange of information between two of them greatly increased transparency to the detriment of the non-colluding competitors.
- (118) Second, the parties coordinated their trading strategies with respect to specific counterparties and to the market in general. For instance, the parties adjusted their price levels and trading strategy based on the exchange of commercially sensitive information, such as market intelligence generated by recent trades or ongoing trading enquiries. This exchange of commercially sensitive information also allowed the parties to identify specific counterparties, including arbitrage traders, and to coordinate their trading strategy towards these counterparties by, for example, removing their access rights to the parties' indicative prices on the AllQ screen. Any exchange of information in relation to a trading enquiry in combination with the identity of the counterparty and with pricing elements such as volumes, positions or prices before the deal with the counterparty is finalised may have an impact on the parties' decision on pricing with respect to that counterparty's enquiry. The matching of the parties' indicative prices on AllQ with the market intelligence generated by recent trades or ongoing trading enquiries served to align or coordinate the parties'

¹⁰¹ See [...].

¹⁰² Traders may choose first to agree between themselves on a trade and then settle via a broker, in which case they will know each other's identity.

¹⁰³ See recital (58).

¹⁰⁴ See recitals (60)-(61).

¹⁰⁵ Fermanian, J-D. *et al*, *o.c.*, page 17.

prices shown to counterparties and/or to warn each other when the other's indicative price on screen was too low or too high.

- (119) At times, the exchange of confidential information and the subsequent coordination was done in relation to the market more generally,¹⁰⁶ meaning it did not take place in the context of a specific identified counterparty or of a specific client's request for a quote.¹⁰⁷ This is the case, for example, with the exchanges of 3 April 2006,¹⁰⁸ 9 May 2006,¹⁰⁹ 20 June 2006,¹¹⁰ 13 September 2006,¹¹¹ 1 December 2006,¹¹² 20 March 2007,¹¹³ 16 July 2007,¹¹⁴ 1 October 2007,¹¹⁵ 27 November 2007,¹¹⁶ 2 October 2008,¹¹⁷ 24 February 2009,¹¹⁸ 9 July 2009,¹¹⁹ 10 July 2009,¹²⁰ 10 September 2009,¹²¹ 8 October 2009,¹²² 27 January 2010,¹²³ 22 March 2010,¹²⁴ 21 April 2010,¹²⁵ 4 May 2010,¹²⁶ 14 June 2010,¹²⁷ 16 November 2010,¹²⁸ 1 December 2010,¹²⁹ 3 February 2011,¹³⁰ 8 June 2011,¹³¹ 5 July 2011,¹³² 18 July 2011,¹³³ 4 August 2011,¹³⁴ 9 November 2011,¹³⁵ 30 November 2011,¹³⁶ 6 December 2012,¹³⁷ 15 February 2013,¹³⁸ 22 May 2013,¹³⁹ 19 August 2013,¹⁴⁰ 26 September 2013,¹⁴¹ 30 April 2014,¹⁴² 17 September 2014,¹⁴³ 26 November 2014,¹⁴⁴ 5 January 2016,¹⁴⁵ 24 February 2016.¹⁴⁶

106 Also referred to as 'the market in general'.
107 For further context see also recital (120), points (a) and (b).
108 [...].
109 [...].
110 [...].
111 [...].
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139 [...].
140 [...].
141 [...].
142 [...].
143 [...].
144 [...].

- (120) For analytical purposes, the cartel can therefore be described as one single and continuous conduct that had several elements that were interrelated and could be 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 rights¹⁴⁷ 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.
- (121) The different elements of the conduct described for analytical purposes were interrelated and often overlapping. For instance, coordination on prices or trading activity would inevitably be accompanied by an exchange of commercially sensitive information on respective pricing or trading intentions. Similarly, the identification of counterparties or the removal of their access rights was always done alongside the exchange of commercially sensitive information such as either the counterparties' or the parties own' prices, volumes or current and future trading intentions.
- (122) The relevant traders participated in all of these elements during the overall duration of the cartel, which lasted from 4 January 2006 to 24 February 2016. The overall aim of this conduct was to increase and/or preserve, that is to maximise, the parties' profit margins by restricting competition to the detriment of their customers and the rest of the market.
- (123) 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.

5.2. Chronological overview of events

- (124) The Commission's file and this Decision contain a significant amount of evidence of bilateral communications in the form of emails, instant messages and chatroom communications (the latter two forms referred to, hereinafter, as 'chats') between the relevant traders of Rabobank and Deutsche Bank that the Commission obtained [...] via requests for information.¹⁴⁸ Each communication, as identified by its date and reference to the corresponding document in the case file, is introduced by a short description and analysis of the part that is relevant for this Decision. This part of the communication is then reproduced in a table as an excerpt.

¹⁴⁵ [...].

¹⁴⁶ [...].

¹⁴⁷ See recital (52).

¹⁴⁸ See Section 4.2.

5.2.1. 2006

- (125) On **4 January 2006** [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank exchanged commercially sensitive information regarding their pricing levels and disclosed a counterparty's name ('[...]') which had '*backdoored*' between Rabobank and Deutsche Bank in the KfW 5.75 (that is, engaged in arbitrage trading as between the two banks) the previous week. [Rabobank employee] informed [Deutsche Bank employee] that [...] had just been hit by this counterparty again in this issue. [Rabobank employee] noted that Rabobank's bid was above Deutsche Bank's offer and asked if [Deutsche Bank employee] could tell [...] whether the counterparty had lifted Deutsche Bank again. [Deutsche Bank employee] replied that [...] would let [...] know '*as soon as they appear here again*'.¹⁴⁹

4 January 2006	
Rabobank ([Rabobank employee])	"GOOD MORNING, LAST WEEK [...] BACKDOORED BETWEEN US & YOU IN THE KfW 5.75 10 & [Deutsche Bank employee] SPOKE TO THEM IN VERY STRONG TERMS & TOLD THEM IT WAS NOT TO BE REPEATED. WE HAVE JUST BEEN HIT BY THEM IN THIS ISSUE ONCE AGAIN & NOTICE OUR BID IS ABOVE YOUR OFFER. WE ALSO WARNED THEM THAT IT COULD NOT HAPPEN AGAIN. WOULD YOU MIND TELLING ME PLEASE IF THEY DID LIFT YOU AGAIN. HOPE YOU DO NOT MIND ME ASKING. REGARDS [Rabobank employee]"
Deutsche Bank ('DB') ([Deutsche Bank employee])	"hi [Rabobank employee], I ll let you know as soon they appear here again - havent done any business in that issue this week rgds [Deutsche bank employee]"
Rabobank ([Rabobank employee])	"THANK YOU FOR YOUR HELP, IT IS MUCH APPRECIATED. REGARDS [Rabobank employee]"
DB ([Deutsche Bank employee])	"you wont believe it ...italian sales asking me now an offer in a single"
Rabobank ([Rabobank employee])	"THEY HIT US AT 111.19. NOT SURE HOWE GOT THAT HIGH. I THOUGHT IT WAS HIGH BUT WAS KEEN TO SEE IF [...] WERE UP TO THEIR TRICKS AGAIN"
DB ([Deutsche Bank employee])	"we dont have any ...i wont show an offer"
Rabobank ([Rabobank employee])	"THANK YOU FOR THE INFO"

¹⁴⁹

[...].

- (126) On **9 January 2006**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank followed up on the previous communication of 4 January 2006, coordinating their trading strategies. In reply to [Rabobank employee]’s previous request, [Deutsche Bank employee] wrote: *‘I’ll keep an eye on it. Apparently they went short as they tried to lift us but couldn’t. Sales then called and asked why...we said no bonds available, but that was after they hit you and after you talked to [Deutsche Bank employee].’*¹⁵⁰
- (127) The communication of 9 January 2006 shows that the parties coordinated their strategies with regards to a counterparty apparently involved in arbitrage, looking to buy bonds from Deutsche Bank at a lower price and sell them to Rabobank at a higher price (which they did). The counterparty was close to buying from Deutsche Bank (*‘they tried to lift us but couldn’t’*), forcing [Deutsche Bank employee] to give reassurances to [Rabobank employee] that [...] would let [...] know if the counterparty tried to buy bonds from them again. It appears that if that were to happen, [Rabobank employee] and [Deutsche Bank employee] would coordinate their bid and ask prices (*‘it could not happen again’* i.e. that Rabobank’s bid price was higher than Deutsche Bank’s ask price) for the respective counterparty.

9 January 2006	
DB ([Deutsche Bank employee])	“BACK ONLY TODAY, GOOD MORNING AND HAPPY NEW YEAR.I’LL KEEP AN EYE ON IT.APPARENTLY THEY WENT SHORT AS THEY TRIED TO LIFT US BUT COULDN’T.SALES THEN CALLED AND ASKED WHY...WE SAID NO BONDS AVAILABLE, BUT THAT WAS AFTER THEY HIT YOU AND AFTER YOU TALKED TO [Deutsche Bank employee]”
Rabobank ([Rabobank employee])	“WELCOME BACK. HAPPY NEW YEAR TO YOU & THANK YOU FOR THE INFO. LET’S KEEP IN TOUCH”

- (128) On **17 January 2006**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank exchanged commercially sensitive information about a counterparty ([...]) known to both and how they intended to deal with that counterparty in future. In reply to [Rabobank employee]’s information (*‘we were just hit in 1.5M by a semi pro from Lux but with Belgian roots’*), [Deutsche Bank employee] replied that [...] was not willing to treat this counterparty as a client as [...] considered them to be a market-maker. For that reason, [...] informed [Rabobank employee] that [...] had put *‘all [...] guys on pending’* and would choose what suited [...]. In reply, [Rabobank employee] agreed and added *‘I think we will have to be a lot more careful with them in future’*.¹⁵¹

17 January 2006	
Rabobank ([Rabobank employee])	“WE WERE JUST HIT IN 1.5M BY A SEMI PRO FROM LUX BUT WITH BELGIAN ROOTS, THER WERE BETTER BIDS. YOU LOOKED ALITTLE LOW BUT THEN AGAIN WE DIDN’T WANT THEM. HOPE WE ARE NOT BEING BROKED”

¹⁵⁰ [...].

¹⁵¹ [...].

DB ([Deutsche Bank employee])	"[...] HAS GOT 9.7 TO DO, [...], I DROPPED THEM"
Rabobank ([Rabobank employee])	"GOD TO KNOW, THANK YOU. DID THE BELGIAN ARM BY ANY CHANCE HIT YOU IN RENTEN 3.375 09?"
DB ([Deutsche Bank employee])	"TRIED TO, REJECTED [...]"
Rabobank ([Rabobank employee])	"I THINK YOU HAVE THE RIGHT APPROACH. I HAVE NO IDEA WHY WE DO THESE TRADES OR GIVE THEM THE LIQUIDITY."
DB ([Deutsche Bank employee])	"THEY ARE BIG, HAVE AN OWN TRADING BOOK AND I AM NOT WILLING TO TREAT THEM AS A CLIENT.THEY ARE MARKET MAKER ON MTS AND IF THE BRUXELLES OFFICE CAN#T TRDAE THEY TRY LUXEMBOURG.I HAVE PUT ALL [...] GUYS ON PENDING WITH MY AND THEN I CHOSE WHAT SUITS.HARD ENOUGH TO MAKE MONEY, DON'T HAVE TO WASTE IT ON THEM"
Rabobank ([Rabobank employee])	"YOU ARE ABSOLUTLEY RIGHT OF COURSE. THANK YOU I THINK WE WILL HAVE TO BE A LOT MORE CAREFUL WITH THEM IN FUTURE"

- (129) The following is an email exchange between [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank, dated **29 March 2006**. In this exchange, the parties discussed a specific trade, which just took place with a Spanish counterparty. The information exchanged shows that they believed the client was making a trade with a view to arbitrage (*'they are on a final warning with us'*) and concludes with [Deutsche Bank employee] suggesting: *'same procedure as every time?? Should I drop them a nice little note as a warning?'*.¹⁵²
- (130) The exchange of 29 March 2006 shows that the parties exchanged commercially sensitive information with each other, including a counterparty's identity (*'did you by any chance get lifted in KFW 5 08 by a Spanish a/c? Now called [...] but were [...]'*), volumes and prices sold to a counterparty (*'correct 1mio [million] they bought 103.45'*) and coordinated actively together against those counterparties they suspected of engaging in arbitrage. It also confirms that they had initiated a common procedure to be used against such traders, which involved sending a warning to the 'offending' party. Moreover, in this exchange, [Deutsche Bank employee] provides to [Rabobank employee] *'for info'* the warning message [...] sent to the Spanish counterparty concerned.

29 March 2006	
Rabobank ([Rabobank employee])	"GOOD MORNING. DID YOU BY ANY CHANCE JUST GET LIFTED IN KFW 5 08 BY A SPANISH A/C? NOW CALLED [...] BUT WERE [...]. THEY ARE ON A FINAL WARNING

¹⁵² [...].

	WITH US.”
DB ([Deutsche Bank employee])	“CORRECT 1MIO THEY BOUGHT 103.45”
DB ([Deutsche Bank employee])	“AND ANOTHER ½MIO [...] BOUGHT JUST NOW AT 103.45”
Rabobank ([Rabobank employee])	“FANTASTIC, THANK YOU. THEY HIT US AT 46 IN 1½M. THEY HAVE GONE NOT THE FIRST TIME WE HAVE CAUGHT THEM OUT”
DB ([Deutsche Bank employee])	“SAME PROCEDURE AS EVERY TIME??SHOULD I DROP THEM A NICE LITTLE NOTE AS A WARNING?”
Rabobank ([Rabobank employee])	“THEY ARE SO STUPID, THANK YOU. I REALLY APPRECIATE YOUR COOPERATION”
DB ([Deutsche Bank employee])	“IS IT [...]?”
Rabobank ([Rabobank employee])	“THAT'S THE ONE. [...] DID THE SAME WITH A TSCO 2010 & MS & WE TOLD [...] NOT TO DO IT AGAIN. WE WERE TOO KIND”
DB ([Deutsche Bank employee])	“FOR INFO HI, IF I AM NOT ENTIRELY WRONG YOU JUST LIFTED ME TWICE IN KFW 5 2008 IN €. ASSUMING YOU ARE A CLIENT I HAVN'T GOT A PROBLEM WITH THAT, BUT FINDING OUT THAT YOU SOLD THE BONDS ON FOR A TICK TO RABOBANK LONDON IS UNBELIEVABLE.THOUGHT YOU HAVE GOT END INVERSTORS AND ARE NOT PAYED TO ARBITRAGE PEOPLE WHO PROVIDE YOU WITH PRICES.IT'S NONE OF MY BUSINESS TO CARE HOW YOU MAKE YOUR MONEY, BUT DB WILL NOT SUPPORT SUCH A BEHAVIOUR. AS I REALIZED IT FOR THE FIRST TIME TODAY, THIS MESSAGE IS JUST CONSIDERED AS BEING A WARNING. IF IT HAPPENS AGAIN I GET YOU OFF MY ELECTRONICAL SYSTEM. AND DON'T TRY TO ARBITRAGE ME WITH A DIFFERENT COUNTERPART, AS I SPEAK TO MOST OF THEM. I HOPE THIS MESSAGE IS CLEAR”
Rabobank ([Rabobank employee])	“CAN YOU TELL ME WHAT TIME THE 2 TRADES WERE PLEASE AS THEY ARE SAYING IT WAS A CLIENT ORDER THAT THEY HAD TO REVERSE.”
DB ([Deutsche Bank employee])	“11.09 1MIO 11.15 ½MIO LONDON TIME”
Rabobank ([Rabobank employee])	“WE WERE 11.07, THANK YOU. THEY SAID IT WAS 45 MINUTES.”

DB ([Deutsche Bank employee])	“THEY HAVN'T PICKED UP MY MESSAGE”
Rabobank ([Rabobank employee])	“I JUST READ IT, VERY GOOD. I ALWAYS START WITH GOOD MORNING/A'NOON ON THE TOP LINE SO THEY THINK IT MIGHT BE A POLITE ENQUIRY, THEN ON THE 2ND LINE COMES THE REAL MESSAGE”

- (131) On **31 March 2006**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to enquire whether [...] had been lifted in 1 million KfW 5 08 by an Israeli account. [...] informed [...] that [...] intended to remove that account from the system at Rabobank. [Deutsche Bank employee] confirmed that [...] had been lifted at 103.39 for one million. Following this, [Rabobank employee] identified the counterparty as [...] at [...] or [...]. [Deutsche Bank employee] informed [Rabobank employee] that [...] would drop [...] the ‘*same message than to our other friends*’.¹⁵³
- (132) The context of the information exchange indicates that the parties had a system in place to monitor and exclude traders such as [...], whom they suspected of arbitrage trading. The coordination of the trading strategies towards this specific counterparty by removing their access rights took place alongside the exchange of commercially sensitive information such as the counterparty’s identity (‘*Israeli a/c*’, ‘[...] at [...] or [...] as we have them set up’), volumes and prices (‘*103.39 1mio*’, ‘*I was hit at 103.41*’).

31 March 2006	
Rabobank ([Rabobank employee])	“EARLY START TODAY. WOULD YOU MIND TELLING ME PLEASE IF YOU WERE JUST LIFTED IN 1 M KFW 5 08 BY AN ISRAELI A/C. THIS IS PERHAPS THE WORST A/C ON OUR SYSTEM, THEY NEVER DO A GENUINE TRADE & I AM VERY KEEN TO REMOVE THIS GUY. REGARDS [Rabobank employee]”
DB ([Deutsche Bank employee])	“I HAVE BEEN INDEED, 103.39 1MIO”
Rabobank ([Rabobank employee])	“THANK YOU VERY MUCH [...] AT [...] OR [...] AS WE HAVE THEM SET UP. I WAS HIT AT 103.41. THIS WAS THE SCEOND BACKWARDATION OF THE DAY [...] TRIED TO TRADE ON”
DB ([Deutsche Bank employee])	“OK, I WILL DROP [...] THE SAME MSG THAN TO OUR OTHER FRIENDS.I DIN'T SEE THE COUNTERPART AS IT GOT BOOKED B2B DB LONDON”

- (133) On **3 April 2006**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to enquire whether [...] had just got lifted in 2 million Renten 3% 10, as [...] noted that [...] pricing seemed low as compared to Rabobank’s.

¹⁵³ [...].

[Deutsche Bank employee] replied that [...] considered [...] pricing to be very high and that [...] was tradable as shown on Bloomberg screen: *'I am tradable as shown on AllQ'*. [Deutsche Bank employee] then confirmed that [...] had not been lifted yet but that it was [...] who traded on [...]. [...] also informed [...] that [...] lost four basis points in Bunds but that [...] managed to run them to swap. In reply, [Rabobank employee] thanked [...] for the information and told [...] that [...] had reduced Rabobank's price: *'marked it down a touch, but kept it above yours'*.¹⁵⁴

- (134) The communication of 3 April 2006 shows that the parties shared commercially sensitive information relating to prices (*'you seemed low compared to us'*, *'I think you are very high'*, *'I am tradable as shown on AllQ'*), as well as commercially sensitive information about recent trades (*'havn't been lifted but it was me who traded at [...]'*). Rabobank also adjusted its prices on the basis of the information exchanged between the two parties (*'marked it down a touch'*).

3 April 2006	
Rabobank ([Rabobank employee])	"Hi [Deutsche Bank employee] Dont mind me asking if you just got lifted in 2m Renten 3% 10? You seem low compared to us..."
DB ([Deutsche Bank employee])	"I THINK YOU ARE VERY HIGH. CHECKED [Rabobank employee] ALREADY THIS AM, BUT AS [...] WAS OUT AND I DINT KNOW THE NAME OF THE GUY SHOWING UP ON [...] BBG I LEFT IT. I AM TRADABLE AS SHOWN ON ALLQ.BUND/SWAP SPREAD IS PUSHING OUT EVERYTHING. SINCE I GOT THE POSITION IT LOST 4 BP TO BUNDS BUT LUCKY I RUN THEM TO SWAP. HAVN'T BEEN LIFTED BUT IT WAS ME WHO TRADED AT [...]"
Rabobank ([Rabobank employee])	"Fair enough - thanks for the info. Marked it down a touch, but kept it above yours. Good hedge vs swaps!"
DB ([Deutsche Bank employee])	"IF I ONLY WOULD HAVE EVERYTHING VS SWAPS...."
Rabobank ([Rabobank employee])	"Amzing, we all knwew they would widen out at some stage, and when it happens, we are only partially covered!"

- (135) On **28 April 2006**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank discussed respective ongoing trades with a *'Dutch client'* (*'[...]'*) and how to deal with this *'top client'*. [Rabobank employee] informed [Deutsche Bank employee] in real time that their *'Dutch friend'* had just sold them some EIB 20 at a price which was one cent above Deutsche Bank's offer and that [...] would expect this client to *'lift'* Deutsche Bank. [Rabobank employee] then informed [...] that [...] was still short 10 million, indicating that [...] was willing to cover [...] short position by trading with that client. Both Rabobank and Deutsche Bank confirmed that they were being asked to offer simultaneously (*'asking us now'*, *'asking for the offer now'*). Finally, [Rabobank employee] confirmed that the client

¹⁵⁴

[...].

made a '08 bid' for 10 million to Rabobank, and [Deutsche Bank employee] replied that the client had lifted [...] 'at .02 just now'.¹⁵⁵

28 April 2006	
Rabobank ([Rabobank employee])	"GOOD MORNING. FYI WE ARE STILL LOOKING FOR THE EIB 20'S. WE JUST BT 10M FROM A DUTCH 'CLIENT' BUT WE HAD TO PAY .81. THIS IS 1 CT ABOVE YOUR OFFER SO IT WOULD NOT SURPRISE ME IF THEY EITHER LIFT YOU NOW OR INDEED WERE THE A/C WHO BT FROM YOU YESTERDAY. WE ARE STILL LOOKING FOR 20M"
DB ([Deutsche Bank employee])	"YOU BOUGHT THEM FROM [...], [...] JUST TRIES TO LIFT ME ON TRADEWEB"
Rabobank ([Rabobank employee])	"THAT IS INTERESTING"
Rabobank ([Rabobank employee])	"I HOPE YOU APPRECIATE THAT THE CLIENT YOU MENTIONED IS ONE I COULD NOT COMMENT ON. NORMALLY I AM VERY HAPPY TO DO SO BUT THEY ARE 'ONE OF OUR TOP CLIENTS'."
DB ([Deutsche Bank employee])	(...) "EXCUSE MY EXPRESSION SPIV.AS [...] HAS GOT TRADEWEB [...] IS MAKING NICE MARGIN ON THE BACK OF EVERYBODY.ON THE OTHER HAND [...] DOES GOOD STRUCTURED TRADES ETC SO WE CAN'T BAN [...]. THANKS FOR LETTING ME KNOW ANYWAY"
Rabobank ([Rabobank employee])	"I AGREE WITH WHAT YOU SAY. AT LEAST YOU KNOW WHAT YOU GET WHEN YOU DEAL WITH [...]. WE ALWAYS THINK IF WE DEAL STRAIGHT AWAY WE HAVE MADE A WRONG PRICE"
Rabobank ([Rabobank employee])	"OUR DUTCH FRIEND JUST SOLD US SOME EIB 20 FYI"
DB ([Deutsche Bank employee])	"KEEP YOU UPDATED,TKS"
Rabobank ([Rabobank employee])	"DO YOU TRADE TEH Q 16S AS WELL. THAT WAS ANOTHER POPULAR QUESTION WITH [...] YESTERDAY."
DB ([Deutsche Bank employee])	"TRUE AND CRH 17. [...] DIDN#T HIT ME ON QUEBEC AS I PULLED AFTER THE THIRD TIME BUT I TOOK THE CRH"
Rabobank ([Rabobank employee])	"WE SOLD OUR Q @ +28 IN THE MORNING TO [...] & THEY SAID THEY WERE BUYERS OF LARGE SIZE, [...] CAME ON A FEW MINUTES LATER & ASKED FOR THE OFFER THEN HIT US LATER IN THE DAY. [...] ALWAYS ASKS A TWO-

¹⁵⁵

[...].

	WAY PRICE & THEN ASKS FOR AN IMPROVEMENT WHICH WE ARE ALWAYS UNDER PRESSURE TO SHOW . BNG 15 WAS THE QUESTION THIS MORNING BUT NOT YOURS. WE DO NOT TRADE CRH 17. WE ARE LONG Q 16 FYI”
DB ([Deutsche Bank employee])	“OK, I KEEP IT IN MIND, WITH US IT'S NEVER TWO WAY AS [...] TRADES VIA TRADEWEB. IF IT'S DIRECT WE REFUSE TO MAKE A TWO WAY TO [...]”
DB ([Deutsche Bank employee])	“THERE [...] COMES WANTS TO SELL 10MIO EIB 20”
Rabobank ([Rabobank employee])	“WE ARE STILL SHORT 10M”
DB ([Deutsche Bank employee])	“I LETT YOU KNOW”
Rabobank ([Rabobank employee])	“ASKING US NOW”
DB ([Deutsche Bank employee])	“HERE [...] ASKING FOR THE OFFER NOW”
Rabobank ([Rabobank employee])	“08 BID FOR 10M HERE”
Rabobank ([Rabobank employee])	“[...] WAS BIDDING US 08 FOR 10M”
DB ([Deutsche Bank employee])	“LIFTED ME AT .02 JUST NOW”
Rabobank ([Rabobank employee])	“THANK YOU. MKT FELL JUST AFTER [...] ASKED US.”

- (136) On **9 May 2006**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank of Deutsche Bank’s live position on a trade (*‘at [...]’*) and then told [...] that: *‘you are low on LBANK 16’*. [Rabobank employee] replied: *‘much appreciated, thank you. Don’t trade it very often, only when we have t[h]e wrong price in fact’*.¹⁵⁶
- (137) The fact that Deutsche Bank considered Rabobank’s indicative price as low may have come from its own market intelligence, such as customer enquiries for those specific bonds or recent trades. The communication of 9 May 2006 shows that the relevant traders protected each other’s trading interests by exchanging inside information about their level of pricing.

9 May 2006	
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¹⁵⁶ [...].

DB ([Deutsche Bank employee])	“IS IT YOU INVOLVED IN THE QUEBEC 16 PRICE?”
Rabobank ([Rabobank employee])	“NOT TODAY. I WAS A SELLER LAST WEEK AS A RESULT OF MAKING THE WRONG PRICE TO OUR DUTCH CLIENT BUT FLAT”
DB ([Deutsche Bank employee])	“OK, WE ARE 27â...»/27 TWO WAY AT [...], ME ON THE BID. IF IT WOULD HAVE BEEN YOU I WOULD HAVE BOUGHT THEM”
Rabobank ([Rabobank employee])	“THANKS FOR THE INFO.”
DB ([Deutsche Bank employee])	“YOU ARE LOW ON LBANK 16”
Rabobank ([Rabobank employee])	“MUCH APPRECIATED, THANK YOU. DON'T TRADE IT VERY OFTEN, ONLY WHEN WE HAVE THE WRONG PRICE IN FACT”

- (138) On **30 May 2006**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank exchanged commercially sensitive information about a client enquiry, including terms offered to the client who had approached both traders. More specifically, [Rabobank employee] and [Deutsche Bank employee] both confirmed that they had been asked to bid for KfW bonds maturing in 2021 by a Dutch client. [Rabobank employee] indicated that the client wanted to sell the KfW against the new RABO 15 (*‘[...] is looking to sell them against a new rabo 15 yr we are launching’*), while [Deutsche Bank employee] presumed that the same client intended to sell them against GPPS.¹⁵⁷ [Deutsche Bank employee] also indicated the volume that the Dutch client had asked them to bid for: *‘we have been asked to bid for 25mio just a minute ago’*.¹⁵⁸

30 May 2006	
Rabobank ([Rabobank employee])	“FYI I MAY BE A SELLER OF 50M KFW 21. YOU COULD WELL HAVE SEEN THE ENQUIRY FROM A DUTCH CLIENT. [...] IS LOOKING TO SELL THEM AGAINST A NEW RABO 15YR WE ARE LAUNCHING. 1”
DB ([Deutsche Bank employee])	“THANKS FOR THE INFO, WE HAVE BEEN ASKED TO BID FOR 25MIO JUST A MINUTE AGO, THOUGHT [...] SWITCHES INTO NEW GPPS”
Rabobank ([Rabobank employee])	“[...] SAID [...] WOULD NOT BUY OUR RABO AS [...] PREFERRED THE GPPS BUT THEN ASKED US TO BID ON THE KFW, WHICH [...] SAID WAS AGAINST THE RABO BUT COULD BE AGAINST THE GPPS & HOPED WE WOULD PAY

¹⁵⁷ German Postal Pensions Securitization.

¹⁵⁸ [...].

	UP, WHO KNOWS. FUN AND GAMES.”
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- (139) On **14 June 2006**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank exchanged commercially sensitive information such as prices, spreads and volumes (*‘we are bidding +26’, ‘we showed 13’, 13¼ offered to you in 10mio in spread’*) in the context of a client enquiry on KfW bonds. [Rabobank employee] informed [Deutsche Bank employee] that a client known to both of them (the *‘favourite Dutch client’*) was looking to buy 10 million of KfW 21 bonds in exchange for selling the RABO 21 bonds (*‘[...] is buying them on a switch out of the RABO 21’*). [Rabobank employee] disclosed [...] bid price for the RABO 21 over the same benchmark (*‘we are bidding +26 for the Rabo over the same bmark’*), as well as [...] ask price for KfW (*‘we showed 13 but as ever [...] wants better’*). [Rabobank employee] asked [Deutsche Bank employee] whether it suited [...] to offer 10 million of KfW 21 on spread. In response, Deutsche Bank offered the same ask price for the same volume as Rabobank offered (*‘13¼ offered to you in 10mio in spread’*).¹⁵⁹

14 June 2006	
Rabobank ([Rabobank employee])	“OUR FAVOURITE DUTCH CLIENT IS LOOKING FOR 10M KFW 21. [...] IS BUYING THEM ON A SWITCH OUT OF THE RABO 21. WE ARE BIDDING +26 FOR THE RABO OVER THE SAME BMARK. DOES IT SUIT YOU TO OFFER 10M KFW ON SPREAD PLEASE. WE SHOWED 13 BUT AS EVER [...] WANTS BETTTER”
DB ([Deutsche Bank employee])	“13¼ OFFERED TO YOU IN 10MIO IN SPREAD”
Rabobank ([Rabobank employee])	“THANK YOU I WILL TRY IT”
Rabobank ([Rabobank employee])	“JUST HEARD [...] DEALT AWAY 'ON [...] TERMS'. THANK YOU FOR TRYING”

- (140) On **20 June 2006**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank exchanged commercially sensitive information about a recent trade activity and position. [Deutsche Bank employee] warned [Rabobank employee] to *‘watch ASFING 15, somebody wanted to lift me in 10mio at .77’*. [...] thanked [...] for the warning as [...] *‘just had french broker ask & [...] just tried to lift us. much appreciated’*. [...] added that: *‘fyi we are long the ASFINAG 13's (12m) & just showed an offer to [...]’*, to which [Deutsche Bank employee] replied: *‘it's me on the bid but am long too’*.¹⁶⁰

20 June 2006	
DB ([Deutsche Bank employee])	“WATCH ASFING 15, SOMEBODY WANTED TO LIFT ME IN 10MIO AT .77”
Rabobank ([Rabobank employee])	“THANK YOU. JUST HAD FRENCH BROKER ASK & [...]

¹⁵⁹ [...].

¹⁶⁰ [...].

employee])	JUST TRIED TO LIFT US. MUCH APPRECIATED. FYI WE ARE LONG THE ASFINAG 13'S (12M) & JUST SHOWED AN OFFER TO [...]"
DB ([Deutsche Bank employee])	"IT'S ME ON THE BID BUT AM LONG TOO, ONLY A COUPLE"
Rabobank ([Rabobank employee])	"GOOD TO KNOW, WE DO VERY LITTLE IN THESE & WHENEVER WE DO IT SEEMS TO COST US MONEY."

- (141) On **13 July 2006**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to exchange commercially sensitive information in relation to certain IBRD bonds, including their bid prices and positions. [...] told [Deutsche Bank employee] that [...] was being asked to bid for those bonds and asked [...] whether [...] had any of those bonds. [Deutsche Bank employee] confirmed that their bid price for those bonds was 60.22. [Rabobank employee] replied: *'I was paying better – but just wanted to make sure that they weren't your bonds!'*. In response, [Deutsche Bank employee] informed [Rabobank employee] that [...] was long and that nobody had asked [...] for an offer. Finally, [...] informed [...] that: *'I showed 60.44 – they offered at 48'*, and [Deutsche Bank employee] thanked [Rabobank employee] for the information.¹⁶¹

13 July 2006	
Rabobank ([Rabobank employee])	<p>**** DES IBRD CPN MTY 3/26/18 II106203</p> <p>Have any of these?</p> <p>Being asked to bid .."</p>
DB ([Deutsche Bank employee])	"60.22 BID"
Rabobank ([Rabobank employee])	"I was paying better - just wanted to make sure that they weren't your bonds!"
DB ([Deutsche Bank employee])	"MAYBE I AM LONG BUT NOBODY ASKED ME FOR AN OFFER"
Rabobank ([Rabobank employee])	"I showed 60.44 - they offered at 48"
DB ([Deutsche Bank employee])	"TKS FOR INFO"

- (142) On **3 August 2006**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank exchanged commercially sensitive information in relation to a counterparty's identity and their pricing and trading strategy towards this counterparty. [Rabobank employee] noted: *'fyi we are asked a quote by a large Dutch a/c in the KFW 21, we do very little in this & I often speak to [Deutsche Bank employee] about this a/c as they always ask you as well. We made a two-way price &*

¹⁶¹ [...].

they said they were a buyer but we were very high on screen'. [Deutsche Bank employee] replied indicating that: 'got you, I think we have seen it, its one of [Deutsche bank employee] bonds not sure what [...] did...but I guess they bought some of us'.¹⁶²

3 August 2006	
Rabobank ([Rabobank employee])	"(...) fyi we are asked a quote by a large Dutch a/c in the KFW 21, we do very little in this & I often speak to [Deutsche Bank employee] about this a/c as they always ask you as well. We made a two-way price & they said they were a buyer but we were very high on screen."
DB ([Deutsche Bank employee])	"GOT YOU, I THINK WE HAVE SEEN IT , ITS ONE OF [Deutsche Bank employee] BONDS NOT SURE SURE WHAT [...] DID ... BUT I GUESS THEY BOUGHT SOME OF US"

- (143) On **13 September 2006**, [Deutsche Bank employee] of Deutsche Bank sent an email to [Rabobank employee] of Rabobank alerting [...] that *'I would lower my price in EIB 10/8.. a tap is coming tomorrow'*. Here [Deutsche Bank employee] warned [Rabobank employee] that a tap¹⁶³ was coming which might increase the volume of EIB 10/8 bonds in the market and consequently have an impact on the prices for those bonds. The communication shows that the parties used internal market intelligence to warn each other to lower their price in view of the coming tap.¹⁶⁴

13 September 2006	
DB ([Deutsche Bank employee]) to Rabobank ([Rabobank employee])	"[Rabobank employee], I would lower my price in EIB 10/8 .. a tap is coming tomorrow"

- (144) On **1 December 2006**, [Rabobank employee] of Rabobank disclosed to [Deutsche Bank employee] of Deutsche Bank that Rabobank was a buyer of Dutch bonds BNG 16: *'BNG 16 you are a good offer – we are a buyer of 2.7 if you are a indeed a seller'*. [...] checked with Deutsche Bank whether the offer on screen for BNG 16 belonged to Deutsche Bank: *'not sure if this is indeed yours as I see [Deutsche Bank employee] is away'*. [Deutsche Bank employee], noted: *'thanks [Rabobank employee]... price was wrong'*, suggesting [...] adjusted the price. Rabobank replied: *'you are welcome'*.¹⁶⁵

1 December 2006	
Rabobank ([Rabobank employee])	"BNG 16 YOU ARE A GOOD OFFER - WE ARE BUYER OF 2.7 IF YOU ARE INDEED A SELLER. NOT SURE IF THIS IS INDEED YOURS AS I SEE [Deutsche Bank employee] IS

¹⁶² [...].

¹⁶³ A tap is the reopening of the issue of an existing bond by bringing additional volume of that bond on the market.

¹⁶⁴ [...].

¹⁶⁵ [...].

	AWAY”
DB ([Deutsche Bank employee])	“thanks [Rabobank employee] ... price was wrong”
Rabobank ([Rabobank employee])	“YOU ARE WELCOME”

5.2.2. 2007

- (145) On **25 January 2007**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank exchanged commercially sensitive information in relation to the volumes and the actual level of price they intended to offer concerning CADES 12 bonds. Knowing that [Deutsche Bank employee] was looking for those bonds, [Rabobank employee] revealed the volume of bonds [...] could offer: *‘fyi I own just 2.253’* and the price at which [...] was willing to offer them: *‘I can offer at 106.44, a bit more than you were looking to pay’*. [...] then added that [...] *‘was just asked by an austrian bk to offer 10m at my screen price, 106.48’*, to which [Deutsche Bank employee] replied: *‘so I guess you want to keep it then’*. [Rabobank employee] then added that [...] would prefer to sell them to Deutsche Bank: *‘I would sell to you if it helps at .44...I would prefer to sell it to you’*, further indicating that: *‘[Deutsche Bank employee] has always helped us’*.¹⁶⁶
- (146) Knowing that Deutsche Bank was looking for CADES 12 bonds, [Rabobank employee] was willing to sell to Deutsche Bank a certain volume of those bonds below Rabobank’s screen price (though at a price slightly higher than the price that Deutsche Bank had planned to pay), despite the request of an Austrian Bank to buy the CADES 12 bonds at Rabobank’s screen price. The exchange of 25 January 2007 therefore shows that before executing a transaction, the parties first tried to protect each other’s trading interests to the detriment of the counterparty.

25 January 2007	
Rabobank ([Rabobank employee])	“I WAS READING YOUR COMMENTARY & NOTICED YOU ARE LOOKING FOR CADES 12. FYI I OWN JUST 2.253 I CAN OFFER AT 106.44, A BIT MORE THAN YOU WERE LOOKING TO PAY. I CAN SEE A 106.57 BID FOR 25M FROM A FRENCH HOUSE BUT I HAVE MY DOUBTS”
Rabobank ([Rabobank employee])	“FYI I WAS JUST ASKED BY AN AUSTRIAN BK TO OFFER 10M AT MY SCREEN PRICE, 106.48”
DB ([Deutsche Bank employee])	“Hi [Rabobank employee], I just came back from lunch ...Yes, indeed ...I would look for some / Pls let me know if u can still show them ... Thanks [Deutsche bank employee]”
DB ([Deutsche Bank employee])	“so I guess u want to keep it then”
Rabobank ([Rabobank employee])	“I WOULD SELL TO YOU IF IT HELPS AT .44. IT IS ONLY 2M. I WOULD PREFER TO SELL TO YOU. I TOLD THE

¹⁶⁶ [...].

employee])	OTHER BUYER I COULDN'T OFFER."
DB ([Deutsche Bank employee])	"I would love to take them there ...Thanks a lot"
Rabobank ([Rabobank employee])	"YOU ARE WELCOME, [Deutsche Bank employee] HAS ALWAYS HELPED US. I DID SEE YOU WERE OFFERING SALES CREDITS & [...] FORWARDED THE MAIL, SHOULD [...] BOOK THE TICKET? I DO NOT WANT TO UPSET [...]"
DB ([Deutsche Bank employee])	"of course ... thanks again"

- (147) On **20 March 2007**, [Deutsche Bank employee] of Deutsche Bank warned [Rabobank employee] of Rabobank that their prices for ASFING 09 were too high: *'hi, you seem a touch high in Asfing 09, just got hit in case you need some'*. That communication is another example of the parties protecting each other's trading interest by exchanging inside information about their level of pricing.¹⁶⁷

20 March 2007	
DB ([Deutsche Bank employee])	"HI, YOU SEEM A TOUCH HIGH IN ASFING 09, JUST GOT HIT IN CASE YOU NEED SOME."
Rabobank ([Rabobank employee])	"Thanks - our prices are a mess.."

- (148) On **30 March 2007**, [Rabobank employee] of Rabobank sent an email to [Deutsche Bank employee] of Deutsche Bank saying: 'do you trade the nedwbk 3.375 16 please? We have just been hit twice in 2m each time by what i thought was a good swiss a/c. i did see that your offer, in 2m, was a couple of cents below our bid'. [Deutsche Bank employee] confirmed that [...] 'didn't have the bonds and just pulled the offer, got lifted at 94.00, 94.01, 94.00 each in 2mio'. [Rabobank employee] asked whether the counterparty's name was [...] as Rabobank was hit by [...] twice, each time for 2 million: '[...] by any chance? They hit us twice in 2m each time'. [Deutsche Bank employee] confirmed: 'Yes, [...], I am already typing to them. Where did you buy them If I may ask'. [Rabobank employee] replied that [...] was happy to pass the information, and communicated the price at which [...] was hit, adding that: 'if you cancel yours we will hold them to ours'. [Deutsche Bank employee] replied: 'I just told [...] what you said that I thought they were a decent house, and told [...] over to [...] if [...]wants to stick to [...] trades or not'.¹⁶⁸

- (149) Rabobank and Deutsche Bank continued their conversation about the counterparty [...], including the likelihood that this counterparty was suspected of arbitrage trading. [Deutsche Bank employee] and [Rabobank employee] exchanged the messages that they had each sent to [...]. [Rabobank employee] also indicated in [...] message to [...] that Rabobank (like Deutsche Bank) did not like clients to 'abuse'

¹⁶⁷ [...].

¹⁶⁸ [...].

their system and that [...] considered [...]’s activity that morning to be ‘*suspicious*’. [...] forwarded the client’s reply to [Deutsche Bank employee].¹⁶⁹

- (150) The communication of 30 March 2007 shows how the parties monitored, discussed and coordinated the trading activity (‘*if you cancel yours we will hold them to ours*’) of counterparties suspected of arbitrage trading. The relevant traders exchanged commercially sensitive information about recent transactions, prices and volumes (‘*got lifted at 94.00, 94.01, 94.00 each in 2mio*’, ‘*They hit us twice in 2m each time*’ and ‘*they hit us at 94.03 10.37 UK time 04 10.42*’), as well as the client’s identity (‘[...] *by any chance?*’).

30 March 2007	
Rabobank ([Rabobank employee])	“DO YOU TRADE THE NEDWBK 3.375 16 PLEASE? WE HAVE JUST BEEN HIT TWICE IN 2M EACH TIME BY WHAT I THOUGHT WAS A GOOD SWISS A/C. I DID SEE THAT YOUR OFFER, IN 2M, WAS A COUPLE OF CENTS BELOW OUR BID. I WOULD HATE TO THINK WE WERE BEING BROKED HOPE YOU ARE WELL, [Rabobank employee]”
DB ([Deutsche Bank employee])	“LOOKS LIKE. I DIDN'T HAVE THE BONDS AND JUST PULLED THE OFFER, G OT LIFTED AT 94.00,94.01, 94.00 EACH IN 2MIO”
Rabobank ([Rabobank employee])	“[...] BY ANY CHANCE? THEY HIT US TWICE IN 2M EACH TIME.”
DB ([Deutsche Bank employee])	“YES [...], I AM ALREADY TYPING TO THEM.WHERE DID YOU BUY THEM I F I MAY ASK”
Rabobank ([Rabobank employee])	“I AM ALWAYS VERY HAPPY TO PASS ON THIS INFO THEY HIT US AT 94.03 10.37 UK TIME 0410.42 [...] WE TRADED WITH”
Rabobank ([Rabobank employee])	“IF YOU CANCEL YOURS WE WILL HOLD THEM TO OURS”
DB ([Deutsche Bank employee])	“I JUST TOLD [...] WHAT YOU SAID THAT I THOUGHT THEY WERE A DECENT HOUSE, AND TOLD [...] OVER TO [...] IF [...] WANTS TO STICK TO [...] TRAD ES OR NOT.I WROTE IT IN FRENCH SO NO HELP IF I FORWARD IT TO YOU OR DO YOU SPEAK FRENCH?”
DB ([Deutsche Bank employee])	“SAME GUY WITH ME”
Rabobank ([Rabobank employee])	“I SPEAK A LITTLE & [Rabobank employee] MY COLLEAGUE IS BILINGUAL”

¹⁶⁹ [...].

DB ([Deutsche Bank employee])	<p>“ BONJOUR, JUSQU'A AUJOURD'HUI JE PENSAIS QUE [...] SOIT UNE MAISON AVEC DE LA CLIENTELE ET UN CLIENT QUE CHACUN AIME AVOIR COMME CONTRE PARTIE.APRES M'AVOIR FAIT LEVER 3FOIS EN 2MIO QUE VOUS AVEZ DE RETOUR VENDU A RABOBANK LONDRE J'AI CHANGE MON OPINION.DEUTESCHE BANK AUTOBAHN EST UN SYSTEM POUR DES VRAIS FLUS ET CERTAINEMENT PAS POUR FAIRE DE L'ARBITRAGE.JE SUIS VRAIMENT DECU DE VOTRE COMPORTEMENT. A VOUS DE DECIDER SI VOUS VOULEZ QUE LES TICKETS SONT FAIT.”</p>
Rabobank ([Rabobank employee])	<p>“VERY GOOD. WE WERE LIFTED IN A BELGIAN COPORATE YESTERDAY BY [...] AT THE EUQUIVALENT OF +55Â½. 5 SECONDS LATER [...] CAME ON TO SAY THEY WERE TRADING BIG SIZE, 21M, AT +55. THE GUY AT [...] DOES NOT READ MY BLOOMBERGS. WHY DO WE KEEP THEM ON?”</p>
DB ([Deutsche Bank employee])	<p>“[...] ANSWER</p> <p>1-je n'ai pas traite 6 M avec rabo mais 4</p> <p>2-ca n'a rien a voir avec de l'arbitrage on n'en fait pas</p> <p>3-si la proximite des trades peut paraitre etrange, elle l'est pour mpi aussi mais les trades proviennent de 2 clients differnts</p> <p>4- j'en cherche encore 748 000 pour etre precis”</p>
DB ([Deutsche Bank employee])	<p>“[...] IS ON TIER4 ALREADY WITH ME AS MUCH AS [...] AND [...], PLUS ALL [...] ENTITIES AND [...]”</p>
Rabobank ([Rabobank employee])	<p>“[...] DID TRADE 4M WITH US BUT THERE WERE SIMILAR BIDS TO OURS. I DO NOT BELIEVE [...] AT ALL & IF THERE WERE 2 CLIENTS WHY NOT BUY 4M OR SELL 4M IN 1 GO. WE QUOTE THIS ISSUE IN 5M ON THE BID”</p>
DB ([Deutsche Bank employee])	<p>“VOUS VOULEZ ME FAIRE CROIRE QUE VOTRE CLIENT LES A ACHETE AVEC DB ET VOUS A DEMANDE DE LES VENDRE A RABOBANK.....MERCI POUR L'INFO</p> <p>Réponse:</p> <p>non je ne veux rien vous faire croire ce sont 2 clients differents et je suis toujours acheteur....”</p>
DB ([Deutsche Bank employee])	<p>“I DON'T BELIEVE [...] EITHER”</p>
Rabobank ([Rabobank employee])	<p>“[Deutsche Bank employee], I sent this to [...]</p> <p>GOOD MORNING</p> <p>I UNDERSTAND THAT YOU ARE CONVERSING WITH DEUTSCHE BK ABOUT YOUR TRADES IN THE NEDWBK</p>

	<p>3.375 16. WE TOO DO NOT LIKE CLIENTS TO ABUSE OUR SYSTEM & CONSIDER YOUR ACTIVITY THIS MORNING TO BE SUSPICIOUS. YOU CLAIMED THAT YOU HAD 2 SEPARATE ORDERS AT THE SAME TIME. ON OUR SCREEN WE ARE BIDDING FOR 5M, WHY DID NOT YOU NOT HIT US IN 4M IN ONE GO RATHER THAN 2 X 2M? WAS IT JUST A COINCIDENCE THAT THE OFFER WITH DB IS ONLY FOR 2M?</p> <p>REGARDS [Rabobank employee]</p> <p>[...] replied with a different story</p> <p>good morning [Rabobank employee]</p> <p>The real thing is that we have a new trainee here and [...] did some mistakes. I already blame [...] for this but we are still looking to buy some. Apologize for this.Regards [...]"</p>
DB ([Deutsche Bank employee])	"great, do you think they know the word "shame"?"

- (151) On **2 July 2007**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank exchanged commercially sensitive information in respect of 75 million of BNG bonds, including the price at which somebody was already bidding: *'are you bidding on the block of BNG? If not, watch it a block of 75 mio is coming out, someone is bidding 8.1 par/par'*. [Rabobank employee] revealed Rabobank's position on BNG bonds, and [...] trading strategy: *'not us, we have not been asked. We have enough BNG paper (enough of all paper) at present. Thank you for the info, can I ask which issue it is please?'* [Deutsche Bank employee] indicated it was BNG bonds maturing in April 2012: *'sorry thought I mentioned it, BNG 4 12'*.¹⁷⁰

2 July 2007	
DB ([Deutsche Bank employee])	"ARE YOU BIDDING ON THE BLOC OF BNG?IF NOT WATCH IT A BLOCK OF 75MIO IS COMING OUT, SOMEBODY IS BIDDING €-8.1 PAR/PAR"
Rabobank ([Rabobank employee])	"NOT US, WE HAVE NOT BEEN ASKED. WE HAVE ENOUGH BNG PAPER (ENOUGH OF ALL PAPER) AT PRESENT. THANK YOU FOR THE INFO, CAN I ASK WHICH ISSUE IT IS PLEASE?"
DB ([Deutsche Bank employee])	"SORRY THOUGHT I MENTIONED IT, BNG 4 12"
Rabobank ([Rabobank employee])	"THAT IS GREAT THANK YOU"

- (152) On **16 July 2007**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to tell [...] *'just for info'* that [...] had *'just got hit in*

¹⁷⁰ [...].

BNG 4 12 at 99.25'. [Deutsche Bank employee] responded by indicating the price with the broker [...]: 'Wow. They are 17 bid at [...] 99.30. We are long unfortunately. Thank you for the info. Your bid looked to be the lowest'. [Rabobank employee] then continued to feed information to [Deutsche Bank employee]: 'FYI we were just lifted in the BNG 12 at .44 by [...]. [...] are bidding .443 for 3 m, [...] are bidding .443 for 10 m, supposedly'.¹⁷¹

- (153) It suggests that the purpose of the disclosure of this information by [Rabobank employee] was to allow [Deutsche Bank employee] to use it in taking [...] own decisions on pricing.

16 July 2007	
Rabobank ([Rabobank employee]) to DB ([Deutsche Bank employee])	<p>"HI, JUST FOR INFO AS I SEE YOUR AUTOBAHN, I JUST GOT HIT IN BNG 4 â... 12 AT 99.25</p> <p>Reply:</p> <p>WOW. THEY ARE 17 BID AT [...] 99.30. WE ARE LONG UNFORTUNATELY. THANK YOU FOR THE INFO. YOUR BID LOOKED TO BE THE LOWEST. SCREEN S ARE NOT VERY RELIABLE AT THE MOMENT.</p> <p>FYI WE WERE JUST LIFTED IN THE BNG 12 AT .44 BY [...]. [...] ARE BIDDING .443 FOR 3M & [...] ARE BIDDING .443 FOR 1 OM. SUPPOSEDLY"</p>

- (154) On **1 October 2007**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to ask whether the FHLMC 3.5 8 was [...], as Rabobank were offering 2.4 million at '.66' and [...] appeared to be bidding at '.69'. [Rabobank employee] told [...] that [...] had just been checked by 'an Israeli "asset manager"', possibly with a view to buying bonds from Rabobank. [Deutsche Bank employee] confirmed that the bid was indeed [...] and thanked [...] for 'making me aware', indicating that Deutsche Bank's pricing feed was wrong.¹⁷²
- (155) The communication of 1 October 2007 is an example of an exchange of commercially sensitive information and price coordination between the parties in relation to FHLMC bonds and a client's interest in those bonds. As Rabobank was offering to sell these bonds at .66, which was below the price that Deutsche Bank was willing to buy (.69), this might have given the potential Israeli account the chance to make a profit from the price differential between the two. This conversation, whilst couched as a question and prompted by the fear of potential arbitrage, is an exchange of commercially sensitive information intended to indicate a pricing level to allow the other party to roll back into line. [Deutsche Bank employee]'s final statement ('Tks for making me aware, wrong pricing feed') indicates that [...] conversation with Rabobank resulted in a change of bidding pricing on the part of Deutsche Bank.

1 October 2007	
Rabobank ([Rabobank employee])	"GOOD MORNING, IS THE FHLMC 3.5 8 YOURS PLEASE?"

¹⁷¹ [...].

¹⁷² [...].

employee])	WE ARE OFFERING 2.4M AT .66 & YOU APPEAR TO BE BID AT .69. I WAS JUST CHECKED BY AN ISRAELI 'ASSET MANAGER' BUT I HAVE MY DOUBTS"
DB ([Deutsche Bank employee])	"YES, IT'S ME,TKS FOR MAKING ME AWARE,WRONG PRICING FEED"
Rabobank ([Rabobank employee])	"YOU ARE WELCOME"

- (156) On **5 November 2007**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to tell [...] that [...] thought that [...] pricing looked *'a little low'*, that [...] *'may be right but there are a lot of bids above your offer'* and that Rabobank had just been asked to bid by a *'Spiv'* (*'spiv'* is a colloquial term used to describe traders suspected of arbitrage trading, or arbitrageurs). [Rabobank employee] concluded that [...] pricing was too high and told [Deutsche Bank employee] that [...] would change the pricing. There then followed some information exchange about a counterparty by the name of [...] who attempted to lift Deutsche Bank for 1 million, and who was then identified by [Deutsche Bank employee] as an *'Israeli Spiv'*. [...] also informed [Rabobank employee] that [...] had just *'changed their tiering'*.¹⁷³
- (157) The exchange of 5 November 2007 shows how the parties monitored a counterparty for potential arbitrage as regards whether or not to trade with this counterparty. The parties engaged in an exchange of commercially sensitive information regarding a counterparty's identity (*'been asked to bid by a spiv'*, [...], *'they were the ones who asked for our bid in 500, [...], 'Israeli spiv'*), recent trades (*'just tried to lift 1mio but didn't trade'*) and prices (*'you look a little low'*, *'we are too high'*).

5 November 2007	
Rabobank ([Rabobank employee])	"HI, YOU LOOK A LITTLE LOW, YOU MAY BE RIGHT BUT THRE ARE A LOT OF BIDS ABOVE YOUR OFFER & WE WERE JUST ASKED TO BID BY A SPIV. WE ARE TOO HIGH & I AM UPDATING"
DB ([Deutsche Bank employee])	"[...] AM JUST TRIED TO LIFT 1MIO BUT DIDN'T TRADE WITH ME.DON'T KNOW WHO THEY ARE"
DB ([Deutsche Bank employee])	"I DO NOT KNOW WHO THEY ARE OTHER THAN THEY WERE THE ONES WHO ASKED FOR OUR BID IN 500K, [...]"
DB ([Deutsche Bank employee])	"CORRECT, SAME GUY"
DB ([Deutsche Bank employee])	"ISRAELIAN SPIV, I JUST CHANGED THEIR TIERING"
Rabobank ([Rabobank employee])	"I JUST ASKED [...] & [...] SAID IT WAS ' A CROSS MARKET FOR END OF MONTH VALUATION'

¹⁷³ [...].

	END OF MONTH ON THE 5TH?"
DB ([Deutsche Bank employee])	"ISRAEL IS PROBABLY DIFFERENT"

- (158) On **27 November 2007**, [Deutsche Bank employee] of Deutsche Bank asked [Rabobank employee] of Rabobank: *'is anybody selling FHLMC to you?'* and disclosed commercially sensitive information such as Deutsche Bank's position and the price at which they bought these bonds the day before: *'am much lower and got hit at +23 and +25 yesterday but see funny accounts lifting me this am'*. [Rabobank employee] replied: *'...we have not been very brave; have stopped trading the name for the most part. I hadn't realised they had moved out that much. It is very difficult to know if screens are reliable; there are a lot of spivs trying it on'*. [Deutsche Bank employee] indicated that [...] just wanted to make sure whether Rabobank were trading those bonds as [...] knew what [Rabobank employee] took care of and that [...] could not keep track. [Rabobank employee]'s final reply to [Deutsche Bank employee] (*'your help is always very welcome, thank you'*) shows that the parties were regularly and continuously collaborating and protecting each other's trading interests.¹⁷⁴

27 November 2007	
DB ([Deutsche Bank employee])	"MORNING, IS ANYBODY SELLING FHLMC TO YOU? I AM MUCH LOWER AND GOT HIT AT €+23 AND +25 YESTERDAY BUT SEE FUNNY ACCOUNTS LIFTING ME THIS AM"
Rabobank ([Rabobank employee])	"MORNING, WE HAVE NOT BEEN VERY BRAVE & HAVE STOPPED TRADING THE NAME FOR THE MOST PART. I HADN'T REALISED THEY HAD MOVED OUT THAT MUCH. IT IS VERY DIFFICULT TO KNOW IF SCREENS ARE RELIABLE & THERE ARE A LOT OF SPIVS TRYING IT ON"
DB ([Deutsche Bank employee])	"JUST WANTING TO MAKE SURE. THE OTHER GUYS I DON'T ACRE BUT I KNOW WHAT YOU ARE TAKING CARE OFF AND THAT YOU CAN'T KEEP TRACK"
Rabobank ([Rabobank employee])	"YOUR HELP IS ALWAYS VERY WELCOME, THAN KYOU"

5.2.3. 2008

- (159) On **14 January 2008**, [Deutsche Bank employee] of Deutsche Bank contacted [Rabobank employee] of Rabobank to provide [...] with information about a trend for NEDWBK for which clients were trying to switch into a new issue and to indicate that [...] was *'trying to achieve a pick up'¹⁷⁵ to the new one. As primary and secondary are two profit centers at DB I have been very defensive on the bid'*.

¹⁷⁴ [...].

¹⁷⁵ 'Pick up' or 'pickup' means to sell a bond with a shorter maturity and buy another with longer maturity or to sell a bond with a smaller yield and buy another with a higher yield.

[Deutsche Bank employee] then added that it *‘might be different with the co leads’*.¹⁷⁶

- (160) In providing this information to Rabobank, [Deutsche Bank employee] disclosed Deutsche Bank’s trading strategy for the NEDWBK bonds, by disclosing that Deutsche Bank was trying to achieve a pick up for the new issue and that [...] approach was *‘very defensive’*.
- (161) A moment later, [Rabobank employee] thanked [...] and disclosed that: ‘the secondaries are very expensive compared to the new one; we are unable to sell even the attractively priced issues’. [...] then revealed that they ‘were asked to bid on blocs of financials today on the back of the new 5YR UBS which is coming very cheaply at swaps +70. These secondaries were previously trading as much as 35 bps¹⁷⁷ tighter for comparable names. We are not even involved with the new deal but are expected to take the secondaries’. In this communication, [Rabobank employee] offered commercially sensitive information by revealing Rabobank’s internal trading strategy with respect to specific bonds, including that they were asked to bid in blocks and that they were expected to take the secondaries.¹⁷⁸

14 January 2008	
DB ([Deutsche Bank employee])	“HI AND HAPPY NEW YEAR, PAY ATTENTION IF YOU GET ASKED TO BID NEDWBK.CLIENTS TRY TO SWITCH INTO THE NEW ONE AND ARE LOOKING FOR BIDS IN BLOCKS, 25 TO 100MIO, TRYING TO ACHIEVE A PICK UP TO THE NEW ONE.AS PRIMARY AND SECONDARY ARE TWO PROFIT CENTERS AT DB I HAVE BEEN VERY DEFENSIVE ON THE BID. MIGHT BE DIFFERENT WITH THE CO LEADS”
Rabobank ([Rabobank employee])	“THANK YOU. THE SECONDARIES ARE VERY EXPENSIVE COMPARED TO THE NEW ONE & WE ARE UNABLE TO SELL EVEN THE ATTRACTIVELY PRICED ISSUES. THE ISSUE OF SWITCHING IS A TRICKY ONE. WE WERE ASKED TO BID ON BLOCS OF FINIANCIALS TODAY ON THE BACK OF THE NEW 5YR UBS WHCIH IS COMING VERY CHEAPLY AT SWAPS +70. THESE SECONDARIES WERE PREVIOUSLY TRADING AS MUCH AS 35 BPS TIGHTER FOR COMPARABLE NAMES. WE ARE NOT EVEN INVOLVED WITH THE NEW DEAL BUT ARE EXPECTED TO TAKE THE SECONDARIES.”
DB ([Deutsche Bank employee])	“SOUNDS FAMILIAR, GOOD LUCK!”

¹⁷⁶ [...].

¹⁷⁷ As mentioned in recitals (70) and (71), traders discuss prices by reference to the yield spread between the bond in question and the relevant benchmark, both denominated in basis points (‘bps’).

¹⁷⁸ [...].

- (162) The following exchange between [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank dates from **16 January 2008** and indicates that both traders regularly compared their prices. It shows that [Rabobank employee] noted that Rabobank's on-screen offer to sell SEK¹⁷⁹ 4.5 was below Deutsche Bank's bid to buy these bonds and that [...] would therefore move Rabobank's price up '*to stop the spivs*'.¹⁸⁰
- (163) The communication of 16 January 2008 shows that [Rabobank employee] moved [...] offer price up in order to align pricing between Rabobank and Deutsche Bank with the purpose of preventing scope for arbitrage trading. For this purpose, the parties exchanged commercially sensitive information in relation to positions ('*i am long..we are long 7.3m..*') and prices ('*our offer is below your bid*').

16 January 2008	
Rabobank ([Rabobank employee])	"GOOD MORNING. DO YOU TRADE THE SEK 4.5 10 PLEASE? IN CASE YOU DO I AM LONG, HAVE BEEN FOR SOME TIME, & OUR OFFER IS BELOW YOUR BID. I AM GOING TO MOVE IT UP TO STOP THE SPIVS. SHOULD YOU NEED ANY WE ARE LONG 7.3M, OR JUST BEAR IT IN MIND IN CASE YOU ARE ASKED TO OFFER REGARDS [Rabobank employee]"
DB ([Deutsche Bank employee])	"OK, WILL DO, I HAVE GOT A WHOLE LOT TOO"
Rabobank ([Rabobank employee])	"JUST SEEN THEY ARE 41/36 AT [...]."
DB ([Deutsche Bank employee])	"AT [...] YOU MEAN"
Rabobank ([Rabobank employee])	"[...] IT IS. NOT THE FIRST PLACE I WOULD HAVE THOUGHT OF"
DB ([Deutsche Bank employee])	"MIGHT CHANGE, SINCE [...] JOINED, BUT I GOT THE PRICE FROM [...]"

- (164) On **12 March 2008**, [Rabobank employee] of Rabobank informed [Deutsche Bank employee] of Deutsche Bank that [...] was '*working on a switch into rabo 17*' and that [...] needed '*to sell 40m cades 4.125 17*'. [...] asked [Deutsche Bank employee] whether [...] would be happy to buy these bonds. [...] disclosed [...] position stating that [...] was '*long already of cades 17 and the market too, so not really keen honestly*'. [Rabobank employee] thanked [...]: '*that is good to know thank you*'.¹⁸¹
- (165) The communication of 12 March 2008 is an example of an exchange of commercially sensitive information between the parties in relation to their volumes and positions.

¹⁷⁹ Swedish Export Credit (SEK) bonds.

¹⁸⁰ [...].

¹⁸¹ [...].

12 March 2008	
Rabobank ([Rabobank employee])	“i am working on a switch into rabo 17 would need to sell 40m cades 4.125 17. it is not firm but can you tell me please if there is a level where you would be happy to bid on this size”
Rabobank ([Rabobank employee])	“40 is the max it could be less”
Rabobank ([Rabobank employee])	“If we did this is I could show you our best bid on the 2 rabos you hold. regards [Rabobank employee]”
DB ([Deutsche Bank employee])	“LONG ALREADY OF CADES 17 AND THE MARKET IS TOO, SO NOT REALLY KEEN HONESTLY”
Rabobank ([Rabobank employee])	“that is good to know thank you”

- (166) On **12 June 2008**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] at Deutsche Bank to provide some information about the EIB 5.625 10. In particular, [...] wanted [...] to know that Rabobank had shown a 31 bid and to distinguish this from another bid. [Rabobank employee] explained that it was for Rabobank’s Far East buyer.¹⁸²

12 June 2008	
Rabobank ([Rabobank employee])	“[...] HAVE AN PRICE 31½/30 IN THE EIB 5.625 10 & TO LET YOU KNOW WE HAVE SHOWN A 31 BID, THE 31½ IS NOT OURS. THIS IS FOR OUR FAR EAST BUYER”
DB ([Deutsche Bank employee])	“i might be bidding too but versus a short i have,still working something out, don#t want to leave you with empty hands in case”
Rabobank ([Rabobank employee])	“SORRY WE BT THEM”
DB ([Deutsche Bank employee])	“ok”
Rabobank ([Rabobank employee])	“WE TOOK 25M & [...] MAY TAKE MORE BUT I DO NOT WANT TO SPOIL IT FOR YOU”

- (167) On **23 June 2008**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank coordinated the offer that they wanted to show to a counterparty. [Rabobank employee] said: *‘Our buyer has asked if we can offer this issue, I thought I would come to you first. If there is anything else you care to show we can try, the EIB 10 for example’*. [Deutsche Bank employee] responded: *‘I am*

¹⁸² [...].

short on those ones, still got my EIB 5 10, cross¹⁸³.41 offered at 101.66'. [Rabobank employee] then replied that Rabobank would offer the client those bonds instead: *'Thanks we will try that one instead. Aim was pre Dec 2011 and yield >5% but the KFW is <5%. I will let you know what we get back'* to which [Deutsche Bank employee] reacted *'couldn't [...] buy NRWKB as a name? The 2011 ones are above 5 % yield'*. [Rabobank employee] then asked [Deutsche Bank employee] to refresh the screen which then showed the new prices of NRWKB at 97.09 for 19 million and 96.31 for 10 million. [Rabobank employee] confirmed that [...] *'would gi(v)e it a go'* but then concluded: *'unfortunately client is already full on nrw'*.¹⁸⁴

23 June 2008	
Rabobank ([Rabobank employee])	<p>**** DES KFW CPN 3¼ MTY 10/14/11 EF693530</p> <p>OUR BUYER HAS ASKED IF WE CAN OFFER THIS ISSUE, I THOUGHT I WOULD COME TO YOU FIRST. IF THERE IS ANYTHING ELSE YOU CARE TO SHOW WE CAN TRY, THE EIB 10 FOR EXAMPLE. REGARDS [Rabobank employee]"</p>
DB ([Deutsche Bank employee])	"I AM SHORT ON THOSE ONES, STILL GOT MY EIB 5â ... 10, CROSS .41 OFFERED AT 101. 66"
Rabobank ([Rabobank employee])	"THANKS WE WILL TRY THAT ONE INSTEAD. AIM WAS PRE DEC 2011 AND YIELD >5% BUT THE KFW IS <5%. I WILL LET YOU KNOW WHAT WE GET BACK"
DB ([Deutsche Bank employee])	"CAN#T REMEMBER, COULDN'T [...] BUY NRWKB AS A NAME?THE 2011 ONES ARE ABOVE 5% YIELD"
Rabobank ([Rabobank employee])	"IF YOU CAN REFRESH I WILL TRY AGAIN PLEASE"
DB ([Deutsche Bank employee])	"NRWBK 4 1/11 19MIO AT 97.09 X .385 3â...ž 7/11 10MIO AT 96.31"
Rabobank ([Rabobank employee])	"I WILL GIE IT A GO, THANK YOU FOR YOUR HELP"
Rabobank ([Rabobank employee])	"unfortunately client is already full on nrw, sorry"

- (168) On **15 July 2008**, [Rabobank employee] of Rabobank asked [Deutsche Bank employee] of Deutsche Bank whether [...] had 'anything in the 2012 maturity to offer please, 10-15m? we are looking for an alternative to Toyota 4.25 12 which we are bidding -20 for, very expensive credit. Fyi our favourite dutch a/c is the holder of the Toyota so you may get asked'. [Deutsche Bank employee] replied: 'got to say we are completely sold out in 2012 paper and I am even short but I never would have

¹⁸³ 'Crossing' means a simultaneous opposite trade with the futures contract to hedge the bond trade. Bond futures are contractual obligations for the contract holder to purchase or sell a bond on a specified date at a predetermined price.

¹⁸⁴ [...].

thought that Toyota trades that tight'. [Rabobank employee] thanked [...]: 'thanks for looking, fyi we have an offer in the kfw 7/12 at 101.82 [indecipherable]'.¹⁸⁵

- (169) In the communication of 15 July 2008, Rabobank disclosed commercially sensitive information to Deutsche Bank in relation to their bidding price for Toyota 4.25 bonds maturing in 2012 ('*we are bidding -20*'), the counterparty's identity ('*our favourite dutch a/c*') and that counterparty's intention for future trading ('*you may get asked*'). Rabobank disclosed that as a potential purchaser of those bonds, Rabobank found them to be very expensive and therefore they were looking for an alternative (that is similar bonds maturing in 2012). This assessment was confirmed by Deutsche Bank which indicated that: '*Toyota trades that tight*' (this is at a high price expressed in terms of yield).¹⁸⁶ The Dutch counterparty¹⁸⁷ who was the holder of the bonds was therefore offering to sell the Toyota 4.25 12 at a high price.

15 July 2008	
Rabobank ([Rabobank employee])	"good morning. do you have anything in the 2012 maturity to offer please, 10-15m? we are looking for an alternative to toyota 4.25 12 which we are bidding -20 for, very expensive credit. fyi our favourite dutch a/c is the holder of the toyota so you may get asked."
DB ([Deutsche Bank employee])	"got to say we are completely sold out in 2012 paper and i am even short but i never would have thought toyota trades that tight"
Rabobank ([Rabobank employee])	"thanks for looking, fyi we have an offer in the kfw 7 /12 at 101.82 a, --24½area"

- (170) On **7 August 2008**, [Deutsche Bank employee] of Deutsche Bank contacted [Rabobank employee] of Rabobank because [...] wanted to make [...] '*aware*' that [...] price on ITL EIB 011 '*works*'. [...] explained that [...] wanted to avoid arbitrage. In response, [Rabobank employee] replied by providing commercially sensitive information in relation to recent trades, noting that [...] '*did spot that*' because they '*were hit but only in 300m*' and that they '*have been buying a lot more than we have been selling*'. [Rabobank employee] reacted to the information provided to [...] by [Deutsche Bank employee] by moving [...] pricing down: '*I think we will move it down, thank you for the info*' and that [...] was '*tempted to average down, we have 5.4bn*'. In response, [Deutsche Bank employee] clarified that the client '*bought them of me exactly that size at 86.66*', as apparently [Rabobank employee] moved the wrong price: '*my mistake, sorry it was the offer. i assumed it was the bid*'.¹⁸⁸

7 August 2008	
DB ([Deutsche Bank employee])	"MORNING, JUST TO MAKE YOU AWARE MY PRICE ON ITL EIB 0 11 WORKS, JUST WANT TO AVOID ARBITRAGE"

¹⁸⁵ [...].

¹⁸⁶ Bonds can be traded on either an absolute price or in reference to the corresponding yield.

¹⁸⁷ An end-investor choses to trade with the trader showing the best price, i.e. the highest price (expressed as the lowest or tightest spread) in case of sale or the lowest price (expressed as the highest or widest spread) in case of purchase.

¹⁸⁸ [...].

Rabobank ([Rabobank employee])	“I DID SPOT THAT AS THIS MORNING AS WE WERE HIT BUT ONLY IN 300M WE DID HAVE SOME SUCCESS SELLING THEM HIGHER BUT LOOKING AT OUR TRADE REVIEW WE HAVE BEEN BUYING A LOT MORE THAN WE HAVE BEEN SELLING. I THINK WE WILL MOVE IT DOWN, THANK YOU FOR THE INFO. DO YOU MIND ME ASKING IF YOU HAVE MANY AS WE MIGHT BE TEMPTED TO AVERAGE DOWN, WE HAVE 5.4BN.”
DB ([Deutsche Bank employee])	“THAT GUY BOUGHT THEM OF ME EXACTLY THAT SIZE AT 86.66”
Rabobank ([Rabobank employee])	“MY MISTAKE, SORRY IT WAS THE OFFER. I ASSUMED IT WAS THE BID”

- (171) On **1 September 2008**, [Deutsche Bank employee] of Deutsche Bank warned [Rabobank employee] of Rabobank to: *‘watch out on ibrd 0 18, unless you really are there on the bid, seller around I am bidding lower’*, adding that [...] had just bought those bonds at 0.35: *‘just got hit at .35’*. [Rabobank employee] acted on that information by letting [Deutsche Bank employee] know that [...] would change [...] own price, but the conversation suggests that it was too late, as [Deutsche Bank employee] commented: *‘the account played db against rabo and got away with it.i spoke to [Rabobank employee] on that one’*.¹⁸⁹
- (172) Again, the parties tried to coordinate on this occasion to align their pricing towards the market, where [Rabobank employee] reacted to information given to [...] by [Deutsche Bank employee] by changing [...] pricing. [Deutsche Bank employee] also discussed with ‘[Rabobank employee]’ (presumably, [Rabobank employee] of Rabobank) an account which *‘played db against rabo and got away with it’*, probably in order to take common action against it. In that context, the parties exchanged commercially sensitive information in relation to recent trades, prices and positions (*‘just got hit at .35’*, *‘we are long kfw...’*, *‘long myself on both’*).

1 September 2008	
DB ([Deutsche Bank employee])	“WATCH OUT ON IBRD 0 18, UNLESS YOU REALLY ARE THERE ON THE BID, SELLER AROUND I AM BIDDING LOWER”
DB ([Deutsche Bank employee])	“JUST GOT HIT AT .35”
Rabobank ([Rabobank employee])	“WE ARE NOT REALLY A BUYER BUT WE DID SELL A REASONABLE AMOUNT OF THE IBRD 0 16 WHILE I WAS AWAY LAST WEEK AT A TIGHTER LEVEL. THANKS FOR THE INFO I WILL KEEP MY EYES OPEN. FYI WE ARE LONG KFW 4 11 & KFW 5.25 12 IF YOU EVER NEED THEM 10M OF EACH”

¹⁸⁹ [...].

Rabobank ([Rabobank employee])	“JUST SEEN THIS, SGOULD HAVE READ IT BEFORE REPLYING. I WILL CHANGE MY PRICE. THAT DOES SEEM A VERY GOOD PRICE TO GET THEM”
DB ([Deutsche Bank employee])	“OK, LONG MYSELF ON BOTH. I KNOW ABOUT TH ESELL OF THE OTHERS.THE ACCOUNT PLAYED DB AGAINST RABO AND GOT AWAY WITH IT.I SPOKE TO [Rabobank employee] ON THAT ONE”
Rabobank ([Rabobank employee])	“THANK YOU, I APPRECAITE THE INFO & FEEL FREE TO ASK ANYTHING”

- (173) On **4 September 2008**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank concerning IBRD 0 16 bonds [...] had just bought from a San Marino client. [Rabobank employee] and [Deutsche Bank employee] then decided to combine their offer for onward sales of IBRD bonds to the market at an agreed price. [Rabobank employee] told [Deutsche Bank employee] that *‘we are trying to sell 16s at -3’* and asked [...]: *‘do you mind showing me where you would be happy to offer? We could try to sell more 16s or the 18s instead but only if you want of course’*. [Deutsche Bank employee] replied: *‘if -3 equals 69.40 with you I could add up to 47bn’* to which [Rabobank employee] responded *‘I will try thanks’*.¹⁹⁰

4 September 2008	
Rabobank ([Rabobank employee])	“A SAN MARINO client just sold us 2bn ibrd 0 16 at 69.28 & has another 30bn. I wanted to check that they were not your bonds. We do not really want to buy them.”
DB ([Deutsche Bank employee])	“no, nothing traded here”
Rabobank ([Rabobank employee])	“good to know thank you. Since i last wrote sales [...] says [...] has a buyer, although we have yet to trade. We will probably buy the balance & sell them slightly tighter. Do you still have the 0 18 as we could see if the buyer cares for those? Just a thought.”
DB ([Deutsche Bank employee])	“i have gor both, the 16 and 18”
Rabobank ([Rabobank employee])	“fyi we are hoping to sell the 16s at -3. We are buying them at - $\hat{A}^{1/2}$. We have not yet bt them. Do you mind showing me where you would be happy to offer? We could try to sell more 16s or the 18s instead but only if you want of course”
DB ([Deutsche Bank employee])	“if -3 equals 69.40 with you i could add up to 47bn”
Rabobank ([Rabobank employee])	“i will try thanks”

¹⁹⁰ [...].

- (174) On **25 September 2008** [Deutsche Bank employee] of Deutsche Bank contacted [Rabobank employee] of Rabobank to inform [...] about a recent trading enquiry where [...] had just been asked to bid BNG ‘5¼ 11 out of Asia’ and that the counterparty had made [...] aware of Rabobank’s screen. [Rabobank employee] thanked [...] for letting [...] know and indicated that [...] would lower [...] bid price.¹⁹¹

25 September 2008	
DB ([Deutsche Bank employee])	“MORNING, JUST BEEN ASKED TO BID BNG 5¼ 11 OUT OF ASIA, JUST BE AWARE, I DID BID LOW BUT THEY MADE ME AWARE OF YOUR SCREEN”
Rabobank ([Rabobank employee])	“THAT IS GOOD TO KNOW THANK YOU. IT IS VERY EXPENSIVE BUT WE SELL A LOT EVERY DAY TO RETAIL. I WILL LOWER MY BID.”

- (175) On **2 October 2008**, [Deutsche Bank employee] of Deutsche Bank contacted [Rabobank employee] of Rabobank to ask whether [...] was short of KfW bonds, providing [...] with commercially sensitive information on a recent trade and the price at which [...] had executed the trades, noting that [...] *‘just got hit at 102.37 in KfW 5¾ 7/10’*. [...] then suggested that [Rabobank employee] adjusted [...] price level to prevent an arbitrage attempt: *‘probably adjust your price for our arbitrage friends’*. [Rabobank employee] thanked [Deutsche Bank employee] for the information and provided [...] with useful information in return (*‘[...] have an offer in the EIB 5cts above your screen price.’*).¹⁹²

2 October 2008	
DB ([Deutsche Bank employee])	“DON'T KNOW IF YOU ARE SHORT BUT JUST GOT HIT AT 102.37 IN KfW 5¾ 7/10, PROBABLY ADJUST YOUR PRICE FOR OUR ARBITRAGE FRIENDS”
Rabobank ([Rabobank employee])	“I AM SURE YOU KNOW BUT I SAW THEY TRADED AT 55, 44 WITH [...], NOT THAT I LOOK AT THEIR PRICES VERY OFTEN BUT I HAPPENED TO NOTICE IT. THANK YOU FOR THE INFO. IF YOU CARE I AM LOOKING FOR 4.8M EIB 4.75 APR 11 2.5M KfW 4.875 AUG 10 MUCH MORE EXPENSIVE THAN THE 5.75 2.7M EIB 3.625 OCT 13”
DB ([Deutsche Bank employee])	“4.8M EIB 4.75 APR 11 SHORT TOO 2.5M KfW 4.875 AUG 10 [...] HAD AN OFFER 2.7M EIB 3.625 OCT 13 JUST COVERED MY SHORT AT [...] THEY HAVE SOME LEFT”

¹⁹¹ [...].

¹⁹² [...].

Rabobank ([Rabobank employee])	“THANKS, [...] HAVE AN OFER IN THE EIB 5CTS ABOVE YOUR SCREEN PRICE I THINK. DO YOU HAVE A NAME AT [...] PLEASE, WE DO NOT REALLY SPEAK TO ANY SUPRA/SOV BROKERS”
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- (176) The following piece of evidence is an exchange between [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank, which dates from **3 November 2008**. Here, [Rabobank employee] discussed pricing for RENTEN 3.625 10 (as mentioned in the subject line of the message), noting that [...] thought that [Deutsche Bank employee] ‘*may be a little high on this one*’ and that [...] was ‘*probably a little low*’. [...] also let [...] know that [...] had just been asked to offer by a Dutch intermediary for 4,081 ‘*in case*’ [...] would be asked to bid on it. In response, [Deutsche Bank employee] informed [Rabobank employee] that [...] would ‘*send the [...] to hell*’ and that for [...] it was a useless account. [...] thanked [Rabobank employee] for the information anyway. Thereafter, they exchanged the identity of the counterparty ([...]).¹⁹³
- (177) In this exchange, the parties exchanged commercially sensitive information in relation to their prices, the counterparty’s identity (‘*dutch intermediary*’) and an ongoing trading enquiry, potentially with the aim of avoiding an arbitrage. Based on the information received from Rabobank, Deutsche Bank adjusted their trading strategy towards that counterparty, indicating that they will not trade with them (‘*i send the [...] to hell*’).

3 November 2008	
Rabobank ([Rabobank employee])	“i think you may be a little high on this one, & i am probably a little low. i have just been asked to offer by a dutch intermediary fyi in case you are asked to bid on 4,081”
DB ([Deutsche Bank employee])	“i send the [...] to hell, to me it's a useless account, tks anyway”
Rabobank ([Rabobank employee])	“did [...] ask yuo to bid?”
Rabobank ([Rabobank employee])	“did [...] or [...] ask yuo to bid please?”
DB ([Deutsche Bank employee])	“second one”

5.2.4. 2009

- (178) On **26 January 2009**, [Rabobank employee] of Rabobank wrote to [Deutsche Bank employee] of Deutsche Bank asking [...] whether [...] was being asked to bid for 5 million KfW 3.375 (the subject line of the message was ‘*ARE YOU BEING ASKED TO BID 5M KFW 3.375 12?*’). [Rabobank employee] noted that [...] could see that Deutsche Bank’s pricing was much higher than Rabobank’s and that [...] was therefore ‘*suspicious*’. [Deutsche Bank employee] reacted immediately (‘[...] *hit me*

¹⁹³ [...].

in 2mio and came back now saying [...] would have another 5mio maybe more'). Following some information exchange about who had been buying the product ([...]), [Deutsche Bank employee] asked whether [...] should speak to[...] sales people. [Rabobank employee] replied that [...] would be in favour of Deutsche Bank cancelling the trade and even to mention Rabobank's name, in response to which [Deutsche Bank employee] confirmed that [...] had called [...] sales people and that they would make the call to the counterparty, giving the sales people authorisation to mention to this counterparty the names of both Deutsche Bank and Rabobank. [Deutsche Bank employee] also confirmed that if such behaviour by that counterparty were to happen again the counterparty would be 'banned'.¹⁹⁴

- (179) This contact shows both information exchange and coordination by the parties in relation to a counterparty, where it was made clear that the counterparty could have [...] access rights removed from Deutsche Bank's trading system. To that end, they exchanged commercially sensitive information in relation to recent trades (*'a swiss a/c [bought] 2m from us', '[...] hit me in 2mio'*), trading enquiries and counterparty identity¹⁹⁵ (*'have come back to ask for the offer in 5m', 'came back now saying [...] would have another 5mio maybe more', 'swiss a/c', '[...]'*). This is an example of concertation between Rabobank and Deutsche Bank to prevent arbitrage by a certain counterparty (*'swiss a/c', '[...]'*) up to the final stage of envisaging restricting access rights to Deutsche Bank's and Rabobank's prices on AllQ (*'if it happens again [...] will be banned'*).

26 January 2009	
Rabobank ([Rabobank employee])	"Subject: ARE YOU BEING ASKED TO BID 5M KFW 3.375 12? we bt some very cheaply, a swiss a/c bt 2m from us & have come back to ask for the offer in 5m & i see you are much higher than us & i am suspicious"
DB ([Deutsche Bank employee])	"[...] hit me in 2mio and came back now saying [...] would have another 5mio maybe more"
Rabobank ([Rabobank employee])	"[...]"
DB ([Deutsche Bank employee])	"correct, should I talk to my sales?"
Rabobank ([Rabobank employee])	"I am very happy for you to cancel the trade, tell them off, i have no problem if you mention our name. they even asked us to improve. i told our sales [...] but i doubt [...] will do anything."
Rabobank ([Rabobank employee])	"they have offered to cancel apparently Sorry for misunderstanding these were intended for client, [...] didn't received approuval for credit line and we where obliged to sell. Talk to your friend in DB and if you want we can cancel it

¹⁹⁴

[...].

¹⁹⁵

See recital (49): only market-makers that have been checked for an RFQ receive the identity of the client making an RFQ.

	Amazing that the credit line was not available twice in such a short time”
DB ([Deutsche Bank employee])	“i told my sales [...] and [...] will call them. i said we have no problems mentioneing your name and my name and made clear that [...] is on watch.if it happens again [...] will be banned”
Rabobank ([Rabobank employee])	“it was a good lie [...] came up with, i would prefer it though if they just admitted it (...)”
DB ([Deutsche Bank employee])	“i have been short of 2mio so we can leave it and [...] never came back on the 5, so for me it's fine.over to you”
Rabobank ([Rabobank employee])	“thanks, we will leave it but will know in future, have a good evening”
DB ([Deutsche Bank employee])	“you too and tks for making me aware”
Rabobank ([Rabobank employee])	“i would be very happy to let you know tomorrow what we have in the supra/sv/gvt gteed issues, it is not a lot & it might stop backdoors, speak tomorrow”
DB ([Deutsche Bank employee])	“sure, more than welcome, have a good eve”

- (180) On **3 February 2009**, [Rabobank employee] of Rabobank asked [Deutsche Bank employee] of Deutsche Bank whether [...] had ‘*been asked to offer for 2m RENTEN 12*’ and informed [...] that a certain counterparty ([...]) was asking [...] to bid for those bonds. [Rabobank employee] also indicated that [...] bid was above [...] offer. [Deutsche Bank employee] denied having been asked to offer and suggested that [...] was just checking to make sure that they could arbitrage, and noted that [...] only had one million of the relevant trade available.¹⁹⁶
- (181) On that occasion, [Rabobank employee] and [Deutsche Bank employee] were monitoring a counterparty ([...]) for arbitrage, exchanging commercially sensitive information such as the counterparty’s identity and the volume of bond the counterparty intended to trade. The fact that [Rabobank employee] informed [Deutsche Bank employee] that [...] was asking [...] for a bid to purchase RENTEN 12 and that [...] bid price was above the price at which [...] offered to sell these bonds, suggests that [Rabobank employee] expected [Deutsche Bank employee] to collaborate with [...] on adjusting prices to deter a counterparty suspected of arbitrage.

3 February 2009	
Rabobank ([Rabobank employee])	“Subject: ARE YOU BEING ASKED TO OFFER 2M RENTEN 12 PLS”

¹⁹⁶ [...].

DB ([Deutsche Bank employee])	“no”
Rabobank ([Rabobank employee])	“thanks [...] asking me to bid & we were above your offer”
DB ([Deutsche Bank employee])	“probbaly they check to make sure they can arbitrage, i only haev 1mio”
Rabobank ([Rabobank employee])	“i now see the new one coming”

- (182) On **10 February 2009**, [Rabobank employee] of Rabobank wrote to [Deutsche Bank employee] of Deutsche Bank to enquire whether a counterparty by the name of [...] had just asked Deutsche Bank for a bid on ‘650 RENTEN 4.375 17’ bonds. In this context, [Rabobank employee] specifically mentioned a trader by the name of [...], whom [...] believed had recently engaged in arbitrage on trades between Rabobank and Deutsche Bank. [...] further warned [Deutsche Bank employee] that [...] ask price for 650 RENTEN 4.375 17 was below the bid level of Rabobank and Deutsche Bank. [Deutsche Bank employee] responded to [Rabobank employee], thanking [...] and indicating that [...] *‘rejected it as i am flat, lucky for once’* and that [...] had just sent this trader *‘two lines’*.¹⁹⁷
- (183) The communication of 10 February 2009 is another example of an exchange of commercially sensitive information between the parties with regard to the identity of a counterparty suspected of arbitrage and its trading enquiry with the purpose of protecting each other’s trading interests. To that extent, [Rabobank employee] and [Deutsche Bank employee] warned each other about their level of bids (*‘[...] are offering 650 below your bid & ours’*) and informed each other about their trading strategies (*‘I rejected it’*, *‘we cancelled our side’*, *‘we booked it again’*) and positions (*‘as I am flat’*).

10 February 2009	
Rabobank ([Rabobank employee])	“did [...] just ask for your bid on 650 renten 4.375 17. it was [...] & we had a big problem when [...] backdoored between us & [...] in your London office, I could not help but notice [...] are offering 650 below your bid & ours”
DB ([Deutsche Bank employee])	“yes indeed [...] did and i rejected it as i am flat, lucky for once...tks for info”
DB ([Deutsche Bank employee])	“i just have send [...] two lines, tks”
Rabobank ([Rabobank employee])	“you are welcome this [...] is the worst yet”

¹⁹⁷ [...].

DB ([Deutsche Bank employee])	“wasn#t aware of [...]”
Rabobank ([Rabobank employee])	“[...] backdoored twice in a matter of hours 2m each time, i was actually on the phone to [...] talking about the first when [...]t ried the scecond time. When asked [...] swore it was genuine & that [...] would get his bank's group treasurer to send a letter saying that. We cancelled our side & [...] was lokoing at a serious loss so got very worried. In the end we booked it again but we had some serious arguments.”

- (184) On **24 February 2009**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to inform [...] that Deutsche Bank’s (sales) price looked ‘*low on the EEC 3.25 11*’, that there were bids (to purchase those bonds) at a higher price and that Rabobank had been lifted (that is, had sold EEC 3.25 11) above Deutsche Bank’s price. [Rabobank employee] added that if [Deutsche Bank employee] had any (of the EEC 3.25 11 to sell) [...] would pay 102.72. [Deutsche Bank employee] responded indicating that [...] was totally flat and that [...] would adjust [...] price (‘*will adjust the price*’).¹⁹⁸
- (185) The communication of 24 February 2009 shows that the parties were exchanging commercially sensitive information in relation to their prices, positions (‘*totally flat*’) and recent trades with counterparties (‘*lifted in just 300 but a 102.93*’), enabling them to determine trading patterns for the specific bonds.
- (186) The fact that [Deutsche Bank employee] adjusted [...] sales pricing to respond to [Rabobank employee]’s information shows that the parties were coordinating on the setting of prices towards counterparties.

24 February 2009	
Rabobank ([Rabobank employee])	“hi, hope all is well with you. your price looks low on the eec 3.25 11, there are bids higher & we have been lifted above your offer, if you had any we would pay 102.72”
DB ([Deutsche Bank employee])	“tks for telling me, i am totally flat but will adjust the price”
Rabobank ([Rabobank employee])	“you are welcome, since you relpied we have been lifted in just 300 but a 102.93 do you have any of the 3.125 14?”
DB ([Deutsche Bank employee])	“never printed a single ticket in that one”

- (187) On **11 May 2009**, [Rabobank employee] of Rabobank wrote to [Deutsche Bank employee] of Deutsche Bank to tell [...] that [...] had just sold Rabobank 1 million of EIB 2.5 12 at 101.34 and that Deutsche Bank’s offer was very close to Rabobank’s bid, adding that they were buyers and that [...] understood that there would be a new 3 year KfW. In reply, [Deutsche Bank employee] informed [Rabobank employee] that a 20 million CADES 2012 issue had come out and that [...] had therefore just

¹⁹⁸ [...].

dropped [...] price on the back of that. The two traders then discussed a counterparty ([...]), who had approached [Rabobank employee] for an offer on 4.6 million EIB, but finally decided to trade with [Deutsche Bank employee] instead.¹⁹⁹

- (188) The discussion of 11 May 2009 shows that the parties exchanged commercially sensitive information about counterparties' approaches, trades executed, including the volumes and the prices at which they concluded the deals and monitored each other's pricing levels.

11 May 2009	
Rabobank ([Rabobank employee])	"[...] just sold us 1 m of the eib 2.5 12 at 101.34. your offer is very close to our bid. We are buyers although i heard there might be a 3yr KFW. Good morning"
DB ([Deutsche Bank employee])	"3year sfefr and 3year kfw is putting pressure on the bonds.20mio cades 2012 have come out and i just dropped prices on the back of that"
Rabobank ([Rabobank employee])	"thanks, [...] just asked our offer in 4.6m eib but did not trade with us"
DB ([Deutsche Bank employee])	"traded with me"
Rabobank ([Rabobank employee])	"i did notice that you had been showing that size so thought that might be the case, thank you."

- (189) On **1 June 2009**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank warning [...] about a request by an account ('[...]') to *'bid on 500 eec 3.125 4/14 & i noticed you were offering below our bid & a few others'*. [Deutsche Bank employee] replied that *'[...] just tried to lift me but didn't trade, [...] let it expire.let me send [...] a nice little few words'*. [Deutsche Bank employee] then sent to [Rabobank employee] the text [...] had sent to the counterparty, in which [...] threatened the counterparty by explaining that *'with autobahn we aim to give clients liquidity and help them to fill their orders. what we don't want autobahn to be used for is for arbitrage.so if i find out again that you try to lift us and hit one of our clients, you will be banned with immediate effect from euro agency products'*. [Rabobank employee] replied providing the names of other counterparties [...] identified as arbitrageurs (*'[...] ([...]) [...] ([...])'*), to which [Deutsche Bank employee] reacted: *'good to know, those ones are new to me'*. Finally, [Rabobank employee] sent to [Deutsche Bank employee] the text of [...] exchange with the previously mentioned account ('[...]') in which [...] explained that [...] had *'very good reason to believe that at the same time you were asking another market-maker to offer the same size. The purpose of our auto-ex system is to enable clients to execute genuine business not to enable users to broke between market-makers. If we find users doing this then we will remove them immediately'*.²⁰⁰

- (190) The communication of 1 June 2009 shows that the parties were exchanging commercially sensitive information, such as the identity of counterparties, their

¹⁹⁹ [...].

²⁰⁰ [...].

trading enquiries such as volumes and prices for specific bonds, as well as the counterparty's trading strategies (*'tried to lift me but didn't trade, [...] let it expire'*). The purpose of the exchange was to identify counterparties suspected of arbitrage and adjust their trading conduct towards those counterparties in case of future trades. To that end, the parties also exchanged commercially sensitive information about their own level of prices (*'noticed you were offering below our bid', 'my price works'* [meaning as it is shown on the screen]), volumes and positions (*'we are long 2.8m'*).

1 June 2009	
Rabobank ([Rabobank employee])	<p>“Subject: EEC 3.125 4/14</p> <p>good afternoon, hope you are well. on a quiet afternoon we were just asked by [...] to bid on 500 eec 3.125 4/14 & i noticed you were offering below our bid & a few others,”</p>
DB ([Deutsche Bank employee])	<p>“exactly, [...] just tried to lift me but didn't trade, [...] let it expire.let me send [...] a nice little few words”</p>
DB ([Deutsche Bank employee])	<p>“FOR INFO HI, JUST A QUICK COMMENT. WITH AUTOBAHN WE AIM TO GIVE CLIENTS LIQUIDITY AND HELP THEM TO FILL THEIR ORDERS. WHAT WE DON'T WANT AUTOBAHN TO BE USED FOR IS FOR ARBITRAGE.SO IF I FIND OUT AGAIN THAT YOU TRY TO LIFT US AND HIT ONE OF OUR CLIENTS, YOU WILL BE BANNED WITH IMMEDIATE EFFECT FROM EURO AGENCY PRODUCTS.”</p>
DB ([Deutsche Bank employee])	<p>“by the way my price works, got 25mio on the book in case you need some”</p>
Rabobank ([Rabobank employee])	<p>“WE TOOK OFF [...] ([...]) [...] ([...]) WE CAUGHT THEM BOTH ON FRIDAY & NEITHER COULD DENY IT”</p>
DB ([Deutsche Bank employee])	<p>“GOOD TO KNOW, THOSE ONES ARE NEW TO ME”</p>
Rabobank ([Rabobank employee])	<p>“Subject: Re:EEC 3.125 4/14</p> <p>we are long 2.8m but i will bear it in mind thank you”</p>
	<p>“Subject: I GIVE UP</p> <p>This is the e-mail exchange i had with [...] from [...]</p> <p>Read down from the top</p> <p>[Rabobank employee]</p> <p>you just asked for our bid in 500k of the EEC 3.125 4/14 & I have very good reason to believe that at the same time you were asking another market-maker to offer the same size. The purpose of our auto-ex system is to enable clients to execute genuine business not to enable users to broke between market-makers. If we find users doing this then we will remove them immediately. If you have</p>

	<p>anything to say I would be very pleased to hear it. Regards [Rabobank employee]</p> <p>[...] ([...])</p> <p>Good afternoon [Rabobank employee], the goog bid was 100.31? [Rabobank employee]</p> <p>my point was that you asked us to bid & another market maker to offer. You hoped to make money by trading between system. You must stop this, our system if for genuine business only</p> <p>[...]</p> <p>did you stop trade with me?</p> <p>[Rabobank employee]</p> <p>yes because you tried to use the system for the wrong purpose</p> <p>[...]</p> <p>I do not</p> <p>[Rabobank employee]</p> <p>but you asked one market-maker to offer 500 eec 14 & at the same time you asked us to bid for 500 eec 14 & you hoped to be able to trade between us</p> <p>[...]</p> <p>no possible I see the run from one off your trader [...].</p> <p>[Rabobank employee]</p> <p>You asked us to bid for 500k eec 3.125 14 & at the same time you asked another bank to sell you 500 eec 3.125 14. Why did you do this?</p> <p>[...]</p> <p>you was on the competittion with another bank</p> <p>[Rabobank employee]</p> <p>you asked us to buy & another bank to sell, were you a buyer, a seller or just abroker?</p> <p>[...]</p> <p>maybe I confused. I am so sorry. do you accepte my apology?</p> <p>[Rabobank employee]</p> <p>what are you apologising for please?</p> <p>[...]</p> <p>for the confused”</p>
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- (191) On **4 June 2009**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to ask [...] about an ongoing trade, and more precisely whether an account (“[...]”) had checked [...] ‘*on the offer on 3m cades*’ as ‘*10.32 they asked us to bid 3m*’. [...] warned [...] that the account ‘*just asked us to bid for 3m*’

& our bid was above your offer'. [Deutsche Bank employee] confirmed that [...] 'got lifted last night in 3mio'.²⁰¹

- (192) The communication of 4 June 2009 shows that the parties were exchanging commercially sensitive information in relation to an ongoing trade for 3 million of CADES with a counterparty, trying to avoid an arbitrage. They exchanged information on the identity of the counterparty and their trading enquiries, including the volumes and prices for specific bonds (*'been checking you on the offer on 3m cades 20 please? 10.32 they asked us to bid 3m', 'same a/c just asked us to bid for 3m'*).

4 June 2009	
Rabobank ([Rabobank employee])	"has this a/c [...] been checking you on the offer on 3m cades 20 please? 10.32 they asked us to bid 3m yesterday they asked for our offer in 3m, we missed but they did trade & i could see [...] were paying a lot higher than our offer & yours. The same a/c just asked us to bid for 3m & our bid was above your offer. They did also ask for the offer much earlier today, there are a lot of potential backwardations in good size on the cades & i have no idea who the client is."
DB ([Deutsche Bank employee])	"funny how i haven't had a single request on autobahn by any client and i have never come across that account. i got lifted last night in 3mio"
Rabobank ([Rabobank employee])	"i had never heard of them, they are probably known as something else [...] THERE MIGHT BE A CLUE IN THE NAMES"

- (193) On **23 June 2009**, [Deutsche Bank employee] of Deutsche Bank contacted [Rabobank employee] of Rabobank to warn [...] on the price of certain bonds (SFEFR 5/12). In that context [Rabobank employee] came back on the account ('[...]') referred to in the chat of 4 June 2009, mentioning that [...] *'sent the [...] from [...] a polite message but [...] did not reply so we took [...] off the system'*. [Deutsche Bank employee] replied that *'[...] didn't reply to me either, thought that was a kind of admitting it'*.²⁰²

- (194) The communication of 23 June 2009 shows that the parties followed up on the commercially sensitive information they had previously exchanged, and as a result [Rabobank employee] took away the access rights of the account.

23 June 2009	
Rabobank ([Rabobank employee])	"I SENT THE [...] FROM [...] A POLITE MESSAGE BUT [...] DID NOT REPLY SO WE TOOK [...] OFF THE SYSTEM"
DB ([Deutsche Bank employee])	"[...] DIDN'T REPLY TO ME EITHER, THOUGHT THAT WAS A KIND OF ADMITTING IT"

²⁰¹ [...].

²⁰² [...].

- (195) On **24 June 2009**, [Rabobank employee] of Rabobank wrote to [Deutsche Bank employee] of Deutsche Bank to provide some information to [...] about the IBRD 19 bonds. More particularly, [...] told [...] that a counterparty by the name of [...] was *‘trying to hit’* Rabobank for 2 million. [...] compared their respective offers and then noted that *‘they have just cancelled their request which could be because you moved your offer up’*.²⁰³
- (196) That counterparty is apparently the same counterparty ([...]) as discussed in the exchange of 3 February 2009 analysed in recital (180). The exchange of 24 June 2009 shows how the parties monitored a counterparty known to both on more than one occasion and kept an eye on each other’s prices. To that end, the parties exchanged commercially sensitive information related to the counterparty’s trading strategies (*‘[...] trying to hit us in 2m’, ‘they have just cancelled their request’*) and internal market intelligence (*‘we are not the best bid’, ‘there are a few above your offer’*), which would moreover also help them in adjusting their current and future trading strategies with that particular counterparty.

24 June 2009	
Rabobank ([Rabobank employee])	“Subject: IBRD 19 [...] trying to hit us in 2m, i can see yo are a very good offer. we are not hte best bid but there a few above your offer. they have just cancelled their request which could be because you moved yuor offer up”
DB ([Deutsche Bank employee])	“[...] is a spiv eventhough it's the head of the trading desk, i had a word with them already but didn#t help”

- (197) On **6 July 2009**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank and asked [...] whether Deutsche Bank was *‘really 70 offered ibrd 0 18’* as a counterparty (*‘[...]’*) was trying to sell to Rabobank the same bonds at a higher price (*‘[...] trying to hit us in 1.5 much higher’*). [Deutsche Bank employee] quickly replied that Rabobank should reject the trade as that counterparty just bought bonds from Deutsche Bank (*‘reject [...] [...] just lifted me’*). [Rabobank employee] responded that it was too late because Rabobank had already been *‘hit’* by [...] at 70.25 even though Rabobank had moved its pricing down (*‘Oops, too late [...] hit us at 70.25, we moved it down but not enough it seems was it [...] please?’*) in an attempt to prevent the counterparty buying IBRD bonds at a lower price from Deutsche Bank and selling them to Rabobank at a higher price, thereby profiting on the price difference.
- (198) Again, the conversation of 6 July 2009 shows close collaboration between the parties in terms of information exchange and coordination on pricing levels, but also in relation to their trading strategies towards a counterparty that had approached both Rabobank and Deutsche Bank (*‘reject [...] [...] just lifted me’, ‘we moved it down...’*). The specific wording of *‘reject [...] [...] just lifted me’* was to warn Rabobank about a potential arbitrage,²⁰⁴ even though the attempt to prevent arbitrage was not successful this time (*‘we moved it down but not enough it seems’*).

²⁰³ [...].

²⁰⁴ [...].

- (199) The relevant traders exchanged commercially sensitive information relating to the counterparty's identity ('[...] *trying to hit us*', '*it seems was it* [...] *please?*'), the counterparty's trading intentions ('[...] *trying to hit us in 1.5 much higher*') and the price at which Rabobank traded with the counterparty ('[...] *hit us at 70.25*').

6 July 2009	
Rabobank ([Rabobank employee])	"are you really 70 offered ibrd o 18 [...] trying to hit us in 1.5 much higher"
DB ([Deutsche Bank employee])	"reject [...] just lifted me"
Rabobank ([Rabobank employee])	"Ooops, too late [...] hit us at 70.25, we moved it down but not enough it seems was it [...] please?"
DB ([Deutsche Bank employee])	"the sales has left for today, can't see the name of the [...] executing, only the client"
Rabobank ([Rabobank employee])	"thanks for trying"

- (200) On **9 July 2009**, [Deutsche Bank employee] of Deutsche Bank wrote to [Rabobank employee] of Rabobank to raise the fact that [...] considered Rabobank's (bid) price on FLEMSH 2013 '*a little high*'. [Rabobank employee] thanked [Deutsche Bank employee] for this information and indicated that [...] had just '*moved it down a little*' while mentioning that '*We are a good bid on purpose*'.²⁰⁵
- (201) The communication of 9 July 2009 shows that the parties were protecting each other's trading interests by monitoring their respective prices, exchanging commercially sensitive information with each other in this regard and consequently, by one of the parties adjusting its price for a specific bond based on valuable information received from the other party.

9 July 2009	
DB ([Deutsche Bank employee])	"SEEMS YOU ARE A LITTLE HIGH ON FLEMSH 2013"
Rabobank ([Rabobank employee])	"THANK YOU, I AHVE MOVED IT DOWN A LITTLE. WE ARE A GOOD BID ON PURPOSE. LAST TIME FLEMSH LAUHCHED WE WERR SHORT 3M OF THE 3YR AS A RESULT OF A TRADE QUERY ON THE VERY FIRST DAY & IT TOOK US NEALRY 6 MONTHS TO COVER IT"
DB ([Deutsche Bank employee])	"OK, THOUGHT THEY WOULD TIGHTEN BUT SO FAR NOTHING"
Rabobank ([Rabobank employee])	"WE HAD QUITE A FEW OF THE OLDER ISSUES WHICH WE SOLD TOO CHEAPLYYESTERDAY. THE PROBLEM IS

²⁰⁵ [...].

	THE LIQUIDITY ON THESE HAS BEEN EVEN POORER THAN ON THE GVT GTEED DEALS. & WHNE EVERYTHING ELSE WAS TIGHTENING WE KEPT BUYING MORE”
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- (202) On **10 July 2009**, [Rabobank employee] of Rabobank wrote to [Deutsche Bank employee] of Deutsche Bank to inform [...] that Rabobank had a higher bid price than Deutsche Bank’s ask price on a specific product (*‘short Flemish’* bonds, as mentioned in the subject line of the message). [Rabobank employee] also added that Rabobank were not the best bid and let [...] know that the previous day, Rabobank were *‘hit twice’* in the Flemish bonds by a certain counterparty ([...]). [...] assumed that since Rabobank were hit (that is, had bought Flemish bonds), Deutsche Bank might have been lifted (this is, would have sold Flemish bonds). In reaction, [Deutsche Bank employee] stated that (*‘for once’*) Deutsche Bank had not been lifted and that [...] would adjust [...] price.²⁰⁶
- (203) The communication of 10 July 2009 shows that the parties exchanged commercially sensitive information generated by a recent trade, including prices at which the deal was executed, the volumes and the name of the counterparty.

10 July 2009	
Rabobank ([Rabobank employee])	“fyi – we are bid higher than your offer but we are not the best bid. i have just noticed we weer hit high yesterday by [...] yesterday in 1.9 & then 1.1m later in the day & the thought occurred that maybe you had been lifted”
DB ([Deutsche Bank employee])	“no, for once not , i adjust my price tks”

- (204) On the same day, **10 July 2009**, [Rabobank employee] of Rabobank disclosed commercially sensitive information to [Deutsche Bank employee] of Deutsche Bank on an offer they had been shown (*‘NIBCAP²⁰⁷ 12 at 0.45 in 20 maybe 25 million’*), including the fact that Rabobank was *‘the 35 bid’*. [Rabobank employee] indicated that the offer had been shown to Rabobank by a German broker and wondered whether the offer was ultimately coming from Deutsche Bank. [Deutsche Bank employee] revealed that it was not Deutsche Bank on the offer and the broker was [...]. [Rabobank employee] informed [Deutsche Bank employee] that there was also an offer on SNS²⁰⁸ 12 bonds the day before and [Deutsche Bank employee] then confirmed that it was the same seller for SNS bonds as for NIBCAP. [...] then asked [Rabobank employee] whether [...] bid was with a *‘schatz’* (i.e. German Treasury bond) reference so [...] could *‘line [...] up’*. [Rabobank employee] replied that they would prefer the SNS bonds for which they *‘could bid for up to 50m of that issue at 101.90 ref 23/235 schatz’* and for which they would try to first position themselves and then try to find buyers.²⁰⁹

²⁰⁶ [...].

²⁰⁷ NIBC bank, a Dutch retail and corporate bank with headquarters in The Hague. Bloomberg ticker: NIBCAP.

²⁰⁸ SNS bank, part of De Volksbank, a Dutch retail bank with headquarters in Utrecht (www.devolsbank.nl, accessed on 19 October 2021).

²⁰⁹ [...].

- (205) That communication shows that the parties exchanged commercially sensitive information with respect to their prices (*'we are the 35 bid'*, *'101.90 ref 23/235 schatz'*), volumes (*'could bid for up to 50m'*) and positions (*'we would position it then try to find a buyer'*).

10 July 2009	
Rabobank ([Rabobank employee])	"I HAVE BEEN SHOWN AN OFFER IN NIBCAP 12 AT .45 IN 20 MAYBE 25M BY GERMAN BROKER (I WOULD TELL YOU WHO BUT I CANNOT REMEMBER WHERE [...] WORKS). I AM GUESSING THE OFFER IS COMING FROM YOU & FYI WE ARE THE 35 BID."
DB ([Deutsche Bank employee])	"not coming from me, it's that initial account going around and now somebody trying to position [...] and take the block off the seller, the broker is [...]"
Rabobank ([Rabobank employee])	"THANK YOU SORRY FOR ASSUMING IT WAS YOU. I REMEMBER NOW THERE WAS ALSO AN OFFER IN THE SNS 12 YESTERDAY AS WELL & IT WAS [...]"
DB ([Deutsche Bank employee])	"all the same seller i try to get hold of the sales now, is your bid with a schatz ref? so i can line [...] up"
Rabobank ([Rabobank employee])	"[...] said it was 2025 i know why. we would not really want more than that & would prefer the sns, we could bid for up to 50m of that issue at 101.90 ref 23/235 schatz, we think we have buyers but are not sure but as you know it is easier to sell something when you actually own it, so we would position it then try to find a buyer."

- (206) On **14 August 2009**, [Deutsche Bank employee] of Deutsche Bank wrote to [Rabobank employee] of Rabobank (copy to [Rabobank employee] of Rabobank) to check whether Rabobank's price on the EEC 2015 was working for 25 million, as [...] sales desk at Deutsche Bank had questioned whether [...] price was at the right level. [Rabobank employee] responded, indicating *inter alia* that, for 25 million, Rabobank's bid *'would be closer to 100.65'*. [Deutsche Bank employee] then asked [...] whether [...] could forward that information to [...] sales desk.²¹⁰
- (207) The communication of 14 August 2009 shows that the parties exchanged information on the level of their pricing and that [Deutsche Bank employee] intended to use the information [...] received from Rabobank as a benchmark to check and set [...] own pricing for the bonds in question (suggested by the fact that [...] intended to send [Rabobank employee]'s mail to [...] sales desk).

14 August 2009	
DB ([Deutsche Bank employee])	**** Original Message was sent to [Rabobank employee], RABOBANK *** *** copy to [Rabobank employee], RABOBANK ***

²¹⁰ [...].

	HI, YOUR BID ON EEC 2015 DOES THAT WORK IN 25MIO?JUST BEING TOLD BY MY SALES THAT MY PRICE IS CRAP”
Rabobank ([Rabobank employee])	“Since when do you listen to sales? As you know, we are not too proactive in keeping these too upto date. It works for a couple for 2m for decent clients. Our bid for 25mn would be closer to 100.65”
DB ([Deutsche Bank employee])	“can i forward this to my sales????”

- (208) On **18 August 2009**, [Rabobank employee] of Rabobank asked [Deutsche Bank employee] of Deutsche Bank whether [...] was being asked to offer 5 million on the EEC 3.25 11 by [...] at [...], noting that Deutsche Bank had the best offer, which was below Rabobank’s bid. Having noted this,[...] then indicated that [...] was ‘*now moving down*’ [...] bid.²¹¹
- (209) On that occasion, even though the information provided was unilateral, [Rabobank employee] used [Deutsche Bank employee]’s pricing as a benchmark to inform a decision to change [...] own pricing.

18 August 2009	
Rabobank ([Rabobank employee])	“hi, eec 3.25 11 are you being asked to offer 5m by [...] you are the best offer, below our bid, whchi i am now moving down. I know nothing about this client except that we never trade ”

- (210) On **20 August 2009**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to ask whether anybody had just checked Deutsche Bank’s offer in 5 million SFEFR 2.125 12.[Deutsche Bank employee] confirmed that Deutsche Bank’s offer had been checked by [...]. [Rabobank employee] then indicated what had been Rabobank’s bid price on screen and at what price [...] had actually bid to buy SFEFR 2.125 12 from [...] at [...]. In turn, [Deutsche Bank employee] indicated what had been Deutsche Bank’s ask/offer price on screen and at what price [...] had actually offered to sell SFEFR 2.125 12 to [...] at [...]. The figures showed that, while according to the screens Rabobank’s bid price would have been higher than Deutsche Bank’s ask/offer price, the opposite was true according to the prices actually proposed by the two banks to [...] at [...]. Therefore, in the end, Rabobank and Deutsche Bank probably had not traded with [...]. [Rabobank employee] then commented ‘*Would have preferred to catch [...] out with a trade though...What shall we do? Take [...] off?*’ to which [Deutsche Bank employee] replied that [...] would talk to [...] sales people and ‘*give [...] a warning*’.²¹²
- (211) The context suggests that, even though arbitrage between Rabobank’s and Deutsche Bank’s prices was probably prevented in this case, the parties suspected [...] of [...], a counterparty known to both Deutsche Bank and Rabobank, of continuing to try to engage in arbitrage trading. The warning [Deutsche Bank employee] planned to give to this counterparty, as well as [Rabobank employee]’s suggestion that both banks may possibly restrict access rights of this counterparty to Deutsche Bank’s and Rabobank’s prices on AllQ, is in line with Deutsche Bank’s and Rabobank’s

²¹¹ [...].

²¹² [...].

established practices in relation to such counterparties. In order to prevent arbitrage, the parties exchanged commercially sensitive information to establish whether both of them were checked by the same counterparty (this information is commercially sensitive as dealers are not given the identity of the other dealers that have been checked by the same client), as well as the price levels actually proposed to the counterparty (*'I bid 100.48 (screen was showing 100.55 bid)'*, *'I showed .51 offer and had .46 on screen'*) compared to the screen levels (the prices on screen are indicative and can differ from the prices actually proposed to the counterparties).

20 August 2009	
Rabobank ([Rabobank employee])	"Hi - anybody just check your offer in 5m SFEFR 2.125 12?"
DB ([Deutsche Bank employee])	"YES [...]"
Rabobank ([Rabobank employee])	"They asked for my bid. I bid 100.48 (screen was showing 100.55 bid). [...]"
DB ([Deutsche Bank employee])	"WELL DONE I SHOWED .51 OFFER AND HAD .46 ON SCREEN"
Rabobank ([Rabobank employee])	"Would have preferred to catch [...] out with a trade though .. What shall we do? Take [...] off?"
DB ([Deutsche Bank employee])	"I TALK TO MY SALES AND GIVE [...] A WARNING"
Rabobank ([Rabobank employee])	"Ok - we will be a bit more direct!!! Will let [Rabobank employee] loose on [...]!!"
DB ([Deutsche Bank employee])	"I TALKED TO MY SALES AND WILL SEE WHAT HAPPENS"

- (212) On **10 September 2009**, [Deutsche Bank employee] of Deutsche Bank wrote to [Rabobank employee] of Rabobank to advise [...] to adjust [...] price level: *'Better adjust your price in EEC 2016, just got hit at .45 in a block'*. [Rabobank employee] thanked [...] for this and then asked *'ok if I quote 48-63 (dont want to undercut you)'*. [Deutsche Bank employee] agreed with this (*'sure'*).²¹³

10 September 2009	
DB ([Deutsche Bank employee])	"BETTER ADJUST YOUR PRICE IN EEC 2016, JUST GOT HIT AT .45 IN A B LOCK"
Rabobank ([Rabobank employee])	"thanks – ok if I quote 48-63 (dont want to undercut you)"
DB ([Deutsche Bank employee])	"SURE"

²¹³ [...].

employee])	
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- (213) On **8 October 2009**, [Deutsche Bank employee] of Deutsche Bank wrote to [Rabobank employee] of Rabobank to discuss Rabobank's pricing on the BACR²¹⁴ 11 GG (Government Guaranteed) bonds.[...] asked [...] whether the pricing level displayed by Rabobank for a certain bond was real (*'really paying that high?'*) which [...] confirmed and then indicated that [...] was *'happy at the price now showing'*. [Deutsche Bank employee] then informed [...] that [...] was bidding for a certain volume of other bonds and that [...] expected that Rabobank also might have the same request: *'just bidding for a total of 100 mio GG, 60 mio UK Bonds, so lets see, maybe you have the same request'*. [Rabobank employee] responded that [...] thought that Rabobank were best bid on the UK names and that if [...] liked [...] could *'move them back a little'*.²¹⁵
- (214) The discussion shows a continued pattern of behaviour between the parties, whereby they monitored each other's prices and would adjust them to avoid being in competition with the other party.

8 October 2009	
DB ([Deutsche Bank employee])	"ARE YOU REALLY PAYING THAT HIGH ON BACR 11 GG?"
Rabobank ([Rabobank employee])	"PROBALBY, I DID SELL MY POSITION THIS MORNING VERY SLIGHTLY HIGHER. I DID JUST WIDEN IT BY A BP & AM HAPPY AT THE PRICE NOW SHOWING."
DB ([Deutsche Bank employee])	"OK, JUST BIDDING FOR A TOTAL OF 100MIO GG, 60MIO UK BONDS, SO LET'S SEE, MAYBE YOU HAVE THE SAME REQUEST"
Rabobank ([Rabobank employee])	"WE HAVE NOT SEEN IT BUT WE WE HAVE MORE SUCCESS SELLING UK NAMESTHAN ANY OTHER. OUR BIDS SHOULD BE OK ON UK NAMES. FOR 10-15M"
DB ([Deutsche Bank employee])	"I THINK WE WERE BEST BID ON THE UK NAMES. IF YOU LIKE I CAN MOVE THEM BACK A LITTLE"
Rabobank ([Rabobank employee])	"STILL WAITING FOR THE FEEDBACK, NO WORRIES"

- (215) On **30 October 2009**, there was an exchange between [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank. Further to a discussion on some trading activity which the parties seem to believe involved arbitrage, [Deutsche Bank employee] indicated that if Rabobank would pay around 102.43 [...] would move Deutsche Bank's price up.[...] then thanked [...] for the information and confirmed *'no arbitrage this time ;-))'*.²¹⁶

²¹⁴ Barclays Bank.

²¹⁵ [...].

²¹⁶ [...].

- (216) The discussion shows that the parties exchanged commercially sensitive information, including trades with counterparties and positions (*‘I have been hit twice by the same Spanish a/c’ / ‘my bid is the same as your offer’, ‘im long 4 mio’*) and coordination of trading strategies and prices (*‘if you pay around 102.43 I will move my price up’*).

30 October 2009	
Rabobank ([Rabobank employee])	“GOOD MORNING I HAVE BEEN HIT TWICE IN THE FBNETH 3 12 BY THE SAME SPANISH A/C. I AM HAPPY TO BUY THEM BUT MY BID IS THE SAME AS YOUR OFFER & I WANTED TO BE SURE THAT WE WERE NOT BEING BROKED, I HOPE YOU DONOT MIND ME POINTING THIS OUT TO YOU REGARDS [RABOBANK EMPLOYEE]”
DB ([Deutsche Bank employee])	“hi ,[Rabobank employee] I didnt trade ,them so if you pay around 102.43 i will move mylprice up , im long 4 mio ntg major but thx a lot for the info no arbitrage this time ;-)))),”
Rabobank ([Rabobank employee])	“thank you for you reply. you were easily the best offer. i am a little upset as i have already bought some bylan 12 from [...] who got them from [...], happy to buy them just annoyed at paying bro to a 'client'”
DB ([Deutsche Bank employee])	“got you often the case these days with these guys.... there is a lot of room in the market which offer this oportunities.... i will keep you updated if see anything strange... only got lifted in ka 5/2011 this morning level was 101.33 for your guide”
Rabobank ([Rabobank employee])	“thanks please feel free to ask if you think i might be able to help at all.”

- (217) The following exchange took place on **9 November 2009** between [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank. It shows the parties were exchanging commercially sensitive information in relation to a certain trade (DES FLEMSH CPN 3.875) such as the level of prices and volumes (*‘I was offering at 48 (3m)’*), as well as trading strategies (*‘just pulled it’, ‘best to hold on to them’*). [Rabobank employee] noted that Deutsche Bank was bidding above Rabobank’s offer and then indicated that [...] would therefore move Rabobank’s offer price up. [Deutsche Bank employee] confirmed that Deutsche Bank had 10 million *‘but have no interest seen the last week ...’*. [Rabobank employee] then provided some more information and advice, to which [Deutsche Bank employee] replied: *‘Ok, very good, thx for the info’*.²¹⁷

9 November 2009	
Rabobank ([Rabobank employee])	“** DES FLEMSH CPN 3.875 MTY 7/20/2016 EH896576 [...] CHECKING ME ON THE OFFER & I SEE YOU ARE BIDDING ABOVE OUR OFFER, I AM MOVING IT UP NOW”

²¹⁷ [...].

DB ([Deutsche Bank employee])	"I HAVE 10 MIO , BUT HAVE NO INTEREST SEEN THE LAST WEEK ..."
Rabobank ([Rabobank employee])	"THEY ARE +50 BID AT [...] FYI. I WAS OFFERING AT 48 (3M) BUT JUST PULLED IT. IF [...] ARE LOOKING FOR THEM BEST TO HOLD ON TO THEM"
DB ([Deutsche Bank employee])	"OK VERY GOOD THX FOR THE INFO, ..."

5.2.5. 2010

- (218) On **8 January 2010**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank entered into a trade for 2.068 million. They discussed the BNG 20 and the NWB, with [Rabobank employee] indicating that [...] had sold *'most of the BNG 20s we were allocated'* at *'around 44½'* and that Rabobank had moved their bid on that to 45. [Deutsche Bank employee], who *'got some aswell but havnt sold any'*, thanked [...] and informed [...] that [...] would *'see how it goes next week but that's good indication'*.²¹⁸
- (219) By disclosing Rabobank's pricing on the BNG 20, [Rabobank employee] provided [Deutsche Bank employee] with commercially sensitive information representing a benchmark for setting [...] own price and that was for [Deutsche Bank employee] a good indication for future pricing.

8 January 2010	
DB ([Deutsche Bank employee])	"hi sorry for late....i have 2068 if it helps 102.05 market hre."
DB ([Deutsche Bank employee])	"if it helps"
Rabobank ([Rabobank employee])	"that would be great, thank you very much"
DB ([Deutsche Bank employee])	"ok done i sell 2.068 mio at 102.05"
Rabobank ([Rabobank employee])	"thanks again. we have sold most of teh BNG 20s we were allocated but eth NWB is a little slower"
DB ([Deutsche Bank employee])	"I got some aswell but havnt sold any , what level did you loose them becuae i havent seen any decent price in the market today in the bng"
Rabobank ([Rabobank employee])	"we sold them around 44½, we have moved our bid to 45, just inside the re-offer but i can see thre are better bids"
DB ([Deutsche Bank employee])	"ok , thx alot, I will see how it goes next week but thats good"

²¹⁸ [...].

employee])	indication ... cheers have good we”
Rabobank ([Rabobank employee])	“thanks & you too”

- (220) On **27 January 2010**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank enquiring whether *‘flemsh 3.875 16 not sure if this is yours’* and remarking *‘you are offered well below other bids, not that i see much busines in this (Ther is a bid at 104.699’*. [Deutsche Bank employee] thanked and responded to the information provided by [Rabobank employee] (*‘hi thx, I’m long but haven’t seen any buyer at all .. but will move it up a bid’*), to which [Rabobank employee] replied indicating that [...] *‘sold 6.3m 2 weeks ago but it is not active’*.²¹⁹
- (221) The commercially sensitive information provided by [Rabobank employee] prompted [Deutsche Bank employee] to react by moving [...] pricing level upwards. As such, the parties coordinated their trading strategies by aligning their prices.

27 January 2010	
Rabobank ([Rabobank employee])	“flemsh 3.875 16 not sure if this is yours but you are offered well below other bids, not that i see much busines in this (Ther is a bid at 104.699”
DB ([Deutsche Bank employee])	“hi thx , im log but havent seen any buyer at all.. but will move it up a bid thank you”
Rabobank ([Rabobank employee])	“we sold 6.3m 2 weeks ago but it is not active”

- (222) On **2 February 2010**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank engaged in an exchange in relation to certain Flemish bonds maturing in 2016. [Deutsche Bank employee] warned that there was a seller for those bonds from whom [...] was not willing to buy at the bid price shown on [...] screen: *‘s[e]ller going around in FLEMSH 2016, 13 mio [million] be aware I am not paying my screen, don’t know if you have b[uy]ing cares’*. [Rabobank employee] thanked and informed [...] that Rabobank were asked to bid 33 million, but that they only bought 20 million and then sold 10 million of these bonds. [Deutsche Bank employee] then disclosed that they *‘got hit at .44 in the remaining 13mio’*, to which [Rabobank employee] reacted *‘Wow, that is a lot less than what we paid’*. [Rabobank employee] then informed [Deutsche Bank employee] that Rabobank sold a *‘few 2014 Dutch GG positions into Germany’*, and that the buyer had an interest in the Flemish bonds but since they were not Government Guaranteed [...] hesitated. [Rabobank employee] then proposed to [Deutsche Bank employee] the amount and price [...] would show to this counterparty if that suited [...]: *‘I can show 23m to [...] at say 104.67 if you care at that level but..’*.²²⁰
- (223) The communication of 2 February 2010 shows that the parties coordinated their strategies and prices to be proposed to specific counterparties. In this respect, they exchanged commercially sensitive information in relation to recent trades,

²¹⁹ [...].

²²⁰ [...].

counterparty's enquiries, volumes, positions and prices, which increased transparency and enabled them to explore opportunities for coordination.

2 February 2010	
DB ([Deutsche Bank employee])	"SELLER GOING AROUND IN FLEMISH 2016, 13MIO BE AWARE, I AM NOT PAYING MY SCREEN, DON'T KNOW IF YOU HAVE BUYING CARES"
Rabobank ([Rabobank employee])	"THANK YOU, WE WERE ASKED TO BID ON 33M ON FRIDAY (ITALIAN), WE TOOK 20 & SOLD 10 OF THEM. WE HAVE HEARD A RUMOUR OF A NEW GVT GTEED NIBCAP BUT KNOW NOTHING"
DB ([Deutsche Bank employee])	"OK THANK YOU, THE SELLER IS ITALIAN WITH US TOO"
DB ([Deutsche Bank employee])	"GOT HIT AT .44 IN THE REMAINING 13MIO"
Rabobank ([Rabobank employee])	"WOW, THAT IS A LOT LESS THAN WE PAID. WE SOLD A FEW 2014 DUTCH GG POSITIONS INTO GERMANY. THE BUYER HAD INTEREST IN THE FLEMISH BUT AS THEY ARE NOT SPECIFICALLY GTEED [...] HESITATED. I CAN SHOW 23M TO [...] AT SAY 104.67 IF YOU CARE AT THAT LEVEL BUT. ..."
DB ([Deutsche Bank employee])	"I DON'T HAVE THAT BUYER AS I HAVE NO SALES WEAKNESS.....I HAVE GOT A TOTAL OF 22MIO NOW, WOULD WORK AT YOUR LEVEL, FEEL FREE TO DO WHAT YOU CAN AS WELL ON THE SIZE, GOT SOME NIBCAP 14 STILL TO GO, CAN'T GET MY SALES INTERESTED IN IF YOUR ACCOUNT HAS MORE BUYING CARES, GOT 21MIO.OFF FOR LUNCH NOW, PLS REVERT TO [Deutsche Bank employee] [...] IS INFORMED.THANK YOU"
Rabobank ([Rabobank employee])	"THANK YOU, I WILL SEE WHAT I CAN DO"

- (224) On **25 February 2010**, [Rabobank employee] of Rabobank informed [Deutsche Bank employee] of Deutsche Bank that the Rabobank central treasury might be looking for Flemish bonds maturing in 2016 for which [...] had 8.9 million, but [...] believed that the central treasury would need more than that.[...] then added: *'I think you might be the offer with [...]'* and [Deutsche Bank employee] confirmed: *'yes, I am. I have got 22 mio to go, screens works if you want to follow it'*. [Rabobank employee] thanked [...] and confirmed that [...] would now show 30 million at a price of five cents above the price shown by Deutsche Bank on the screen: *'thats, I show 30 at 5cts above your screen, it is our central treasury but it might be a little long for them'*, indicating that the volume might be too much for the central treasury.

[Deutsche Bank employee] replied: *'don't worry, I can't get anybody involved in this name, trading with brokers only if it comes to trading'*.²²¹

- (225) The communication of 25 February 2010 is an example of the parties combining their positions (22 million plus 8.9 million resulting in approximately 30 million) at a pre-agreed price (*'5cts above your screen'*) to offer to a counterparty (this is the central treasury mentioned by Rabobank) before the trade with that counterparty has been executed. In this respect, the parties exchanged commercially sensitive information with respect to the counterparty's identity, their positions and prices and coordinated their strategy with respect to that counterparty.

25 February 2010	
Rabobank ([Rabobank employee])	"hi, our central treasury might look at the flemish 16, i have 8.9m but they need larger size, ideally they want 4 to 5y gg but as there is nothing beyond 2014 i was intending to show the flemsh. i think you might be th eoffer with [...]."
DB ([Deutsche Bank employee])	"yes i am, i have got 22mio to go, screen works if you want to follow it"
Rabobank ([Rabobank employee])	"thaks, i show 30 at 5cts above your screen, it is our central treasury but it might be a little long for them"
DB ([Deutsche Bank employee])	"don't worry, i can't get anybody involved in this name, trading with brokers only if it comes to trading"

- (226) On **22 March 2010**, [Rabobank employee] of Rabobank warned [Deutsche Bank employee] of Deutsche Bank that with regard to: *'bng 2.875 15 you look a little high new coming of course but we have been asked to offer a couple of time by dodgy a/cs; th[e]re are offers below your bid'*.²²²
- (227) In this unilateral communication between the parties, Rabobank offered inside intelligence to Deutsche Bank with regard to offer and demand for BNG 2.875 15, allowing Deutsche Bank to adjust its bid price on the basis of the input received from Rabobank.

22 March 2010	
Rabobank ([Rabobank employee]) to DB ([Deutsche Bank employee])	"Bng 2.875 15 you look little high new coming of course but we have been asked to offer a number of times by dodgy a/cs & thre are offers below your bid"

- (228) On **21 April 2010**, [Deutsche Bank employee] of Deutsche Bank wrote to [Rabobank employee] of Rabobank to ask [...] whether Rabobank was a buyer of SWEDA bonds and to point out that [...] screen looked very high, whereas [...] was having *'them way lower'*. [Rabobank employee] reacted: *'we are flat, i can see [...] paying 10cts better*

²²¹ [...].

²²² [...].

than us & i know of a mkt maker looking for 20m. i am sure you know but sweda has pulled out of the gg programme'. [Deutsche Bank employee] commented that a 'big European CB (central bank) had asked for a bid' in 100 million. [Rabobank employee] thanked [Deutsche Bank employee] and mentioned that: 'We will never see that. I would take 25m at the screen if you needed to reduce. ch[a]nce the buyer of FLEMH from yesterday wo[u]ld look at it'.²²³

- (229) This conversation shows that the parties continued with their habit of monitoring and exchanging commercially sensitive information with respect to their respective positions and pricing levels. This would have allowed them to coordinate on trading strategies and pricing in relation to the SWEDA bonds.

21 April 2010	
DB ([Deutsche Bank employee])	"MORNING, ARE YOU A BUYER OF SWEDA 3 ¾ 14?SEEMS VERY HIGH ON YOUR SCREEN.I DIDN'T GET HIT YET BUT HAVE THEM WAY LOWER"
Rabobank ([Rabobank employee])	"WE ARE FLAT, I CAN SEE [...] PAYING 10CTS BETTER THAN US & I KNOW OF A MKT MAKER LOOKING FOR 20M. I AM SURE YOU KNOW BUT SWEDA HAS PULLED OUT OF THE GG PROGRAMME. A GOOD ONE TO BE LONG OF I THINK"
DB ([Deutsche Bank employee])	"WELL, BIG EUROPEAN CB HAS ASKED FOR A BID IN 100MIO"
Rabobank ([Rabobank employee])	"THANK YOU. WE WILL NEVER SEE THAT. I WOULD TAKE 25M AT THE SCREEN IF YOU NEEDED TO REDUCE. CHSNCE THE BUYER OF FLEMH FROM YESTERDAY WOLD LOOK AT IT"

- (230) On **4 May 2010**, [Rabobank employee] of Rabobank wrote to [Deutsche Bank employee] of Deutsche Bank to provide some information to [...] about the BNG 2.875.[...] indicated that [...] thought that on pricing Deutsche Bank was '*a little high*' and informed [...] that Rabobank offered 5 cents lower. [Deutsche Bank employee] thanked [Rabobank employee] for the information.²²⁴

- (231) The communication of 4 May 2010 is an example of the transmission between competitors of commercially sensitive information by providing internal price views gained from a recent trade and thereby reducing uncertainties inherent to bond trading. [Rabobank employee] also provided to [Deutsche Bank employee] commercially sensitive information in relation to the counterparty's identity ('[...]') and the price at which Rabobank was offering in respect of BNG bonds.

4 May 2010	
Rabobank ([Rabobank employee])	"BNG 2.875 15 I THINK YOU ARE A LITTLE HIGH - WE OFFER 5CTS LOWER"

²²³ [...].

²²⁴ [...].

Rabobank ([Rabobank employee])	“[...] JUST LIFTED US IN 1 M”
DB ([Deutsche Bank employee])	“THANK YOU”

- (232) On **20 May 2010**, [Rabobank employee] of Rabobank exchanged some commercially sensitive information with [Deutsche Bank employee] of Deutsche Bank about a trade with certain RBS²²⁵ bonds [...] was putting through with a trader by the name of [...], indicating that the counterparty was bidding [...] ‘.835’ and that [...] would put it through flat.[...] told [Deutsche Bank employee]: *‘I am happy to tell you the buyer, it is not a captive account by any means’*. [Deutsche Bank employee] replied that in the end, [...] did not really care as *‘whatever you want to do is done and we owe the [...] a beer, what do you think?’* [Rabobank employee] agreed with this (*‘I agree [...] deserve something’*) and mentioned the name of the counterparty (*‘the buyer is [...] at [...]’*), finally confirming that [...] concluded the trade.²²⁶

20 May 2010	
Rabobank ([Rabobank employee])	“Subject: RBS i am happy to tell you the buyer, it is not a captive a/c by any means, as i am putting this through flat,[...] is bidding me .835”
DB ([Deutsche Bank employee])	“at the end honestly i don't really care, what ever you want to do is done and we owe the [...] a beer, what do you think”
Rabobank ([Rabobank employee])	“i agree [...] deserve something, the buyer is [...] at [...]”
Rabobank ([Rabobank employee])	“13:58:00 [...] : pls treat me subj 13:58:14 [...] : should be fine, but i will need to refresh my swap”
Rabobank ([Rabobank employee])	“Subject: I CAN PAY .835 FOR 13M”
Rabobank ([Rabobank employee])	“INSTANT BLOOMBERG: i can pay .835 for 13m”
Rabobank ([Rabobank employee])	“Subject: I SOLD 13M AT .835”

- (233) On **14 June 2010**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank exchanged commercially sensitive information in relation to Lloyds 11 bonds. [Deutsche Bank employee] informed [Rabobank employee] that [...] thought that Rabobank were high on Lloyds 11 bonds as [...] had a seller of a block with a target of 103.52. This information was intended to let [Rabobank employee] know that [...] was quoting an inappropriate price that was above the level where it needed to be to conclude the transaction. [...] further disclosed details about

²²⁵ Royal Bank of Scotland.

²²⁶ [...].

market conditions and added that Deutsche Bank did not have any flow in those bonds, and that [...] would have been able to buy those bonds at .50, meaning at a lower price (103.50) than that at which the seller was asking (103.52). [Rabobank employee] indicated that Rabobank *'had an on-going buyer of UK names'* and that a market-maker just bought RBS 11 bonds with very similar maturity (to that of Lloyds 11) and same coupon for 103.70. In return, [Deutsche Bank employee] indicated that [...] was offering RBS at $\frac{3}{4}$ (.75) and [...] thought that: *'those guys need to get out'*.²²⁷

- (234) In the communication of 14 June 2010, the parties exchanged commercially sensitive information with a view to helping the other party make a trade on specific bonds. In particular, Deutsche Bank provided valuable information on which Rabobank could act upon by adjusting their price. Knowing that there was a seller with an ask price lower than that at which Rabobank was willing to bid provided an advantage to Rabobank and deprived the counterparty from the opportunity to obtain a competitive price. In addition, by providing details about market conditions (*'we don't have any flows in it'*) Deutsche Bank reduced market uncertainties and provided Rabobank with information that was helpful in determining the level at which to quote the bid price.

14 June 2010	
DB ([Deutsche Bank employee])	"THINK YOU ARE HIGH ON LLOYDS 11, GOT A SELLER OF A BLOCK HERE, TARGET 103.52"
Rabobank ([Rabobank employee])	"THANK YOU VERY MUCH, REALLY 103.52?"
DB ([Deutsche Bank employee])	"YES.WE DON'T HAVE ANY FLOWS IN IT.I THINK I WOULD HAVE EVEN GOT THEM AT .50"
Rabobank ([Rabobank employee])	"WE HAVE HAD AN ON-GOING BUYER OF UK NAMES, ONLY 1 THOUGH. A MKT-MAKER JUST BT SOME RBS 11, VERY SIMILAR MATURITY & SAME CPN, & IS OFFERING THEM AT 103.70"
Rabobank ([Rabobank employee])	"[...] JUST OFFEREING RBS AT $\frac{3}{4}$,THINK THOSE GUYS NEED TO GET OUT"

- (235) On **22 June 2010**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank continued the discussion from 14 June 2010 (see recital (234)) in relation to the same RBS 2011 bonds. [Deutsche Bank employee] warned [Rabobank employee] to watch out on the RBS 11 as 15 million *'came out at 103.25'*. [...] explained that [...] *'missed have been paying .21 only'*. [Rabobank employee] thanked [...] and added that there were many sellers of those bonds and that the day before Rabobank had been lifted in five million, suggesting that even though there were many sellers,[...] managed to sell five million of RBS 11. [Rabobank employee] further mentioned that that morning [...] bought six million for 103.43, suggesting that the price [...] paid for those bonds was economically disadvantageous. [Deutsche Bank employee] replied: *'this [...] is offered only, the*

²²⁷

[...].

same as on the Lloyds the other day'. [Rabobank employee] added that: '[...] have been showing us 75 m in each [i.e. RBS 11 and Lloyds 11] for a couple of days but at a high price' and that [...] probably bought the bonds at low levels when [...] missed.²²⁸

- (236) In this exchange, the parties exchanged commercially sensitive information about recent trades and prices (*'I missed have been paying .21 only', '...we were lifted yesterday in 5m. I did pay .43 (I know) for 6m this morning'*), thereby reducing market uncertainties inherent to bond trading.

22 June 2010	
DB ([Deutsche Bank employee])	"WATCH OUT ON RBS 2011, 15MIO CAME OUT AT 103.25, I MISSED HAVE BEEN PAYING .21 ONLY"
Rabobank ([Rabobank employee])	"THANK YOU. THERE ARE A LOT OF SELLERS AROUND BUT WE WERE LIFTED YESTERDAY IN 5M. I DID PAY .43 (I KNOW) FOR 6M THIS MORNING"
DB ([Deutsche Bank employee])	"THIS [...] IS OFFERED ONLY, THE SAME AS ON THE LLOYDS THE OTHER DAY"
Rabobank ([Rabobank employee])	"FYI [...] HAVE BEEN SHOWING US 75M IN EACH FOR A COUPLE OF DAYS BUT AT A HIGH PRICE."
DB ([Deutsche Bank employee])	"THEY PROBABLY BOUGHT THEM AT THSOE LOW LEVELS WHEN I MISSED.TOTAL MUST BE AROUND 150MIO NOW WHICH CAME OUT"

- (237) Later on that same day, [Rabobank employee] of Rabobank shared with [Deutsche Bank employee] of Deutsche Bank an example of an action to deter a certain trader ([...] at Bank [...]) from engaging in arbitrage.
- (238) [Rabobank employee] afterwards informed [Deutsche Bank employee] that Rabobank had been hit in 5 million RBS 11 by a Spanish counterparty and that: *'thanks to you i moved the price down 20 cents from where i was hit this morning, i thought [...] was genuine but now [...] has another 5m but that is [...] total, so [...] says'*.²²⁹
- (239) In that communication, the parties exchanged commercially sensitive information and [Rabobank employee] explained how Rabobank was adjusting the price level based on market intelligence gained from Deutsche Bank.

Rabobank ([Rabobank employee])	"i thik a lot of findan traded, [...] lost their's & they had quite a few this morning bank [...] lifted [...] on a wrong price in 2m of a liquid \$ dollar bond & hit us 57 cts higher. I contacted the [...] trader & [...] saw [...] price had been wrong so & [...] asked them to cancel, they said they had a private bk order funnily enough 2 cts below where they had hit us. they then asked us to cancel but we refused as we told them we knew what they had done. so
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²²⁸ [...].

²²⁹ [...].

	<p>having abused the system then lied i got this</p> <p>11:18:23 [...] : the problem is that you broke the trust between us to arrive at your conclusion.</p> <p>11:21:59 [Rabobank employee] : there was no trust & your actions clearly indicate you were not entitled to any. It will not be a problem any more as you have been removed & this time we will not put you back on.</p> <p>11:29:53 [...] : I need to take a decision as well about the structured product business I do with you as well as the other business I do with your good bank”</p>
DB ([Deutsche Bank employee])	“great story, i don't think they trade with us at all, but [...] really thinks [...] can put pressure on you”
Rabobank ([Rabobank employee])	“we took them off last year & have only just put them back on. spanish [...] just hit us in 5m rbs 11(thanks to you i moved the price down 20 cts from where i was hit this morning), i thought [...] was genuine but now [...] has another 5m but that is [...] total, so [...] says.”
DB ([Deutsche Bank employee])	“famous last words”

(240) On **23 June 2010**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank continued the previous day’s communication,²³⁰ exchanging commercially sensitive information in relation to RBS 2011 bonds. [Rabobank employee] informed [Deutsche Bank employee] that they had *‘just sold our rbs 11, 16m, at .41. it surprised me’*. [Deutsche Bank employee] replied that [...] was just checked for a two-way price in 50x50 and that [...] sent the client *‘to hell,[...]then left a buyin care at 103.25’*. [Rabobank employee] mentioned that Rabobank had one account asking for two-way prices and that [...] thought *‘it is ridiculous’* and that [...] would *‘replace the rbs at 30’*. [...] then added that [...] was offering 50 million RBS as well as *‘at asw-6 btf 0 11 at +74.8 which looks ambitious’*.²³¹

(241) In this exchange, the parties exchanged commercially sensitive information in relation to recent trades and the price at which they effected those trades, as well as information in relation to a counterparty’s offer and its identity (*‘[...] offering 50m this morning...’*).

23 June 2010	
Rabobank ([Rabobank employee])	“fyi we just sold our rbs 11, 16m, at .41. it surprised me”
DB ([Deutsche Bank employee])	“just been check for a two way in 50x50, i send [...] to hell,[...] then left a buyin care at 103.25”

²³⁰ See recitals (237)-(239).

²³¹ [...].

DB ([Deutsche Bank employee])	“we have 1 a/c that asks for two-way prices, i think it is ridiculous, i would replace the rbs at 30. [...] offering 50m rbs this morning at asw-6 btf 0 11 at +74.8 which looks ambitious.”
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- (242) On **24 June 2010**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank continued exchanging commercially sensitive information in relation to RBS 2011 bonds. [Deutsche Bank employee] asked [Rabobank employee] whether [...] was interested in RBS 11/11 as *‘the cheap seller is going around again, size 20 to 30mio, wouldn’t be astonished if [...] has got more. Had been talking to [Rabobank employee] about it’*. [Rabobank employee] replied: *‘Let me push my [...] from yesterday. Have them 103.32-44. Agree?’*, meaning that, in view of Rabobank’s client interest in buying the same bonds,[...] asked [Deutsche Bank employee] to obtain in [...] negotiations with the counterparty a transaction price in the range of 103.32-44. Thereafter, [Deutsche Bank employee] informed [...] that [...] seller *‘is just opening up target .36 [i.e. 103.36], but I think I can squeeze a couple of cents’*. [Rabobank employee] replied: *‘let me try’*. One hour later, [Deutsche Bank employee] informed [Rabobank employee] that: *‘the [...] with the large clip is going home now’*, and mentioned that: *‘target as with the other [...] around 103.36, so if your [...] ever comes back I will revisit it tomorrow’*.²³²

24 June 2010	
DB ([Deutsche Bank employee])	“ANY CARES IN RBS 11/11?THE CHEAP SELLER IS GOING AROUND AGAIN, SIZE 20 TO 30MIO, WOULDN'T BE ASTONISHED IF [...] HAS GOT MORE. HAD BEEN TALKING TO [Rabobank employee] ABOUT IT “
Rabobank ([Rabobank employee])	“Let me push my [...] from yesterday. Have them 103.32-44. Agree?”
DB ([Deutsche Bank employee])	“MY SELLER IS JUST OPENING UP TARGET .36, BUT I THINK I CAN SQUEEZE A COUPLE OF CENTS”
Rabobank ([Rabobank employee])	“Let me try..”
DB ([Deutsche Bank employee])	“THE [...] WITH THE LARGE CLIP IS GOING HOME NOW, TARGET AS WITH THE OTHER [...] AROUND 103.36, SO IF YOUR [...] EVER COMES BACK,I WILL REVISIT IT TOMORROW”
Rabobank ([Rabobank employee])	“Ah - meant to say. My [...] can take the 70m, but is busy requesting swap lines etc. Give me another 5 mins for more clarification if possible.”
Rabobank ([Rabobank employee])	“Think we have another 5 / 10 mins?”

²³² [...].

- (243) On **20 July 2010**, [Rabobank employee] of Rabobank informed [Deutsche Bank employee] of Deutsche Bank that [...] was *'being asked to bid'* for some bonds maturing in 2026 and asked [...] whether those were Deutsche Bank's bonds. [Deutsche Bank employee] replied that *'the ITL ones'* were traded outside the London desk and they had no interest in them, but that *'looking at the DEM ones'*, Rabobank's bid *'would be a bargain if you get them there'*. [...] then explained that [...] *'could bid'* but if [...] gets them *'they are running them 2 big figures lower than your price'*. [...] also added that the DEM bonds were *'at 45¾ and that's still low'*. [Rabobank employee] in return replied: *'will bear in mind if we see any DMs'*.²³³
- (244) The communication of 20 July 2010 is an example of the parties exchanging commercially sensitive information in relation to prices (*'the DM is at 45¾ and that's still too low'*) and recent trades (*'being asked to bid for these-your bonds perhaps'*).

20 July 2010	
Rabobank ([Rabobank employee])	“*** DES DB CPN MTY 10/15/2026 TT329680 FYI - being asked to bid for these. Your bonds perhaps?”
DB ([Deutsche Bank employee])	“THE ITL ONES ARE SADLY DONE OUT OF LONDON AND THEY DON'T CARE, LOOKING AT THE DEM ONES I WOULD SAY YOUR BID WOULD BE A BARGAIN IF YOU GET THEM THERE.I COULD BID BUT IF I GET THEM THEY ARE RUNNING THEM 2 BIG FIGURES LOWER THAN YOUR PRICE.THE DM ONE IS AT 45¾ AND THAT'S STILL TOO LOW”
Rabobank ([Rabobank employee])	“Thanks - will bear in mind if we see any DMs. Thanks”

- (245) On **28 October 2010**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that, with regard to a certain bond, Deutsche Bank had not been hit yet, but [...] would let [...] know. [Rabobank employee] replied: *'much appreciated. [...] [s]howing 100-100.20 on Bloomberg but I refuse to ever speak to them again'*. [Deutsche Bank employee] agreed and then disclosed [...] bid price and volumes for what [...] was offering on the screen: *'I did bid 99.97 for 64mio, par was the target, not sure if traded away'*.²³⁴ After approximately thirty minutes, [Deutsche Bank employee] replied: *'market here they just traded away from me at 100'*.²³⁵
- (246) The communication of 28 October 2010 is an example of an exchange of commercially sensitive information between the parties where one of them (Deutsche Bank) revealed their own bid price and strategy before the trade was executed. Rabobank could thus use that information for its own interactions with the counterparty and adjust their trading strategies accordingly.

28 October 2010	
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²³³ [...].

²³⁴ 'Trade away' means that a trade is executed by another broker or dealer.

²³⁵ [...].

DB ([Deutsche Bank employee])	“msg”
Rabobank ([Rabobank employee])	“great than kyou”
DB ([Deutsche Bank employee])	“didn't get hit yet, let you know”
Rabobank ([Rabobank employee])	“much appreciated. [...] howing 100.00-100.20 on bloomberg but i refuse to ever speak to them again”
DB ([Deutsche Bank employee])	“right you are, i did bid 99.97 for 64mio, par was the target, not sure if traded away, sales not coming back”
Rabobank ([Rabobank employee])	“thanks”
DB ([Deutsche Bank employee])	“market here they just traded away from me at 100”

- (247) On **16 November 2010**, [Rabobank employee] of Rabobank told [Deutsche Bank employee] of Deutsche Bank that Deutsche Bank's bid price for the purchase of certain bonds was *'a bit high'*, as [...] was being offered to buy those bonds at a lower price (*'being offered below your bid'*).²³⁶
- (248) The communication of 16 November 2010 shows that the parties exchanged commercially sensitive information about their bid prices and about the sales prices counterparties had offered to them and/or were offering in the market, allowing them to adjust their prices and trading strategies accordingly.

16 November 2010	
Rabobank ([Rabobank employee]) to DB Bank ([Deutsche Bank employee])	“*** DES DB CPN MTY 10/15/2021 TT329846 Hi - a bit high on this one perhaps? Being offered below your bid..”

- (249) On **1 December 2010**, [Deutsche Bank employee] of Deutsche Bank warned [Rabobank employee] of Rabobank that [...] *'just got hit at .42 in BNG 9/20'*, therefore revealing the price at which Deutsche Bank bought those bonds. [Rabobank employee] thanked [...] and disclosed Rabobank's position: *'thanks again, fyi we were long 10m'*. [...] then informed [...] that [...] had adjusted the price downwards to a level more beneficial to Rabobank, but not to a level that would disadvantage Deutsche Bank: *'I have moved it down but will not beat your offer'*.
- (250) The communication of 1 December 2010 is an example of how the parties exchanged commercially sensitive information in relation to prices, positions and recent trades and adjusted their prices on the basis of the information received.

²³⁶ [...].

- (251) The relevant traders then continued the conversation in relation to EEC 3.25 14 bonds, revealing recent client enquiries, including the volumes and prices at which the trade was concluded (*'being asked to offer 10m', '[...] bt my 2m at 33 at that was the screen, dutch a/c'*), allowing the recipient of the information to act upon it and to adjust its trading and pricing strategies in relation to that counterparty (*'i passed but you may get asked', 'just getting lifted now dutch ins'*).
- (252) On the same subject concerning EEC 3.125 14 bonds, [Rabobank employee] provided information about a specific bid for 2 million [...] had been asked to make by a counterparty ([...]) and noted that Deutsche Bank was offering 2 million *'at a very good price'*. [...] further noted that this was *'well below our bid'* and that, whilst Rabobank was *'not short'*, [...] thought [...] would let [Deutsche Bank employee] know. [Deutsche Bank employee] reacted that *'[...] is playing with [...] life....[...] is just checking me in 2mio on the offer, alarm bell!!!!!!!!!!'*. [...] then added: *'[...] [a] has been told'*. [Rabobank employee] responded *'fantastic thank you, i will have a word'*.
- (253) [Rabobank employee] then continued: *'fyi the dutch insure who was the buyer this morning we caught backdooring between us & your [...] [...], in rabo 22s. i was shocked but [...] said [...] did not know it was wrong but it was the first time [...] had done it'*. [Deutsche Bank employee] then replied *'where have you been bid at the time as [...] boss wouldn't mind that we take [...] off'*. [Rabobank employee] then replied giving [Deutsche Bank employee] [...] price level saying *'104.05, there was a much higher bid as well'*.²³⁷
- (254) The context of this conversation suggests that [Rabobank employee] and [Deutsche Bank employee] were collaborating on the pricing level for the bid for EEC 3.125 14 requested by a mutual client ([...]) as well as on the price level at which Deutsche Bank was offering to sell those bonds in the market. The chat is also an example of the parties coordinating their trading behaviour towards a specific counterparty by discussing the possibility to remove access rights to their trading system of a counterparty suspected of arbitrage, such as the Dutch insurer and the trader of [...], which were *'caught backdooring'*.

1 December 2010	
DB ([Deutsche Bank employee])	"WATCH OUT JUST GOT HIT AT .42 IN BNG 9/20"
Rabobank ([Rabobank employee])	"THANKS AGAIN, FYI WE WERE LONG 10M. I HAVE MOVED IT DOWN BUT WILL NOT BEAT YOUR OFFER"
Rabobank ([Rabobank employee])	"Subject: EEC 3.25 14 being asked to offer 10m do you have any please? i have just 2m"
DB ([Deutsche Bank employee])	"Subject: Re:EEC 3.25 14 screen works"
Rabobank ([Rabobank employee])	"fyi buying bidding .36 - i passed but you may get asked. [...] bt my 2m at 33 at that was the screen, dutch a/c"

²³⁷ [...].

DB ([Deutsche Bank employee])	“just getting lifted now dutch ins”
	(...)
Rabobank ([Rabobank employee])	“Subject: EEC 3.125 14 [...] asking me to bid 2m, you are offering 2m at a very good price, well below our bid. we are not short but thought i would let you know”
DB ([Deutsche Bank employee])	“oho, [...] is playing with [...] life....[...] is just checking me in 2mio on the offer, alarm bell!!!!!!!!!!!!”
DB ([Deutsche Bank employee])	“[...] has been told”
Rabobank ([Rabobank employee])	“fantastic thank you, i will have a word. fyi the dutch insure who was the buyer this morning we caught backdooring bewtween us & your [...], [...], in rabo 22s. i was shocked but [...] said [...] did not know it was wrong but it was the first time [...] had done it.”
DB ([Deutsche Bank employee])	“where have you been bid at the time as [...] boss wouldn't mind that we take [...] off”
Rabobank ([Rabobank employee])	“104.05, thre was a much higher bid as well”
Rabobank ([Rabobank employee])	<p>“[...] said [...] need to get a two-way price, although [...] canceled my side before i could send a price, i guess because you would not offer where [...] wanted. did i send you this before?</p> <p>14:04:11 [Rabobank employee]: hi, can you tell me please if the 550m rabo 20s you sold us came from an investor.</p> <p>14:05:55 [...]: hi [Rabobank employee], yes, a client of us (fund) asked twoway price and did both side... doing this business since a year... funny, because counterparty asked the same...</p> <p>14:38:05 [Rabobank employee]: interesting, so you were asked a two way price which happened to be bakwardation & you traded both sides in 550 at the same time. so your client ended up doing nothing as[...]bt & sd 550k?</p> <p>14:57:37 [...]: correct...</p> <p>15:09:04 [Rabobank employee]: clients do not ask a two-way to trade on each side for a backwardation & not actually end up buying or selling. Why did you not execute in larger size? If it was a client, which i doubt, then we do not want to see this business & have decided to rmove your trading privileges. regards</p> <p>15:15:03 [...]: i have sent you an inquiry to sell 550k of your own bonds, you gave me a price and now you are upset because i accept your price?</p>

	<p>15:15:27 [Rabobank employee]: i am upset because the bonds you sold me came from another market maker</p> <p>15:16:02 [...]: why didn't you ask to cancel the trade?</p> <p>15:17:06 [Rabobank employee]: i am happy with the trade but not with the manner in which it was done</p> <p>15:21:08 [...]: ok, will discuss this with client, can understand you are displeased, but for me doing commission is important too...</p> <p>15:22:58 [Rabobank employee]: why would a client expect to be able to trade on a backwardation. that is money for nothing.[...] has not actually done anything but make money out of 2 market-makers who are trying to provide liquidity to genuine accounts</p> <p>15:27:15 [...]: that's right...</p> <p>15:38:12 [Rabobank employee]: thanks, you can understand why we do not want to see this business"</p>
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5.2.6. 2011

- (255) On **3 February 2011**, [Rabobank employee] of Rabobank informed [Deutsche Bank employee] of Deutsche Bank that [...] was *'a very good offer in the eib 2.625 16'*. [...] confirmed to [...] that Rabobank was buying those bonds from Deutsche Bank (*'we are paying your screen'*), but warned [...] that there was someone else willing to buy at a better price (*'there is a better bid'*). [Deutsche Bank employee] thanked [Rabobank employee] for making [...] aware and let [...] know that [...] would adjust the spreads ([...] was *'almost flat in it'* and *'will tighten'*).²³⁸
- (256) The exchange of 3 February 2011 is an example of the parties providing each other with mutual assistance in trading bonds. [Deutsche Bank employee] revealed Deutsche Bank's position and, following the information received from [Rabobank employee], [...] decided to tighten the spreads which would move the market price upwards (see recital (38)). Deutsche Bank would therefore be able to sell those bonds for a higher price to the counterparty showing *'a better bid'*, but only after Rabobank had already bought bonds from Deutsche Bank at *'a very good offer'*.

3 February 2011	
Rabobank ([Rabobank employee])	"you are a very good offer in the eib 2.625 16, we are paying your screen & there is a better bid. on the kfw problem with [...] they accepted they were wrong but blamed it on different desks being involved."
DB ([Deutsche Bank employee])	"tks for making me aware.! am almost flat in it, will tighten.the [...] excuse is rubbish, they only have one desk...."

- (257) On **8 June 2011**, [Deutsche Bank employee] of Deutsche Bank contacted [Rabobank employee] of Rabobank to let [...] know that [...] had just got hit in the BNG 2.875 at 100.83 and suggested that if [...] happened to have been in competition with [...], [...]

²³⁸ [...].

might want to drop [...] price: *'don't know if you where my comp but maybe you want to drop your price'*.²³⁹

- (258) The communication of 8 June 2011, even if unilateral in nature, shows that the objective of exchanging information in relation to prices was to avoid competition by aligning prices.

8 June 2011	
DB ([Deutsche Bank employee]) to Rabobank ([Rabobank employee])	"hi, jsut ot hit in bng 2.875 15 at 100.83, don't know if you where my comp but maybe you want to drop your price"

- (259) On **9 June 2011**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to inform [...] that Rabobank had a buyer (*'our own private bank in Holland'*) of 100 million triple A paper 2014-16. [Rabobank employee] suggested that BNG would be a good bond to show them and that if [...] still had them [...] would suggest it. In addition, [Rabobank employee] of Rabobank shared its recent trades with a German and a Nordic central bank, including the volumes sold to those counterparties. [Deutsche Bank employee] replied that [...] still had BNG bonds and *'other AAA stuff in that bucket'* and that [...] should *'feel free to show them'*. [Rabobank employee] thanked [...] and confirmed that [...] would use [...] screen to do so.²⁴⁰

- (260) In this exchange, the parties shared commercially sensitive information about a counterparty's identity and their trading intentions, such as volumes.

9 June 2011	
Rabobank ([Rabobank employee])	"WE WERE ASKED TO BID ON 22M. SADLY WE HAVE TOO MANY BONDS ALREADY. TODAY WE DO HAVE A BUYER OF 100M TRIPLE A PAPER 2014-16. IT IS OUR OWN PRIVATE BANK IN HOLLAND & BNG WOULD BE A GOOD BOND TO SHOW THEM. THEY WILL BUY MAX OF 10M IN EACH ISSUE. IF YOU STILL HAVE THEM CARE I WILL SUGGEST IT."
Rabobank ([Rabobank employee])	"WE WERE ALSO HI IN BNG 17S BY A GERMAN LBK & BNG 16S BY A NORDICCB. JUST 5M EACH TIME BUT I SUSPECT THEY DID MORE ELSEWHERE"
DB ([Deutsche Bank employee])	"OK, I STILL HAVE THEM AND OTHER AAA STUFF IN THAT BUCKET IF YOU NEED ANYTHING.FEEL FREE TO SHOW THEM"
Rabobank ([Rabobank employee])	"WILL DO THANKS. WILL USE YOUR SCREEN"

²³⁹ [...].

²⁴⁰ [...].

- (261) On **10 June 2011** [Rabobank employee] of Rabobank informed [Deutsche Bank employee] of Deutsche Bank that Rabobank had earlier that week been asked for an offer in relation to the DEXGRP (as mentioned in the subject of the message) and that if [...] did get them [...] would be happy to ‘*show them*’. [Deutsche Bank employee] replied that [...] had an order for 40 million with a minimum clip of 10 million and with a target of 100.00, with 5 cent to play. [Rabobank employee] was very happy with this and asked [...] whether [...] could show 40 at 100.12, or whatever price [...] wanted. [...] agreed with this, replying ‘*sure*’.²⁴¹
- (262) In other words, [Rabobank employee] and [Deutsche Bank employee] coordinated on behalf of the parties with a view to combining their bonds for onward sale at a fixed price.
- (263) In particular, [Rabobank employee] agreed with [Deutsche Bank employee] on the price that [Rabobank employee] would show to Rabobank’s buying customer on the basis of the information [Deutsche Bank employee] provided about the sell order [...] was working on.²⁴²

10 June 2011	
Rabobank ([Rabobank employee])	“we were asked to offer earlier this week. if you do get them i would be very happy to show them. no idea what they would pay but they were looking for up to 100m of this issue in particular.”
DB ([Deutsche Bank employee])	“i have an order until london close, 40mio, min clip 10mio, target 100.00 with 5cent to play depending on the size i can execute”
Rabobank ([Rabobank employee])	“that is great, can i show 40 at 100.12 or wherever you care”
DB ([Deutsche Bank employee])	“sure”

- (264) On **5 July 2011**, there was a long exchange between [Deutsche Bank employee] and [Rabobank employee]. [Deutsche Bank employee] messaged [Rabobank employee] saying, likely referring to a broker: ‘*so rather tell them not to talk to you ... am offered 99.56 in 26.6mio...talking 2.625 1/14*’. [Rabobank employee] then wrote: ‘*we are small long, happy to buy a small amount at that price 5 to 10 but not too many. [...] bidding slightly higher than us*’, followed by: ‘*we would take 8m at that level as we are long 2m already*’. [Deutsche Bank employee] then replied: ‘*sell you 8mio at 99.55 if that's ok*’ and [Rabobank employee] responded ‘*that is great, thanks... i will move it down a couple of cents or if you prefer i can leave it there?*’ to which [Deutsche Bank employee] wrote: ‘*no, fine with me*’. [Rabobank employee] then wrote ‘*thanks I am 53-63 now*’ and [Deutsche Bank employee] replied: ‘*ok...am .57 offered at [...], told them not to approach you*’.²⁴³
- (265) Here, the last part of the exchange is indicative of price coordination as [Rabobank employee] asked [Deutsche Bank employee] whether [...] could move Rabobank’s price down by a couple of cents, to which [Deutsche Bank employee] agreed,

²⁴¹ [...].

²⁴² [...].

²⁴³ [...].

following which [Rabobank employee] then informed [Deutsche Bank employee] of Rabobank's new price level.

5 July 2011	
DB ([Deutsche Bank employee])	"so rather tell them not to talk to you"
DB ([Deutsche Bank employee])	"am offered at 99.56 in 26.6mio"
DB ([Deutsche Bank employee])	"talking 2.625 1/14"
Rabobank ([Rabobank employee])	"we are small long, happy to buy a small amount at that price 5 to 10 but not too many. [...] bidding slightly higher than us. we did sell some flemsh 16s yesterday, +54, which we had owned for a while."
DB ([Deutsche Bank employee])	"that's one of those useless names too"
DB ([Deutsche Bank employee])	"don't worry i don't have to sell just if somebody tries to hit you"
Rabobank ([Rabobank employee])	"I agree. we sold 10m, still long 6m. i remember buying some from you when i still thought it was a good name"
Rabobank ([Rabobank employee])	"we would take 8m at that level as we are long 2m already"
DB ([Deutsche Bank employee])	"sell you 8mio at 99.55 if that's ok"
Rabobank ([Rabobank employee])	"that is great, thanks"
Rabobank ([Rabobank employee])	"i will move it down a couple of cents or if you prefer i can leave it there?"
DB ([Deutsche Bank employee])	"no, fine with me"
Rabobank ([Rabobank employee])	"thanks i am 53-63 now"
DB ([Deutsche Bank employee])	"ok"
DB ([Deutsche Bank employee])	"am .57 offered at [...], told them not to approach you"

- (266) On **18 July 2011**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank exchanged information in relation to the pricing and trading of FINDAN 2013. [Deutsche Bank employee] advised [Rabobank employee]: *‘Watch out, Findan 2013 trading at .53 in the brokers. Got checked by two clients earlier. Got hit by one the other traded away’*. [Rabobank employee] replied that [...] had *‘just bought those. Thanks for that’*. [Rabobank employee] then asked [Deutsche Bank employee]: *‘do I mark down the rest of my position - that is the question’* and [...] also asked [...] whether [...] had seen *‘bigger size on the offer’*. [Deutsche Bank employee] replied: *‘I got 5 mio, instantly [...] came back to ask if I bid on in another 5 mio or more. I marked them down’*. [...] also disclosed [...] position, indicating that [...] was long 52 million.²⁴⁴
- (267) This communication is an example of the parties exchanging commercially sensitive information on recent trades, including positions (*‘am long 52mio’*) and the price level at which Deutsche Bank traded FINDAN bonds with a view to warning Rabobank to adjust its price. The fact that [Rabobank employee] asked whether there was ongoing selling interest and [Deutsche Bank employee] provided [...] with information on that indicates an intention for price coordination.

18 July 2011	
DB ([Deutsche Bank employee])	“WATCH OUT, FINDAN 2013 TRADING AT .53 IN THE BROKERS.GOT CHECKED BY TWO CLIENTS EARLIER, GOT HIT BY ONE THE OTHER TRADED AWAY”
Rabobank ([Rabobank employee])	“Yep - just bought those. Thanks for that”
DB ([Deutsche Bank employee])	“SORRY. TOO LATE”
Rabobank ([Rabobank employee])	“Do I mark down the rest of my position - that is the question! Did you see bigger size on the offer?”
DB ([Deutsche Bank employee])	“I GOT 5MIO, INSTANTLY [...] CAME BACK TO ASK IF I BID ON IN ANOTHER 5MIO OR MORE. I MARKED THEM DOWN, I DON'T KNOW WHAT'S WRONG WITH THAT NAME.AM LONG 52MIO”

- (268) On **4 August 2011**, [Deutsche Bank employee] of Deutsche Bank warned [Rabobank employee] of Rabobank that [...] was *‘too high on eib 5.5 18, just got hit at 115.88 coverage 115.50 and the guy is coming in again and selling more’*.²⁴⁵
- (269) The communication of 4 August 2011 is another example of the parties protecting each other’s trading interests by exchanging information about their level of pricing.

4 August 2011	
DB ([Deutsche Bank employee] to	“hi, think you are too high on eib 5.5 18, just got hit at 115.88

²⁴⁴ [...].

²⁴⁵ [...].

Rabobank ([Rabobank employee])	coverage 115.50 and the guy is coming in again and selling more”
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- (270) On **14 September 2011**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to ask if [...] was trading IBRD 0 16 bonds. [Deutsche Bank employee] confirmed that the offer on screen for IBRD bonds was belonging to Deutsche Bank: *‘ibrd 0 16 is me yes’*. [Rabobank employee] replied that [...] just sold a good size of the bonds to a UK broker at a price level above Deutsche Bank’s offer, adding that the *‘buyer needs good size’*, part of which [...] managed to get from an account.[...] then suggested that if Deutsche Bank was interested in offering the bonds, Rabobank could see if they could build up the size, disclosing also the identity of the counterparty as ‘[...]’. [Deutsche Bank employee] indicated that [...] had *‘got 10.3bn to go if of any use...feel free to work on my position if you add the one from your account...I’ll let you know if they contact me’*. [Rabobank employee] then confirmed that [...] could buy the 10.3 billion bonds from [Deutsche Bank employee]. They then continued exchanging commercially sensitive information about offers they had received and the level of pricing for those offers. They also warned each other about undesirable counterparties: *‘just be aware of some of our friends’*.²⁴⁶
- (271) In the communication of 14 September 2011, the parties exchanged commercially sensitive information about recent trades and offers from counterparties and protected each other’s trading interests by disclosing the price level at which they sold bonds (*‘we just sold good size to a uk broker above your offer’*). They also combined their positions to provide *‘a good size’* to the buyer which only requested a quote to Rabobank, not to Deutsche Bank (*‘they do not really speak to us’*). Instead of offering two independent offers to the counterparty which might have approached Deutsche Bank as well (*‘I’ll let you know if they contact me’*), the parties coordinated their strategies by combining their positions, thereby avoiding a situation where the counterparty would have placed one of the parties in competition with the other.

14 September 2011	
Rabobank ([Rabobank employee])	“hi, you may ne asked to bid on 10m eib oct 15 by [...], they just asked us to offer. do you trade teh ibrd 0 16 in itl please? {XS0070184527 Corp DES <GO>}”
DB ([Deutsche Bank employee])	“not yet”
DB ([Deutsche Bank employee])	“ibrd 0 16 is me yes”
Rabobank ([Rabobank employee])	“i am sure you see the interst but we just sold good size to a uk broker above your offer. the problem is that teh buyer needs good size. we were able to get some from an account. if you care to offer we can see if we can build up the size. i might as well tell you the buyer is [...]”
DB ([Deutsche Bank employee])	“only seeing sellers in it, have got 10.3bn to go if of any use, they

²⁴⁶ [...].

employee])	do not really speak to us”
Rabobank ([Rabobank employee])	“i am sure that would be good. i agree we have been buying lots of ITL bonds & no buyers”
DB ([Deutsche Bank employee])	“feel free to work on my position if you add the one from your account”
DB ([Deutsche Bank employee])	“i'll let you know if they contact me”
Rabobank ([Rabobank employee])	“i have asked the question. we have dealt with these guys probably only twice this year but they seem to do a lot as we had to book a put-through for them yesterday in 100m of a kfw issue they had sold to what i am sure you would say is one of your vey best accounts.”
Rabobank ([Rabobank employee])	“i do need to speak to yuo lpease”
Rabobank ([Rabobank employee])	“i can buy the 10.3bn”
Rabobank ([Rabobank employee])	“eu 2.75 6/16 [...] offered below your bid”
DB ([Deutsche Bank employee])	“one more thing, sfefr 3.125 6/14 i am offered below your bid have got 15mio to go and am in touch with a large block if you have a buyer, else just be aware of some of our friends”
Rabobank ([Rabobank employee])	“thank you, i am not a buyer”

(272) On **9 November 2011**, [Deutsche Bank employee] of Deutsche Bank responded to [Rabobank employee] of Rabobank: ‘*oho, good to know, will check instantly*’, then indicated that [...] had ‘*just adjusted it*’. [...] then warned [Rabobank employee] to ‘*watch out on 2037, apparently eib 2036 traded at I+112 yesterday*’. In response to this, [Rabobank employee] informed [Deutsche Bank employee] that: ‘*we just keep moving it down....*’.²⁴⁷

(273) On that occasion, the discussion between the two traders shows that the information exchange led to an adjustment of pricing on the part of the other party.

9 November 2011	
DB ([Deutsche Bank employee])	“oho, good to know, will check instantly”
DB ([Deutsche Bank employee])	“thank you vm, just adjusted it”

²⁴⁷ [...].

Rabobank ([Rabobank employee])	“you are welcome. eib is a disaster”
DB ([Deutsche Bank employee])	“yes, watch out on 2037, apparently eib 2036 traded at I+112 yesterday”
Rabobank ([Rabobank employee])	“we just keep moving it down & sadly we are not short. you did well to miss the 37 trade when you made that 2-way price (offered on your bid) & were criticised. I would take criticism over trading at the moment”

- (274) On **18 November 2011**, [Rabobank employee] of Rabobank entered into a discussion with someone at Deutsche Bank called [...], who replied to [...] from [Deutsche Bank employee]’s account as [...] was away from the desk at the time. [Rabobank employee] asked [...] whether Deutsche Bank had been approached to offer on the EU 2.375 18 by an Israeli account. The Deutsche Bank employee replied that [...] could not remember but suggested that *‘all those guys are now happily arbitraging anything’*. [Rabobank employee] then informed [...] that as of Monday, Rabobank would be *‘tiering’* all Israeli clients.²⁴⁸
- (275) The disclosure in relation to *‘tiering’* all Israeli clients is relevant to the parties’ established practice of coordinating their behaviour as concerns clients suspected of arbitrage. The communication involves an exchange of commercially sensitive information related to the counterparty’s identity and their trading requirements (*‘eu 2.375 18 - are you being asked to offer that one, isreali a/c’*) enabling the parties to coordinate their trading strategies with respect to the client.

18 November 2011	
DB ([Deutsche Bank employee]’s account)	“hi [Rabobank employee], it's [...] as [Deutsche Bank employee] is off the desk. [...]’ll come back the next half an hour i guess. we haven't seen this request so far”
Rabobank ([Rabobank employee])	“siorry, thank you for yur help - i guess you must be very busy. there aer so mnay poor accounts about at eth moment”
Rabobank ([Rabobank employee])	“eu 2.375 18 - are you being asked to offer that one, isreali a/c - iof you are there”
DB ([Deutsche Bank employee]’s account)	“morning, can#t remember but all those guys are now happily arbitraging anything”
Rabobank ([Rabobank employee])	“we have never tiered 'clients' before but on monday we start & ALL israelis are going on to it for starters”

- (276) On **28 November 2011**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank exchanged commercially sensitive information in relation to specific Dutch Government Guaranteed bonds. [Rabobank employee] stated: *‘we tend to build up the size until we get to 20 then sell. but if you do see any good sellers please let me know & i will try them’*. [Deutsche Bank employee]

²⁴⁸ [...].

responded: *'I hear you but pulled my bids as i thought in comparison to nether and where bng and nedwbk is being sold at they are way too rich and i never want to stuff you with my longs.will tighten them a little again'*.²⁴⁹

- (277) This communication is an example of the parties exchanging commercially sensitive information, such as trading strategy (*'we tend to build up the size until we get to 20 then sell', 'pulled my bids ... and i never want to stuff you with my longs', 'will tighten them a little again'*) and coordination of their trading strategies. The fact that Rabobank wanted to increase the size of the bonds to 20 million and then sell them and Deutsche Bank's confirmation that it would tighten the bid (that is, the spread), which would have the effect of increasing the price, suggests that the action was intended to help Rabobank sell the 20 million bonds at a higher price.

28 November 2011	
Rabobank ([Rabobank employee])	"Â fyi we have an internal buyer of the 2014 Dutch GG issues, needs minimum 20m at at time, we tend to build up the size until we get to 20 then sell, but if you do see any good sellers please let me know & i will try them. They were still interested this morning but we do need to check in case they move their target."
DB ([Deutsche Bank employee])	"i hear you but pulled my bids as i thought in comparison to nether and wheer bng and nedwbk is being sold at they are way too rich and i never want to stuff you with my longs.will tighten them a little again"
Rabobank ([Rabobank employee])	"sorry i missed this earlier, i agree of course but they are still keen to buy & only moved their target vs 3m swaps by 1 bp. it would not surprise me if they did move their target although this morning they had not. my bid has some room should they rethink their level."
DB ([Deutsche Bank employee])	"ok, than i keep an eye on your screens when it comes to bidding"
Rabobank ([Rabobank employee])	"i have been trying to get accounts to switch out of the ggs into nwb & bng as the spread is considerable but no luck."
DB ([Deutsche Bank employee])	"that's what i thought too would make sense, but....rv....what rv?????"
Rabobank ([Rabobank employee])	"indeed value is an irrelevance, only stuff we are selling is out to jul 12. i had a look at the DB german gvt page & saw that the bko sep 12 is the shortest bond to give a positive return on the offer & even then it is only 2bps."

- (278) On **29 November 2011**, [Rabobank employee] of Rabobank thanked [Deutsche Bank employee] of Deutsche Bank in relation to a recent trade in certain bonds: *'wow even by current standards 2.2 points is some cover'*.[...] then revealed that [...] sold some ING 14 GG bonds *'but the target is now wider. Our screens are still good but are*

²⁴⁹

[...].

slightly wider than before'. [...] informed [Deutsche Bank employee] that [...] could not see [...] prices on screen in those bonds. [Deutsche Bank employee] informed [...] that [...] *'would have 2350 lpty 3.25 14 to go'*. [Rabobank employee] confirmed that that *'would be fine'* to which [Deutsche Bank employee] replied: *'should I try on your screen?'*.²⁵⁰

- (279) The communication is an example of the parties exchanging commercially sensitive information such as recent trades, volumes, trading strategies and prices in relation to specific bonds.

29 November 2011	
Rabobank ([Rabobank employee])	"wow thank you. even by current standards 2.2 points is some cover. we just bt & sold some ing 14 gg but the target is now wider. our screens are still good but are slightly wider than before. i cannot see your prices in these by the way"
DB ([Deutsche Bank employee])	"would have 2350 lpty 3.25 14 to go"
Rabobank ([Rabobank employee])	"that would be fine"
DB ([Deutsche Bank employee])	"should I try on your screen?"

- (280) On **30 November 2011**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that Deutsche Bank had just *'got hit in 3.3 mio lpty and 8 mio sweda 3 375 14 if any cares in either'*. In response, [Rabobank employee] told [Deutsche Bank employee] that: *'our screen bids work'* and that [...] had just moved *'the sweda down 2.5tcs'* and then thanked [...]. [Deutsche Bank employee] responded: *'thank you! If [...] doesn't pay the next dinner, I will'*. Moreover, [Rabobank employee] informed [Deutsche Bank employee] that Rabobank was offering to sell EIB 28 at a price below Deutsche Bank's bid price for purchasing those bonds and enquired whether Deutsche Bank had been asked to bid or had indeed its own interest in purchasing these bonds.²⁵¹

- (281) The communication shows an exchange of commercially sensitive information and action to change pricing by Rabobank in reaction to that information. The indication that *'our screen bids work'* means that [Rabobank employee] confirmed that [...] was trading at the bid prices shown on the screens, and [Deutsche Bank employee] expresses gratitude for price movements made by [Rabobank employee] following their exchange of commercially sensitive information.

30 November 2011	
DB ([Deutsche Bank employee])	"got hit in 3.3mio lpty and 8mio sweda 3.375 14 if any cares in either"

²⁵⁰ [...].

²⁵¹ [...].

Rabobank ([Rabobank employee])	“our screen bids work - i did just move the sweda down 2.5tcs”
Rabobank ([Rabobank employee])	“thank you”
Rabobank ([Rabobank employee])	“and again”
DB ([Deutsche Bank employee])	“thank you!if [...] doesn#t pay the next dinner i will”
Rabobank ([Rabobank employee])	“you are welcome. i look forward to it & we are always happy to pay”
Rabobank ([Rabobank employee])	“we are offering eib 28 below your bid, dutch a/c & curious to know if they were asking you to bid or indeed if you did have an interest”

5.2.7. 2012

- (282) On **16 January 2012** [Deutsche Bank employee] of Deutsche Bank requested [Rabobank employee] of Rabobank not to bid on the NEDWBK 23 to [...] as [...] was on the offer (*‘don’t bid to [...] on nedwbk 23, it’s me on the offer’*). [Rabobank employee] immediately agreed to this: *‘thank you I will not’*.²⁵²

16 January 2012	
Rabobank ([Rabobank employee])	“hi ”
DB ([Deutsche Bank employee])	“don't bid to [...] on nedwbk 23, it's me on teh offer”
Rabobank ([Rabobank employee])	“thank you i will not.”
DB ([Deutsche Bank employee])	“on bng the 2.211 mio i bought on the 11th ”

- (283) On **21 February 2012** [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to inform [...] that a client called [...] was in the process of asking Rabobank to offer 6m EIB 0 2/17 and that [...] had shown a price of 88.29 on the Rabobank screen. [Deutsche Bank employee] replied that the counterparty had not approached Deutsche Bank *‘so far’*. Eventually, [Rabobank employee] indicated that Rabobank had sold those bonds at the price shown on screen. [Deutsche Bank employee] responded *‘88.30 at the time’*, presumably indicating Deutsche Bank’s price for those bonds at the time [Rabobank employee] executed the deal.²⁵³

²⁵² [...].

²⁵³ [...].

21 February 2012	
Rabobank ([Rabobank employee])	“Subject: INSTANT BLOOMBERG: [...] asking us to offer 6m eib 0 2/17 - we showed 88.29 our screen & good morning” ²⁵⁴
DB ([Deutsche Bank employee])	“good to know, didn't turn up here so far, morning to you”
Rabobank ([Rabobank employee])	”fyi we just sold 6m at our screen to [...] - this was our full size”
Rabobank ([Rabobank employee])	“88.30-at teh time” ²⁵⁵

(284) On **22 February 2012**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank coordinated in relation to an approach to a specific counterparty [...]. [Deutsche Bank employee] asked [Rabobank employee] ‘*can I tell [...] I know they are looking for some or just approach them without mentioning?*’. To this, [Rabobank employee] replied ‘*I think i might make sense to tell them I was putting our positions together, or they will ask me. it might be worth trying [...] as .they [bought] all we had ...; paid above your offer*’. [Deutsche Bank employee] then adjusted Deutsche Bank’s offer and informed [...] of this. Finally, [Rabobank employee] suggested that they combined their sizes in the ‘escudo’ issue of one of the EIB bonds [...] mentioned.²⁵⁶

(285) The communication shows that the parties coordinated their prices and exchanged commercially sensitive information about recent trades with a counterparty (‘[...] *as they bt all we had ...; paid above your offer*’). The fact that [Rabobank employee] informed [Deutsche Bank employee] that Rabobank’s client had paid above the price at which Deutsche Bank was selling the bonds allowed [Deutsche Bank employee] to adjust Deutsche Bank’s price.

22 February 2012	
DB ([Deutsche Bank employee])	“ok, can i tell [...] i know they are looking for some or just approach them without mentioning”
Rabobank ([Rabobank employee])	“i think i might make sense to tell them i was putting our positions together, or they will ask me. it might be worth trying [...] as they bt all we had & paid above yuor offer.”
DB ([Deutsche Bank employee])	“i adjusted my offer now, let me see”
Rabobank ([Rabobank employee])	“[...] were very interested in the eib 0 2/17 & are also looking at the PTE EIB 8 16. If you stiill care to offer i can show your 0% (14m?) & cobime our sizes in the escudo issue”

²⁵⁴ [...].

²⁵⁵ [...].

²⁵⁶ [...].

- (286) On **26 March 2012**, [Deutsche Bank employee] of Deutsche Bank confirmed to [Rabobank employee] of Rabobank that [...] had just come back from holiday and that [...] had *‘adjusted it’* (presumably, a price level). Concerning another bond (the EIB 4.25 19), [Rabobank employee] then informed [...] that Deutsche Bank was bidding above Rabobank’s offer to which [Deutsche Bank employee] reacted by stating that [...] had considered the EIB bond too cheap, that Deutsche Bank’s position was flat and that [...] would now adjust the price.²⁵⁷
- (287) This conversation again shows an explicit adjustment of pricing by one of the parties in the context of an exchange of commercially sensitive information, including positions (*‘we are long if you do care’*, *‘am flat’*), recent trades (*‘they hit me’*, *‘we were just lifted in 595 by [...]’*, *‘we got lifted in 10/2017 and others with high premium too’*) and price levels (*‘you are bidding above our offer’*).

26 March 2012	
DB ([Deutsche Bank employee])	“morning, just back from holiday, yes i am just adjusted it”
DB ([Deutsche Bank employee])	“tks”
DB ([Deutsche Bank employee])	“they hit me”
Rabobank ([Rabobank employee])	“welcome back. this is an account i loathe”
Rabobank ([Rabobank employee])	“eib 4.25 19 you are bidding above our offer - we were just lifted in 595 by [...]. we are long if you do care”
DB ([Deutsche Bank employee])	“looked at the eib and thought they are to cheap, am flat, will adjust”
Rabobank ([Rabobank employee])	“it is cheap but high cash price which still seems to count on eib bonds”
DB ([Deutsche Bank employee])	“ right you are but we got lifted in 10/2017 and others with high premium too”
DB ([Deutsche Bank employee])	“don't always get it”

- (288) On **29 March 2012**, [Rabobank employee] of Rabobank wrote to [Deutsche Bank employee] of Deutsche Bank. [Deutsche Bank employee] informed [Rabobank employee]: *‘if you just bought the bng 2021 ...it wasn’t [...] entire size’*. In the event, [Rabobank employee] already knew that, informing [...] that the counterparty had 20 million and that [...] had shown [...] a bid in smaller size. [Deutsche Bank employee] agreed with this (*‘exactly’*) and then informed [...] that [...] had *‘bid partial too’*.

²⁵⁷ [...].

[Rabobank employee] thanked [...] for this: *‘Good - thanks for info. Shld be some buyers out there, I guess?’*.²⁵⁸

29 March 2012	
Rabobank ([Rabobank employee])	“Hey [Deutsche Bank employee]”
DB ([Deutsche Bank employee])	“if you just bought the bng 2021”
Rabobank ([Rabobank employee])	“Go on..”
DB ([Deutsche Bank employee])	“it wasn't [...] entire size”
Rabobank ([Rabobank employee])	“That I know, thanks. [...] had 20m. I showed [...] a bid in smaller and [...] decided to pass and go through auto-ex..”
DB ([Deutsche Bank employee])	“exactly”
DB ([Deutsche Bank employee])	“i bid partial too”
Rabobank ([Rabobank employee])	“Good - thanks for info. Shld be some buyers out there, I guess?”
DB ([Deutsche Bank employee])	“not sure”
DB ([Deutsche Bank employee])	“been asked to bid stuff this am and was astonished how low the overage was”
DB ([Deutsche Bank employee])	“on issues where nobody was offering a single bond”
Rabobank ([Rabobank employee])	“Oh dear - not this again..”
DB ([Deutsche Bank employee])	“seems as if nobody is willing to bid either”

- (289) On **21 June 2012**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that a certain client got an offer to sell specific bonds at a bid price of 18, but eventually that client did not sell: *‘client said [...]checked the market and got an 18bid but didn#t sell...no clou what [...] is doing but sales is a desaster too’*. [Rabobank employee] replied: *‘if you have a target i would be interested...woul beat 18’*, suggesting that [...] would offer a bid price

²⁵⁸

[...].

better than 18. [Deutsche Bank employee] responded *‘i know that's why i came to you but that idiot is not opening up and playing around’*. [Rabobank employee] then wrote *‘i might show a low offer, that ok with you at [...]’*, suggesting to show a lower bid price in an attempt to drive down the market price for those specific bonds and convince the client to sell to Deutsche Bank at a certain level. Eventually, [Rabobank employee] informed [Deutsche Bank employee] that the client was offered a price of 25 noting: *‘away from me’*.²⁵⁹

21 June 2012	
DB ([Deutsche Bank employee])	“client said [...] checked the market and got a 18bid but didn#t sell”
DB ([Deutsche Bank employee])	“no clou what [...] is doing but sales is a desaster too”
Rabobank ([Rabobank employee])	“if you have a target i would be interested”
Rabobank ([Rabobank employee])	“woul beat 18”
DB ([Deutsche Bank employee])	“i know that's why i came to you but that idiot is not opening up and playing around”
Rabobank ([Rabobank employee])	“i might show an low offer, that ok with you at [...]”
DB ([Deutsche Bank employee])	“sure”
DB ([Deutsche Bank employee])	“i don't talk to them stealing too much money”
Rabobank ([Rabobank employee])	“they are 25 offered in 25m now”
Rabobank ([Rabobank employee])	“away from me”

- (290) On **23 July 2012**, [Rabobank employee] of Rabobank wrote to [Deutsche Bank employee] of Deutsche Bank to ask [...] whether [...] had been asked to offer 1 million on the *‘eu 3.125 15’* by a client called [...]. In response, [Deutsche Bank employee] confirmed that [...] had been asked by this client to make the offer. [Rabobank employee] informed [...] that Rabobank had bought 1 million from that client and that they were *‘slowly taking these guys off’*. [...] then confirmed that [...] had *‘taken them off’*. In the meantime, [Deutsche Bank employee] had told [...] *‘shame they didn’t get us on both sides, would love to take them off’*.²⁶⁰

²⁵⁹ [...].

²⁶⁰ [...].

- (291) This conversation shows that the parties coordinated their trading strategies towards a certain counterparty (‘[...] *we are slowly taking these guys off*’) along with the exchange of commercially sensitive information about that counterparty, such as the identity and their trading requirements (‘*eu 3.125 15 - were you asked to offer 1m by [...] by any chance*’).

23 July 2012	
Rabobank ([Rabobank employee])	“hi, hope you are well. i have been away for a couple of weeks. eu 3.125 15 - were you asked to offer 1m by [...] by any chance”
DB ([Deutsche Bank employee])	“yes”
DB ([Deutsche Bank employee])	“you missed a nice rally”
Rabobank ([Rabobank employee])	“we bt 1m from [...] [...]. we are slowly taking these guys off”
DB ([Deutsche Bank employee])	“ok, shame they didn't get us on both sides, would love to take them off”
DB ([Deutsche Bank employee])	“where have you been to?”
Rabobank ([Rabobank employee])	“we have taken them off, we have caught out enough of his colleagues that we no longer even tell them or warn them - [...] just goes [...]”

- (292) On **28 September 2012**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to share an exchange [...] had had with a trader from an Israeli bank [...] about using Rabobank’s trades for arbitrage. Entitled ‘*Another Shocker*’ (in the subject of the message), the exchange included [Rabobank employee] telling the trader that [...] did not give that trader access to the system to allow [...] to arbitrage, as it was for genuine ‘end business’.²⁶¹

28 September 2012	
Rabobank employee] to DB Bank employee])	<p>“{RABL <go>} €Rabo = {NXTW RABLl <go>} M 07770795476 97442</p> <p>10:12:38 [Rabobank employee] : “hi, you just hit us in some sweda 14. can i ask please if they came from an investor?”</p> <p>10:12:45 *** [...] (BANK [...]) : acknowledged the chat request.</p> <p>10:13:01 [...] : “hello”</p> <p>10:14:28 [...] : “investor? what exactly do u mean?”</p> <p>10:15:29 [Rabobank employee] : “well were they from a client</p>

²⁶¹ [...].

	<p>of yours or did you just buy them from another traer for example”</p> <p>10:15:31 [...] : “its a client of mine ”</p> <p>10:16:04 [Rabobank employee] : “Do you count large German banks as clients?”</p> <p>10:19:17 [...] : “well, sometimes yes, if there is a problem i will understand”</p> <p>10:20:17 [Rabobank employee] : “we do not give you access to our system to allow you to arbitrage ; it is for genuine end businiess as i am sure yo are aware.”</p> <p>10:20:42 [...] : “ok understood”</p> <p>10:21:04 [Rabobank employee] : “will not be a problen in future”</p> <p>10:21:53 [...] : “what do u mean in the future?”</p> <p>10:22:26 [Rabobank employee] : “from now on ”</p> <p>10:24:42 [...] : “agreed ”</p> <p>DisclaimerReference: 674208”</p>
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- (293) On **31 October 2012**, [Rabobank employee] of Rabobank exchanged commercially sensitive information with [Deutsche Bank employee] of Deutsche Bank. In particular, [Rabobank employee] informed [Deutsche Bank employee] that Rabobank were bidding ‘*another pf in Holland for 10 m at the moment*’ and that their ‘*order to the client is at +56, 120.50*’ but they had just bought 10 million at ‘+57 25’. [Deutsche Bank employee] clearly knew the identity of the client [...] counterparty was discussing as [...] responded: ‘*incredible, now the [...] is with us on eib 2037*’. [Rabobank employee] then indicated for certainty that this was the ‘*pf from Holland*’, which [...] confirmed (‘*si*’). Finally, [Rabobank employee] replied ‘*you know where we sold ours, thanks for the information*’.²⁶²
- (294) In other words, [Rabobank employee] had given Rabobank’s pricing level to [Deutsche Bank employee] so that [...] could take this into consideration when setting Deutsche Bank’s for the counterparty identified as the ‘*pf from Holland*’.

31 October 2012	
Rabobank ([Rabobank employee])	“thank you. the buyer of the eib 37 has given us an order it is a dutch PF. we do not trade this very often so will not have many holders to contact. ”
DB ([Deutsche Bank employee])	“i am long but short eu 38 and efsf 37 against it”
DB ([Deutsche Bank employee])	“if it would be an extraordinary price i could trade”

²⁶² [...].

DB ([Deutsche Bank employee])	“got 24mio”
Rabobank ([Rabobank employee])	“we are bidding another pf in holland for 10m at the moment. our order to the client is at +56, 120.50 but we just bt 10m at +57.25”
DB ([Deutsche Bank employee])	“incredible, now the [...] is with us on eib 2037”
Rabobank ([Rabobank employee])	“the pf from holland”
DB ([Deutsche Bank employee])	“si”
Rabobank ([Rabobank employee])	“you know where we sold ours, thaks for the info”
DB ([Deutsche Bank employee])	“we have been 15cent away vs the bund, didn#t trade with us”
Rabobank ([Rabobank employee])	“did you see i mentioned above their target level”
Rabobank ([Rabobank employee])	“if it is the same client”
DB ([Deutsche Bank employee])	“yes”

- (295) On **6 December 2012**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that [...] *‘just got hit in eib 0 2/17 in good size az. 57’*. [Rabobank employee] replied that [...] had also made an offer for those bonds and that the client promised not to trade away: *‘I showed [...] .50 but said that I would pay better.[...] promised not to trade away!’*. [Rabobank employee] then asked [Deutsche Bank employee] whether [...] was looking *‘for a quick turn’* or *‘to sell on ½ position’*, to which [Deutsche Bank employee] replied: *‘if you can use them and we can both make money, more than welcome’*. [Rabobank employee] asked: *‘would you sell me 15 or 20m at .65? or did you want to handle it differently’* to which [Deutsche Bank employee] replied: *‘sure, 20mio done if you want’*. [Rabobank employee] confirmed: *‘ok, done, 20 m done at .65... mind moving your screen up?’*, suggesting that [Deutsche Bank employee] increase the price of those bonds on [...] screen, which [...] agreed to (*‘will do’*). [...] then disclosed the identity of the last counterparty [...] sold the bonds to (i.e. [...]) and added: *‘showing them to sales now’*.²⁶³
- (296) The communication of 6 December 2012 is an example whereby the parties would not set their prices independently, but rather adopt a coordinated approach (*‘Mind moving your screen up a bit?’*), as well as trying to help each other out and protect

²⁶³ [...].

each other's trading interests (*'tell me what you prefer', 'if you can use them and we both can make money, more than welcome'*).

6 December 2012	
Rabobank ([Rabobank employee])	"Hi [...]"
DB ([Deutsche Bank employee])	"just be aware I just got hit in eib 0 2/17 in good size az .57"
Rabobank ([Rabobank employee])	"I showed [...] .50 but said that I would pay better.[...] promised not to trade away!"
DB ([Deutsche Bank employee])	"there you go"
Rabobank ([Rabobank employee])	"You looking for a quick turn? Or to sell on 1/2 position?"
DB ([Deutsche Bank employee])	"why not"
Rabobank ([Rabobank employee])	"Tell me what you prefer."
DB ([Deutsche Bank employee])	"if you can use them and we both can make money, more than welcome"
Rabobank ([Rabobank employee])	"Good. Would you sell me 15 or 20m at .65?"
Rabobank ([Rabobank employee])	"Or did you want to handle it differently?"
DB ([Deutsche Bank employee])	"sure, 20mio done if you want"
Rabobank ([Rabobank employee])	"Ok - 20 m done at .65. Mind moving your screen up a bit?"
DB ([Deutsche Bank employee])	"will do"
Rabobank ([Rabobank employee])	"Last person I sold them to was [...] fyi.."
DB ([Deutsche Bank employee])	"if not ahead of year end i would have kept them, but anything we shift bosses are happy"
Rabobank ([Rabobank employee])	"Yep - they are good value.. Showing them to sales now.."

- (297) On **10 December 2012**, [Deutsche Bank employee] of Deutsche Bank disclosed to [Rabobank employee] of Rabobank the amount and price Deutsche Bank could offer for certain bonds: *'can offer 18mio as screen if you want to add mine, 97.18'*, adding that [...] could adjust the price on screen if [Rabobank employee] needed it. [Rabobank employee] replied that [Rabobank employee] bought *'these'* from [...], adding that *'I think you split the amount'*. [...] then added that an account (a/c) *'may switch out of 3.5 4/16 eib'*. [Deutsche Bank employee] confirmed: *'indeed'* and indicated that [...] got hit below Rabobank's bid and *'sold partials on to [...]'* (i.e. the a/c). [Rabobank employee] and [Deutsche Bank employee] continued their conversation by disclosing their positions (*'we are small short apr 16s'*, *'we are short the 3.125 3/17'*, *'am short 3.17 too'*), commercially sensitive information related to recent trades, including prices (*'I paid up a little'*, *'did bid .66 only'*, *'I had been asked to bid when you told me'*, *'[...] just said [...] trades away'*), counterparty's identity (*'UK account was ours'*) and future trading strategy with a counterparty (*'I have asked if [...] has that one. but you should show [...] your zeros as I think [...] will take more'*).²⁶⁴

10 December 2012	
DB ([Deutsche Bank employee])	"can offer 18mio as screen if you want to add mine, 97.18"
DB ([Deutsche Bank employee])	"if you need me to adjust my screen let me know"
Rabobank ([Rabobank employee])	"[Rabobank employee] told me [...] had bought these from you, i think you split the amount ([Rabobank employee] is away today). i will let you know. a/c may switch out of 3.5 4/16 eib"
DB ([Deutsche Bank employee])	"indeed"
DB ([Deutsche Bank employee])	"i got hit below your bid and sold partials on to [...]"
Rabobank ([Rabobank employee])	"i think we are buying 10m april 16s at 110.72 vs selling 20m feb 17 at 97.24. we are small short apr 16s."
DB ([Deutsche Bank employee])	"ok, that's aggressive on 4/16 i thing"
Rabobank ([Rabobank employee])	"it was 10 x 20 so i paid up a little . we did miss on some this morning at a higher price"
DB ([Deutsche Bank employee])	"did bid .66 only, but [...] just said [...] trades away"
Rabobank ([Rabobank employee])	"just now?"

²⁶⁴

[...].

DB ([Deutsche Bank employee])	“yes as I had been asked to bid when you told me”
DB ([Deutsche Bank employee])	“but outright”
DB ([Deutsche Bank employee])	“guess my sales doesn't know about the zero position”
DB ([Deutsche Bank employee])	“which is normal”
Rabobank ([Rabobank employee])	“interesting. UK account was ours. Originally [...] had 20m to sell of the 4/16 so [...] must have got a better bid for 10m somewhere else”
Rabobank ([Rabobank employee])	“we are short the 3.125 3/17 so i have asked if [...] has that one. but you should show [...] your zeros as i think [...] will take more”
DB ([Deutsche Bank employee])	“ok, will do”
DB ([Deutsche Bank employee])	“am short 3/17 too”

(298) On **14 December 2012**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to ask [...] whether [...] had just been asked to offer one million ‘renten 14’, as a ‘client’ had told [...] that they dealt at ‘.96’. [Deutsche Bank employee] replied that [...] had not been asked to do so, that [...] was ‘*too low on all the mmkt stuff*’ that morning and that as ‘*they rolled [out] the euribor*’ they now had a ‘mass’. [Rabobank employee] responded by informing [...] that [...] had ‘*moved to simply pricing on yield for the short end as any sort of spread seems to lead to problems*’. [Deutsche Bank employee] indicated that [...] found this a ‘*wise decision*’.²⁶⁵

(299) The discussion of 14 December 2012 shows how [Rabobank employee] checked information provided by a client against information from Deutsche Bank, which should have been commercially sensitive. It also shows how the parties disclosed their trading position and strategy towards each other.

14 December 2012	
Rabobank ([Rabobank employee])	“can i ask if you were just asked to offer 1 m renten 14 please? 'client' told me they dealt at .96!”
DB ([Deutsche Bank employee])	“no”
DB ([Deutsche Bank employee])	“am too low on all the mmkt stuff this am”

²⁶⁵ [...].

employee])	
DB ([Deutsche Bank employee])	“they rolled the euribor and we have a mass now”
Rabobank ([Rabobank employee])	“i have moved to simply pricing on yield for the short end as any sort of spread seems to lead to problems”
DB ([Deutsche Bank employee])	“wise decision”
Rabobank ([Rabobank employee])	“i was concerned that [...] ([...]); this [...] was asking us to bid & i have no idea who they are but [...] sounds italian”
DB ([Deutsche Bank employee])	“have come across them a few times, but no idea either”
DB ([Deutsche Bank employee])	“based in the uk”
DB ([Deutsche Bank employee])	“fund management and broking is what the sales told me”
DB ([Deutsche Bank employee])	“but [...] has never talked to them”

5.2.8. 2013

- (300) On **10 January 2013**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that, in relation to a counterparty, [...] ‘*showed them a bid at .67 and got topped instantly*’. [Rabobank employee] disclosed that [...] was ‘*the buyer of the jan 3.625 20 kfw fyi, against the new one. I was just shown 68-70 in the eu*’, to which [Deutsche Bank employee] replied: ‘*being told .68 bid maybe 685*’. Acting upon the information received from [Deutsche Bank employee] that the demanded bid price was 68, [Rabobank employee], who was a buyer of those bonds, indicated that [...] would tell the counterparty that the maximum [...] could pay for those bonds was 67: ‘*I will tell them I can only pay 67; see if they move their bid to you*’. This last sentence suggests that the parties wanted to drive the counterparty towards selling those bonds to Deutsche Bank whose initial bid price was .67. Regarding [Rabobank employee]’s intention to buy January 3.625 20 KfW versus selling the new issue, [Deutsche Bank employee] confirmed that ‘*we could do it in 5mio for pick²⁶⁶ 1bp [basis points] for us*’ and that ‘*99.36 and 116.14 would be the terms, if agreed in 5mio*’. [Rabobank employee] signaled [...] agreement with this.²⁶⁷
- (301) In the communication of 10 January 2013, the parties exchanged commercially sensitive information about their bid levels and coordinated their trading strategies towards a specific counterparty. In the second part of the communication, [Rabobank employee] disclosed that Rabobank was the buyer of the specific bonds and

²⁶⁶ ‘Pick’ or ‘pick-up’ refers to the additional interest gained from selling a bond with a smaller yield versus buying a bond with a higher yield.

²⁶⁷ [...].

[Deutsche Bank employee] revealed the pick-up [...] was interested in gaining if [...] would execute the trade.

10 January 2013	
Rabobank ([Rabobank employee])	“no me, i have not looked at it yet”
DB ([Deutsche Bank employee])	“they had an offer no bid”
DB ([Deutsche Bank employee])	“showed them a bid at .67 and got topped instantly”
Rabobank ([Rabobank employee])	“i am the buyer of the jan 3.625 20 kfw fyi, against the new one. i was just shown 68-70 in th eu”
DB ([Deutsche Bank employee])	“being told .68 bid maybe 685”
Rabobank ([Rabobank employee])	“i will tell them i can only pay 67 & see if they move thier bid to you”
DB ([Deutsche Bank employee])	“on kfw we could do it in 5mio for pick 1bp for us”
Rabobank ([Rabobank employee])	“i could do that. fyi we sold the high coupon to our treasury as it swaps vs 3m at a much better spread. we also use a different dicounting curve (i am told) which also means an advantage for higher coupon issues”
DB ([Deutsche Bank employee])	“ok”
DB ([Deutsche Bank employee])	“mi, if agreed in 5mio”
DB ([Deutsche Bank employee])	“[Deutsche Bank employee] is doing german debt now so i am only transmitting”
DB ([Deutsche Bank employee])	“i would have 100mio kfw 3.5 7/21 to go in case that's something for your treasury”
Rabobank ([Rabobank employee])	“i agree the terms thanks for your help.”
DB ([Deutsche Bank employee])	“ok, tks to you”
Rabobank ([Rabobank employee])	“just to let you know we are looking for another 12m of the 3.625, thanks again”
DB ([Deutsche Bank employee])	“ok”

employee])	
Rabobank ([Rabobank employee])	“just finished the kfw trade”

- (302) In the exchange of **15 February 2013**, [Deutsche Bank employee] of Deutsche Bank asked [Rabobank employee] of Rabobank to confirm whether it was [...] *‘having the size in bng 3.75 3/14’* as [...] had *‘a size on a call to go’*. [Rabobank employee] indicated that it was not [...] but that [...] knew who it could be in case [Deutsche Bank employee] would be interested. [Deutsche Bank employee] responded that [...] *‘offer on screen is so aggressive that I doubt I get somewhere...but I’ll be back to you in case’*. Later, [Rabobank employee] indicated that the bank showing the bonds *‘do not actually own the bonds, but have an order, which make it difficult. If there is a level that works I can show it or just give you the name of the bank’*. [Deutsche Bank employee] was interested in executing a trade in BNG bonds, but because [Rabobank employee]’s offer on screen was so aggressive, [...] did not think [...] could *‘get somewhere’*. By asking [Rabobank employee] whether it was [...] having the size on BNG bonds [...] could see on the screen, [...] was exploring the possibility to coordinate so [...] could execute the trade. Further, the traders engaged in an exchange of commercially sensitive information by revealing the price level for ONT bonds and the client identity ([...]): *‘I have 97m ont 4.25 12/13 but they are a little expensive’... ‘we were showing 12bps had so far only sold 3m!’ ... ‘we do have a buyer ([...])’ ... ‘please show the onts to anybody in canada’*.
- (303) Later, [Rabobank employee] and [Deutsche Bank employee] discussed a bid for BNG and the idea that [Rabobank employee] would pass on [Deutsche Bank employee]’s bid to *‘the large swiss bank’*. In this context, [Rabobank employee] told [Deutsche Bank employee] that [...] did not like *‘showing other people’s positions unless it is somebody like you who I know & [amp] trust, the upside is usually small whilst the risks are larger’*. [Deutsche Bank employee] agreed with this statement, replying in return, *‘exactly, that’s why I leave it on the bng’*.²⁶⁸

15 February 2013	
DB ([Deutsche Bank employee])	“is it you having the size in bng 3.75 3/14?”
DB ([Deutsche Bank employee])	“[...] telling me they have size on a call to go”
Rabobank ([Rabobank employee])	“no but I think I know who it might be if you are interested.”
DB ([Deutsche Bank employee])	“well your offer on screen is so aggressive that i doubt i get anywhere”
DB ([Deutsche Bank employee])	“but i’ll be back to you in case”
Rabobank ([Rabobank employee])	“yesterday we bt 100m ont 4.25 13 & were shown th e100m

²⁶⁸ [...].

employee])	nedwbk 4.25 11/13 by the same seller & the nwb came up with [...]"
DB ([Deutsche Bank employee])	"ok"
DB ([Deutsche Bank employee])	"i only did quebec 2015 33mio yesterday but not with them"
Rabobank ([Rabobank employee])	"the seler is a tsy dept of a large bank"
Rabobank ([Rabobank employee])	"they had owned them asset swapped. this might be a different seller but it seems odd"
DB ([Deutsche Bank employee])	"i'll try the bng and let you know"
Rabobank ([Rabobank employee])	"i did ask if they were the seller as i think you will get a better price going direct. i can tell you who it is or what ever you prefer"
Rabobank ([Rabobank employee])	"i hvae 97m ont 4.25 12/13 but they are a little expensive. good for a [...]"
DB ([Deutsche Bank employee])	"at what level?"
Rabobank ([Rabobank employee])	"we were showing 12bps had so far only sold 3m!"
DB ([Deutsche Bank employee])	"that is a tough sell i would say"
Rabobank ([Rabobank employee])	"i guess that is why we still have them"
Rabobank ([Rabobank employee])	"we had one client in mind who was looking for the name, or [...] was until yesterday. we do have a buyer [...] but they have to wait 2 weeks for it to fall in their bucket for the name"
DB ([Deutsche Bank employee])	"have you shown it into canada?"
DB ([Deutsche Bank employee])	"could give my sales there a try"
Rabobank ([Rabobank employee])	"we were told the cb would not buy it & that is the only canadian a/c we speak to. i do know who the holder is of the bng"
Rabobank ([Rabobank employee])	"i am being told by th ebank showing teh offer that they do not actually own the bonds but have an order, which makes it difficult. if thre is a level that works i can show it or just give you the name of teh bank. pleas show the onts to anybody in canada"

DB ([Deutsche Bank employee])	“working on your onts”
Rabobank ([Rabobank employee])	“thank you, if you have a bid for bng i can pass it on. i have 8m 3.75 3/14 i am offering slightly better & 14m of the 4.5 3/14 whcih we have owned for a while.”
DB ([Deutsche Bank employee])	“no luck on the ontario, too rich when swapped into cad”
Rabobank ([Rabobank employee])	“thank you for trying, if yo have a low bid for the bng i will pass it on to the large swiss bank (oops)”
DB ([Deutsche Bank employee])	“don't want to chase it, they haven't shown interst, let you know in case”
Rabobank ([Rabobank employee])	“thanks, i do not like showing other people's positions unless it is somebody like you who i know & trust, the upside is usually small whilst the risks are larger.”
DB ([Deutsche Bank employee])	“exactly, that's why i leave it on the bng”
Rabobank ([Rabobank employee])	“the [...] i know at [...] used to work here & [...] is very good & professional but it is his colleagues I doubt, i am happy to do anythign to help if you think it useful”

(304) On **6 March 2013**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that a counterparty (account) just bought bonds from [...] and was asking [...] to sell 10 million of EU 2026 bonds: *‘just got lifted...been asked to offer 10mio eu 2026...both requests not my favourite account’*. [Rabobank employee] then lowered [...] bid price as it was above the offer price of Deutsche Bank’s.[...] also indicated that Rabobank was not following the EU 2026 bonds: *‘i moved my bid down, it was above your offer. eu 26 we do nto really follow’*.²⁶⁹

(305) In the exchange of 6 March 2013, the parties exchanged commercially sensitive information by providing internal market intelligence generated by a recent trade and a request for quote received by Deutsche Bank. On the basis of the information received from Deutsche Bank, [Rabobank employee] adjusted [...] bid price. Moreover, the parties also exchanged commercially sensitive information relating to their positions: *‘pretty long eu overall’, ‘we are long 9m of the eu 21s, some of the shorter ones as well, not selling any at the moment’, ‘eu we have 9.9. of the 2.75 sept 21 but flat the rest 2,556’*.

6 March 2013	
DB ([Deutsche Bank employee])	“800k?”

²⁶⁹ [...]

Rabobank ([Rabobank employee])	“exaclty [...]”
DB ([Deutsche Bank employee])	“just got lifted”
DB ([Deutsche Bank employee])	“been asked to offer 10mio eu 2026”
DB ([Deutsche Bank employee])	“both requests not my favourite accounts”
Rabobank ([Rabobank employee])	“i moved my bid down, it was above your offer. eu 26 we do nto really follow”
DB ([Deutsche Bank employee])	“[...] was very high bid yetsreday”
DB ([Deutsche Bank employee])	“might ba i am too low but am pretty long eu overall”
DB ([Deutsche Bank employee])	“so watch out”
Rabobank ([Rabobank employee])	“we are long 9m of the eu 21s & some of the shorter ones as well. not selling any at the moment”
DB ([Deutsche Bank employee])	“[...] is back willing to buy 1mio now”
DB ([Deutsche Bank employee])	“and [...] now here too”
Rabobank ([Rabobank employee])	“it worries me a lot that [...] is one of our most active accounts. what about [...]? they claim to speak to pension funds but as with [...] they always ask us issues that are popular with teh brokers. we also took [...] off but have kept their 'retail' desk on but they hit us in eu 15 at exactly the same time as they traded down at [...]. there aer so many accoutns i know so little about.”
DB ([Deutsche Bank employee])	“[...] never heard about”
DB ([Deutsche Bank employee])	“[...] offered over”
DB ([Deutsche Bank employee])	“got [...] retail desk too”
DB ([Deutsche Bank employee])	“but overall [...] is the [...]”
DB ([Deutsche Bank employee])	“well when your screens have been down yesterday been told they

employee])	[...] is not yet in where we get the prices”
Rabobank ([Rabobank employee])	“i like [...] but they would not let us have access to their prices etc”
DB ([Deutsche Bank employee])	“i don't have access to theirs but you they shouldn't be troubled”
Rabobank ([Rabobank employee])	“that is good to hear. so you let their traders on?”
DB ([Deutsche Bank employee])	“they never wanted to get on, only [...] retail trading is on”
DB ([Deutsche Bank employee])	“on eu”
DB ([Deutsche Bank employee])	“i am looking for 9/17, 10/18, 9/21 and 9/26 in case”
DB ([Deutsche Bank employee])	“and tks for the eib earlier”
Rabobank ([Rabobank employee])	“you are welcome, eu we have 9.9 of the 2.75 sep 21 but flat the rest 2,556 EU 3.250 04-Apr-18 2,339 EU 3.375 10-May-19 9,901 EU 2.750 21-Sep-21”
Rabobank ([Rabobank employee])	“sorry I was in a meeting”

- (306) On **22 May 2013**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank coordinated their trading strategies and exchanged commercially sensitive information about their pricing level, counterparty’s identity and recent trades. In particular, [Deutsche Bank employee] informed [Rabobank employee] that [...] price for a certain bond was a bit high: *‘think you are a touch high on unedic 2014’*. [...] had drawn this conclusion on the basis of a recent purchase [...] had made: *‘just got hit at .88 in 50mio’*.²⁷⁰ A few minutes later, [Rabobank employee] revealed that [...] *‘sold sfefr jun 14 yesterday to cb at 10bps [basis points]’* and that the counterparty was looking to buy more. [Deutsche Bank employee] replied that [...] could increase [...] offer price again for those bonds: *‘can mark them a touch higher again’*, suggesting that [...] had done that before (*‘again’*).

22 May 2013	
DB ([Deutsche Bank employee])	“think you are a touch high on unedic 2014”
DB ([Deutsche Bank employee])	“just got hit at .88 in 50mio”

²⁷⁰ [...]

employee])	
Rabobank ([Rabobank employee])	“hi”
DB ([Deutsche Bank employee])	“down the pub again”
DB ([Deutsche Bank employee])	“and fell of the bike”
Rabobank ([Rabobank employee])	“never”
DB ([Deutsche Bank employee])	“too much spinning is no good”
Rabobank ([Rabobank employee])	“we sold sfefr jun 14 yesterday to cb at 10bps & [...] was looking for more”
DB ([Deutsche Bank employee])	“can mark them a touch higher again”
DB ([Deutsche Bank employee])	“sold them at .92”
Rabobank ([Rabobank employee])	“that was good”
DB ([Deutsche Bank employee])	“cb”
Rabobank ([Rabobank employee])	“thanks for the info, i was actually downstairs grabbing a soup (cold) & bread roll (stale)”
DB ([Deutsche Bank employee])	“sounds great”
Rabobank ([Rabobank employee])	“it was a good purchase”
DB ([Deutsche Bank employee])	“in comp”
Rabobank ([Rabobank employee])	“yours i mean not my lunch”
DB ([Deutsche Bank employee])	“but no coverage”
Rabobank ([Rabobank employee])	“we were not asked, that [...] from [...] has not stopped today”

- (307) On **25 June 2013**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank exchanged commercially sensitive information in relation to a counterparty named [...] who was looking to buy a certain volume of bonds: ‘[...] is looking for 500 to 1mio’. [Rabobank employee] replied: ‘good to know, we have not seen it’. [Deutsche Bank employee] then shared how many bonds Deutsche Bank had available and the price at which the counterparty was willing to buy: ‘we have 50k but obviously we are off market...[...] pays 106.35 [...] thinks’, adding that ‘[...] had paper too end of last week’. [Rabobank employee] replied: ‘may have been our offer’. A few minutes later, [Rabobank employee] informed [Deutsche Bank employee] that Rabobank sold ‘1m [million] at 106.70 to a legitimate sounding Greek a/c but no idea if it is a good one’... ‘[...] ever heard of these guys?’.²⁷¹
- (308) In the communication of 25 June 2013, [Deutsche Bank employee] revealed the identity of a counterparty who had approached Deutsche Bank and the price at which the counterparty was willing to buy bonds (‘[...] pays 106.35’). Furthermore, [Rabobank employee] revealed commercially sensitive information about a recent trade, including volumes, price and identity of the counterparty.

25 June 2013	
DB ([Deutsche Bank employee])	“just told [...]”
Rabobank ([Rabobank employee])	“thanks”
DB ([Deutsche Bank employee])	“[...] is looking for 500 to 1mio”
Rabobank ([Rabobank employee])	“good to know, we have not seen i”
Rabobank ([Rabobank employee])	“it”
DB ([Deutsche Bank employee])	“we have 50k but obviously we are off markt”
DB ([Deutsche Bank employee])	“[...] pays 106.35 [...] thinks”
DB ([Deutsche Bank employee])	“[...] had paper too end of last week”
Rabobank ([Rabobank employee])	“may have been our offer”
DB ([Deutsche Bank employee])	“ah ok”

²⁷¹

[...]

Rabobank ([Rabobank employee])	“we did sel 1m at 106.70 to a legitimate sounding Greek a/c but no idea if it is a good one”
Rabobank ([Rabobank employee])	“[...] ever heard of these guys?”
DB ([Deutsche Bank employee])	“maybe yes, mayb no”
DB ([Deutsche Bank employee])	“no clou”
Rabobank ([Rabobank employee])	“me neither, they have come up with a good name though. sounds like they might be real”

(309) On **17 July 2013**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank discussed a mutual client [...] and how they should together react to an apparent transgression in the use of their systems of which they were both aware. In the event, [Deutsche Bank employee] suggested that they ‘*leave it*’ but that ‘*they should get those guys off the system*’. [Rabobank employee] agreed with the approach.²⁷²

(310) Similarly, as regards another client, [...], [Deutsche Bank employee] noted that they were asking a few traders for best execution ‘in competition’ and that they might come through to Rabobank. [Rabobank employee] confirmed that [...] had just asked them for the EIB 19 and then the 20 ‘*to bid each time*’.

17 July 2013	
Rabobank ([Rabobank employee])	“shall we leave the trades? [...] saying they have the same system; they give their cooperative banks access to an electronic platform & then their users abuse it”
DB ([Deutsche Bank employee])	“ok then we leave it but they should get those guys off the system”
DB ([Deutsche Bank employee])	“so, talked to [...], should be fine and they are more than happy to be made aware of such trades going forward”
DB ([Deutsche Bank employee])	“not too sure [...],[...]is rushing off to a meeting, no time to respond”
Rabobank ([Rabobank employee])	“good, [...] have to control their accounts & i really thik they are concerned”
DB ([Deutsche Bank employee])	“sounds like, yes”
DB ([Deutsche Bank employee])	“[...] doesn't agree”

²⁷²

[...]

DB ([Deutsche Bank employee])	“[...] is checking now”
DB ([Deutsche Bank employee])	“in case [...] comes through to you”
DB ([Deutsche Bank employee])	“[...] says they ask in comp a few traders and do best execution”
DB ([Deutsche Bank employee])	“i said funny best execution by hitting andf lifting”
DB ([Deutsche Bank employee])	“[...] says wasn't the case but is checking now”
Rabobank ([Rabobank employee])	“thank you, [...] asked us eib 19 then the 20 to bid each time”

- (311) On **5 August 2013**, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank discussed counterparties whom they suspected of potential arbitrage. [Rabobank employee] indicated that [...] was losing patience with these counterparties and would *‘take them off’*. In this case, [Deutsche Bank employee] indicated that [...] was not allowed to take them off as the sales division considered them to be great customers, and *‘so if you are the other side it’s always easy for me to prove’*. [Rabobank employee] then proceeded to send [...] a list of traders (including [...] whom they had talked about the week before) [...] had already discussed with [...] *‘friend’* at [...]. [Deutsche Bank employee] responded that [...] would print it out and then have a *‘try’* with [...] support to *‘take them off’*. [...] then revelead the results of a recent trade *‘got 40k only in those eurof 4â...oe 19’*.²⁷³

5 August 2013	
Rabobank ([Rabobank employee])	“we are at last losing patience & taking tehnm off”
DB ([Deutsche Bank employee])	“me too”
DB ([Deutsche Bank employee])	“but not allowed to take them off as sales pretends they are great customers”
DB ([Deutsche Bank employee])	“so if you are the other side it's always easy for me to prove”
Rabobank ([Rabobank employee])	“we can do it ourselves”
Rabobank ([Rabobank employee])	“[Rabobank employee] has the power”

²⁷³

[...]

19 August 2013	
Rabobank ([Rabobank employee])	“Hi [Deutsche Bank employee]”
DB ([Deutsche Bank employee])	“watch out on euro of 21, if you haven't sen the request”
Rabobank ([Rabobank employee])	“Seen plenty of requests, but not that one”
DB ([Deutsche Bank employee])	“i can tll you one thing your bid is high”
DB ([Deutsche Bank employee])	“if some spiv comes around”
DB ([Deutsche Bank employee])	“thy traded away from me at .12 in large size for that issuer”
Rabobank ([Rabobank employee])	“Wow - rare bond usually..”
DB ([Deutsche Bank employee])	“i know, but wouldn't know where to go with a large block”
DB ([Deutsche Bank employee])	“cheap over eib but don't see any account doing rv trades”
Rabobank ([Rabobank employee])	“Yep - I cant shift much at the moment.”

- (313) On **28 August 2013** [Deutsche Bank employee] of Deutsche Bank discussed a counterparty (Marzotto) with [Rabobank employee] of Rabobank. [Deutsche Bank employee] informed [Rabobank employee] that [...] had warned [...] the other day and that [...] was now *'caught out'*. [Rabobank employee] indicated that Rabobank had this counterparty's access to Rabobank's AllQ removed.²⁷⁵
- (314) The parties proceeded to discuss other potential arbitrage traders that they were aware of, including [...] (*'another one to watch and [...], 'amazing, [...] are beyond contempt'*) and one [...] of [...] (*'best avoided'*).
- (315) Later in the same day, [Deutsche Bank employee] asked [Rabobank employee] whether [...] *'just bought eu 2018? [...]'?* [...] then informed [...] that [...] *'got hot [hit] in 50mio you seem high'*. After [Deutsche Bank employee]'s remark suggesting that Rabobank's (bid) price was too high, [Rabobank employee] responded *'wow, thanks i am long 27m and have been for some time'*. About a minute later, [Deutsche Bank employee] wrote *'[...] lifiting me...not sure to whom [...] is selling the paper...wanted to make sure not to you'*. [Rabobank employee] then replied *'that is*

²⁷⁵

[...]

very helpful thank you. i will adjust. we only have 16m so not as painful as i thought'.

- (316) In this exchange, the parties exchanged commercially sensitive information regarding recent trades (*'got hit in 50mio'*, *'[...] lifiting me'*), price levels (*'you seem high'*), counterparty's identity (e.g. [...]) and positions (*'I am long 27m and have been for some time'*, *'we only have 16m'*). On the basis of a recent trade, Deutsche Bank was able to indicate to Rabobank that their bid price level was too high.

28 August 2013	
Rabobank ([Rabobank employee])	"asfinag"
DB ([Deutsche Bank employee])	"hope you had a good time off"
Rabobank ([Rabobank employee])	"i did thank you"
DB ([Deutsche Bank employee])	"exactly"
DB ([Deutsche Bank employee])	"[...]?"
DB ([Deutsche Bank employee])	"3mio"
Rabobank ([Rabobank employee])	"i was just hit in 3m, not paying attention"
Rabobank ([Rabobank employee])	"yes"
DB ([Deutsche Bank employee])	"on the case"
Rabobank ([Rabobank employee])	"they asked over the chat."
DB ([Deutsche Bank employee])	"we warned [...] the other day"
DB ([Deutsche Bank employee])	"now caught out"
DB ([Deutsche Bank employee])	"at 105.74?"
DB ([Deutsche Bank employee])	"[...] lifted 105.71 with me"

Rabobank ([Rabobank employee])	“yes”
Rabobank ([Rabobank employee])	“i was tied up and not paying attention”
DB ([Deutsche Bank employee])	“will talk to sales and let you know”
Rabobank ([Rabobank employee])	“as you soon as i saw you on the chat i woke up to what i had done”
DB ([Deutsche Bank employee])	“sales calling them now”
Rabobank ([Rabobank employee])	“we have removed them from ALLQ but have a chat as they do 'genuine business' sometimes.”
DB ([Deutsche Bank employee])	“that#s what they always told us”
DB ([Deutsche Bank employee])	“family office”
DB ([Deutsche Bank employee])	“i went to see them and had a good impression of the company”
DB ([Deutsche Bank employee])	“but obviously ...”
DB ([Deutsche Bank employee])	“same as [...], new great client too”
DB ([Deutsche Bank employee])	“seen them already?”
Rabobank ([Rabobank employee])	“trust your original instincts! [...] do not know but may be a new name for an old adversary”
DB ([Deutsche Bank employee])	“checked on google”
DB ([Deutsche Bank employee])	“they guys tradiong are the guys owning the company”
DB ([Deutsche Bank employee])	“another one to watch and [...]”
Rabobank ([Rabobank employee])	“amazing, [...] are beyond contempt”
Rabobank ([Rabobank employee])	“they are my sworn enemy”

employee])	
DB ([Deutsche Bank employee])	“think the clips they trade are not even covered by their balance sheet”
Rabobank ([Rabobank employee])	“we have caught them out so many times & so blatantly yet they appear again”
DB ([Deutsche Bank employee])	“and [...]”
Rabobank ([Rabobank employee])	“they have also had to walk the plank”
Rabobank ([Rabobank employee])	“what about this [...] [...];”
DB ([Deutsche Bank employee])	“new to me”
Rabobank ([Rabobank employee])	“best avoided”
Rabobank ([Rabobank employee])	“[...] looks unusual”
DB ([Deutsche Bank employee])	“think the list of such "clients" is longer than the one with real end accounts”
DB ([Deutsche Bank employee])	“the first time i got confused and thought it's [...]"
DB ([Deutsche Bank employee])	“then I saw cover prices and thought something wrong”
Rabobank ([Rabobank employee])	“that was my thought whe i saw them”
DB ([Deutsche Bank employee])	“and only then it clicked”
DB ([Deutsche Bank employee])	“too blond i guess”
Rabobank ([Rabobank employee])	“i dealt with [...] today, they came up as [...] finance which i confused with [...] services (I was busy, my excuse). [...], an ex broker, works for [...] and [...] has started sendng us two-way spread prices in rabo issues. i asked the 'fund manager' what was going on & [...] said they were not from the street but reflected the interests they were working for some of their wealthier private clients.”
DB ([Deutsche Bank employee])	“just bought eu 2018?”

employee])	
DB ([Deutsche Bank employee])	“from [...]?”
DB ([Deutsche Bank employee])	“got hot in 50mio you seem high”
DB ([Deutsche Bank employee])	“hit”
Rabobank ([Rabobank employee])	“wow, thanks i am long 27m and have been for some time”
Rabobank ([Rabobank employee])	“aprils”
DB ([Deutsche Bank employee])	“correct”
DB ([Deutsche Bank employee])	“[...] lifting me”
DB ([Deutsche Bank employee])	“not sure to whom [...] is selling the paper”
DB ([Deutsche Bank employee])	“wanted to make sure not to you”
Rabobank ([Rabobank employee])	“that is very helpful thank you. i will adjust, we only have 16m so not as painful as i thought”

- (317) On **26 September 2013**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that Rabobank’s price level was too high given that one of Deutsche Bank’s bids had been ‘hit’ (*‘you are too high on eu 6/21...got hit at .13...right now’*). [Rabobank employee] responded *‘thanks, needless to say i am not short. wow...thank you for the info’*. [Deutsche Bank employee] explained that [...] had been told that Deutsche Bank’s bid price was not attractive because other market-makers, such as Rabobank, were offering a better bid price: *‘been told my bid was shit...other mm [market-makers] paying much better...and then yours..guess they looked at your screen’*. [Rabobank employee] in return replied: *‘i thought there were better bids but they do not seem to be working these days’*.
- (318) In the communication of 26 September 2013, the parties exchanged commercially sensitive information relating to their pricing level and recent trades. In the first place, [Deutsche Bank employee] warned [Rabobank employee] that Rabobank’s bid price was too high based on a recent trade [...] executed for a bid price lower than that offered by Rabobank. In the second place, because Rabobank offered a more competitive bid price than Deutsche Bank, [Deutsche Bank employee] could not execute the trade at the bid price [...] was offering.
- (319) Later that day, [Rabobank employee] messaged [Deutsche Bank employee] saying *‘hi, we were just asked to bid 25m eib 2.75 21. client would have sold at 68, just in case you did not see it’*, to which [Deutsche Bank employee] replied *‘i saw it but*

have been bidding that low that [...] didn't tell us [...] target...thank you'. [Rabobank employee] added: 'there is no upside to buying them even if they look very attractive compared to screen bids...we already have more than we can hope to sell'.

- (320) In this part of the communication, the two traders discussed a request for quote by a client who was willing to sell 25 million bonds at the price of 68. Knowing that [Deutsche Bank employee] was bidding for those bonds, [Rabobank employee] informed [...] that a client was looking to sell. The parties exchanged commercially sensitive information in relation to a client's request for quote, including the volume and price at which the client was selling, as well as in relation to their bid levels (*'have been bidding that low'*) and positions (*'we already have more than we can hope to sell'*).²⁷⁶

26 September 2013	
DB ([Deutsche Bank employee])	"you are too high on eu 6/21"
DB ([Deutsche Bank employee])	"got hit at.13"
DB ([Deutsche Bank employee])	"right now"
Rabobank ([Rabobank employee])	"thanks, needless to say i am not short. wow"
Rabobank ([Rabobank employee])	"thank you for the info"
DB ([Deutsche Bank employee])	"been told my bid is s.it"
DB ([Deutsche Bank employee])	"other mm paying much better"
DB ([Deutsche Bank employee])	"and then yours"
DB ([Deutsche Bank employee])	"guess they looked at your screen"
Rabobank ([Rabobank employee])	"i thought there were better bids but they do ot seem to be working these days"
DB ([Deutsche Bank employee])	"all high premium lines for sale outright or versus switching in around par paper"
Rabobank ([Rabobank employee])	"hi, we were just asked to bid on 25m eib 2.75 21. client would have sold at 68, just in case you did not see it."

²⁷⁶

[...]

DB ([Deutsche Bank employee])	“i saw it but have been bidding that low that [...] didn't tell us [...] target”
DB ([Deutsche Bank employee])	“thank you”
Rabobank ([Rabobank employee])	“you are welcome. there is no upside to buying them even if they look very attractive compared to screen bids”
Rabobank ([Rabobank employee])	“we already have more than we can hope to sell”

- (321) On **6 November 2013**, [Deutsche Bank employee] of Deutsche Bank discussed the trade of LPTY and SFEFR bonds with [Rabobank employee] of Rabobank. [Rabobank employee] informed [Deutsche Bank employee] that the LPTY bonds had traded the previous day at 15.6bps (101.90) and asked [...] if it would be ‘*OK if I try to sell yours*’ to which [...] agreed. [Rabobank employee] then confirmed that [...] had sold the SFEFR at 101.8832 and could pay Deutsche Bank that price for its bonds. Ultimately, [...] told [...] that Rabobank could have them at .88, 9.531 million (*‘mio’*), which [...] accepted. However, on the face of it [...] had already sold these bonds to the market at the level [...] had set for Rabobank’s own bonds.²⁷⁷
- (322) This is another example of the parties combining their bonds portfolios together for onward sale to third parties. To that end, they exchanged commercially sensitive information such as the price levels (*‘9.531’*, *‘15.6bps (101.90)’*, *‘I have shown 865 bid’*, *‘you can have them at .88’*), recent trades (*‘I just sold the sfefr at 101.8832’*, *‘we did sell 85m lpty this morning flat trade’*) and positions (*‘i will send you/[Deutsche Bank employee] our updated positions’*).

6 November 2013	
DB ([Deutsche Bank employee])	“will let [...] know on lpty”
DB ([Deutsche Bank employee])	“and good morning”
Rabobank ([Rabobank employee])	“thanks”
DB ([Deutsche Bank employee])	“yes 9.531”
Rabobank ([Rabobank employee])	“They traded yesterday at 15.6bps (101.90) OK if i try to sell yours?”
DB ([Deutsche Bank employee])	“sure”
Rabobank ([Rabobank employee])	“hi, i just sold the sfefr at 101.8832 and can pay you that for yours.”

²⁷⁷ [...]

employee])	[...] have 88 offer in 20m & i have shown 865 bid. we did sell 85m Ipty this morning (flat trade which is better than most of mine). i will send you/[Deutsche Bank employee] our updated positions”
DB ([Deutsche Bank employee])	“you can have them at .88, 9.531 mio”
DB ([Deutsche Bank employee])	“tks very much”

(323) On **15 November 2013**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that [...] just bid 50 million at a price of ‘.065’, the target being ‘.08’. [Rabobank employee] asked whether the seller was a ‘CB’ (Central Bank) and mentioned that [...] bid for the price of ‘075’. A few minutes later, [Rabobank employee] confirmed that [...] missed buying the bonds at the bid price of 075 as those bonds were eventually sold at 085.²⁷⁸

(324) In this exchange, the parties exchanged commercially sensitive information about a counterparty’s identity (‘CB’), as well as their bid prices and volumes for certain bonds for which they both placed a bid.

15 November 2013	
DB ([Deutsche Bank employee])	“i did bid .065, target .08, don't know if you have interst”
DB ([Deutsche Bank employee])	“50mio”
Rabobank ([Rabobank employee])	“CB seller? we bid 075 fyi”
Rabobank ([Rabobank employee])	“thank you”
Rabobank ([Rabobank employee])	“we missed at 075 apparently got 085”
DB ([Deutsche Bank employee])	“yes”
DB ([Deutsche Bank employee])	“just been told”

5.2.9. 2014

(325) On **21 January 2014**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank discussed trading strategies in respect of a counterparty that had approached both parties with respect to a trade for 1 million and 5 million bonds. [Deutsche Bank employee] noted: *‘twice..5mio and 1 mio..i must be that low that [...]*

²⁷⁸ [...]

lifted me in non comp...and sold them on..i won't ask the question'. [Rabobank employee] replied: 'we [were] asked to bid but [there] [were] plenty of bids around 08 and 09, there is still a bid at 13 fyi'. [Deutsche Bank employee] indicated that [...] could not see anyone that high and that [...] was hit in a large block versus new ones. [Rabobank employee] then informed [...] that the counterparty had 'just asked us again...1m this time', to which [Deutsche Bank employee] replied: 'this is the 1mio i lost in the first place'. [Rabobank employee] noted: 'longer time investment this time' and that [...] was also asked to offer by a genuine account. [Deutsche Bank employee] then alerted [Rabobank employee] that the client was looking again for 5 million: 'there [...] comes another 5 mio' to which [Rabobank employee] replied: 'we turned [...] off'. [Deutsche Bank employee] was surprised that [...] was not asked to offer by the counterparty: 'not been asked...always dodgy when in non comp for better size'. [Rabobank employee] replied that the account told [...] that [...] did not ask anyone for an offer, but [...] thought the account 'denies trying to lift anybody'.²⁷⁹

- (326) In this exchange, the relevant traders tried to assist each other in executing a trade with a counterparty that had approached both of them. In doing so, the parties exchanged commercially sensitive information about the counterparty's strategy towards each of them and Rabobank refrained from trading with the counterparty ('we turned [...] off').

21 January 2014	
DB ([Deutsche Bank employee])	"sorry"
DB ([Deutsche Bank employee])	"replied on bbg"
DB ([Deutsche Bank employee])	"yes"
DB ([Deutsche Bank employee])	"twice"
DB ([Deutsche Bank employee])	"5mio and 1mio"
DB ([Deutsche Bank employee])	"i must be that low that [...] lifted me in non comp"
DB ([Deutsche Bank employee])	"and sold them on"
DB ([Deutsche Bank employee])	"i won't ask the question"
Rabobank ([Rabobank employee])	"we were asked to bid but there were plenty of bids around 08 and 09. there is still a bid at 13 fyi"

²⁷⁹

[...]

DB ([Deutsche Bank employee])	“i don't see anybody that high”
DB ([Deutsche Bank employee])	“got hit in a large block vs new ones”
DB ([Deutsche Bank employee])	“asked [...] if they had something but nothing”
Rabobank ([Rabobank employee])	“[...] just asked us again”
Rabobank ([Rabobank employee])	“1m this time”
DB ([Deutsche Bank employee])	“so i am not astonished to see some spivs now lifting me and distributing my paper”
DB ([Deutsche Bank employee])	“this is the 1 mio i lost in the first place”
Rabobank ([Rabobank employee])	“Longer term investment this time. were you also asked to offer the 3.625 Jan 21 (25-50) this is a genuine a/c but i did not want to short them”
DB ([Deutsche Bank employee])	“there [...] comes another 5mio”
Rabobank ([Rabobank employee])	“we turned [...] off”
DB ([Deutsche Bank employee])	“not been asked”
DB ([Deutsche Bank employee])	“always dodgy when in non comp for better size”
Rabobank ([Rabobank employee])	“too good to be true”
Rabobank ([Rabobank employee])	“i did ask the a/c but says [...] sold to US bank at .062 but did not ask anybody to offer. 'in verse is' easier to ask (clue) but denies trying to lift anybody”
DB ([Deutsche Bank employee])	“you can tell [...] that [...] lifted me.just tell [...] you are a client of mine too and at the moment [...] lifted me you have been checking my offer”
Rabobank ([Rabobank employee])	“the [...] at [...] says i can ask you if it was [...] as [...] says it was not. the problem is i think people like [...] are used by others.so they use 2 brokers to execute the back door, ah well.”

DB ([Deutsche Bank employee])	“well [...] isn#t even lying”
DB ([Deutsche Bank employee])	“it was [...] with me, acting the same way”
Rabobank ([Rabobank employee])	“we took them off as they were just unacceptable. we havd caught them out before in this way”

(327) On **4 February 2014**, [Deutsche Bank employee] of Deutsche Bank asked [Rabobank employee] of Rabobank whether [...] minded if [...] lifted [...] in two EU bonds and one NEDWBK bond. [Rabobank employee] had no objections and provided [...] the spread for those bonds. In return, [Deutsche Bank employee] warned [...] to ‘*watch out in nedwbk 3/22 and 11.23*’ as [...] had ‘*been checked in bids in 100mio up...apparently traded away..not sure if you saw it but in case you come across some of our friends*’, suggesting that some common clients known to both of them might also approach Rabobank. [Rabobank employee] then informed [Deutsche Bank employee] that [...] would adjust [...] screen for [...]: ‘*I will show yo better than screen..*’.²⁸⁰

(328) The communication of 4 February 2014 is an example of the parties exchanging commercially sensitive information such as ongoing trading requests for certain bonds and coordination of price based on internal market intelligence received from one trader.

4 February 2014	
DB ([Deutsche Bank employee])	“do you mind if i lift you in eu 6/21 500k”
Rabobank ([Rabobank employee])	“hi, all is ok thank you and you?”
DB ([Deutsche Bank employee])	“and eu 9/21 850k”
Rabobank ([Rabobank employee])	“of course”
DB ([Deutsche Bank employee])	“and nedwbk 3â...ž 20 your 210k”
DB ([Deutsche Bank employee])	“not bad tks”
Rabobank ([Rabobank employee])	“fyi 6/21 we have 3.8 & 2.8 9/21”
DB ([Deutsche Bank employee])	“watch out in nedwbk 3/22 and 11/23”

²⁸⁰ [...]

employee])	
Rabobank ([Rabobank employee])	“all3 are fine”
DB ([Deutsche Bank employee])	“been checked in bids in 100mio up”
DB ([Deutsche Bank employee])	“apparently traded away”
DB ([Deutsche Bank employee])	“not sure if you saw it but in case you come across some of our friends”
Rabobank ([Rabobank employee])	“nwb 3 22 we did see it but did not execute”
Rabobank ([Rabobank employee])	“i will show yo better than screen, i know it does not make much difference but i like to improve”
DB ([Deutsche Bank employee])	“thank y ou very much”
DB ([Deutsche Bank employee])	“as you say not really necessary but always appreciated”
DB ([Deutsche Bank employee])	“merci”

(329) On **27 February 2014**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank discussed transactions involving a Dutch counterparty (*‘dutch insurer’*), in respect of whom [Rabobank employee] provided information allowing [Deutsche Bank employee] to identify the counterparty despite *‘compliance’* concerns (based in *‘rotterdam, of german parentage’*).²⁸¹

27 February 2014	
Rabobank ([Rabobank employee])	“did you just sell some of the 2021 eurodm (3m) to a dutch intermediary by any chance”
Rabobank ([Rabobank employee])	“we were just asked to write a put-through between a dutch broker and a dutch client”
DB ([Deutsche Bank employee])	“yes”
Rabobank ([Rabobank employee])	“they were sold at 87.05 to the investor, dutch insurer - fyi”
DB ([Deutsche Bank employee])	“ok”

²⁸¹ [...]

employee])	“tks for info” “[...] made 15cent then”
Rabobank ([Rabobank employee])	“[...] was just showing me your other positions as well”
DB ([Deutsche Bank employee])	“at a nice margin i guess”
Rabobank ([Rabobank employee])	“I did not ask price as soon as i recognised the size, dutch sales [...] who spoke to teh broker told me 90% certain the seller (you) was an end investor”
DB ([Deutsche Bank employee])	“I am end seller:-)”
DB ([Deutsche Bank employee])	“is that insurer based in amsterdam?”
DB ([Deutsche Bank employee])	“don't need a name compliance wise just would love to know the city”
Rabobank ([Rabobank employee])	“rotterdam, of german parentage”
DB ([Deutsche Bank employee])	“tks”
Rabobank ([Rabobank employee])	“you are welcome”

(330) The following exchange between [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank, dating from **24 March 2014**, shows that the parties combined their EIB bonds for onward sale to a specific counterparty at an agreed price. In this instance, [Rabobank employee] informed [Deutsche Bank employee] that [...] was showing Rabobank’s EIB bonds at 98.23 and asked [...] if [...] would like to sell Deutsche Bank’s also there. In response, [Deutsche Bank employee] replied ‘*sure, you can add them*’ to which the reply was ‘*thanks*’.²⁸²

(331) As such, there was an agreement between the parties to sell their respective EIB bonds at a specific price (98.23), on the basis that [Rabobank employee] would sell the combined amount of bonds together to the counterparty (apparently a central bank - ‘CB’) at that price.

24 March 2014	
Rabobank ([Rabobank employee])	“{eib0 2/17/17 Corp <Go>} i am showing mine at 98.23 (4.9m) if [...] would you like to sell yours there. this buyer just took 11m of the eib 0 12/16 - i bt 5m from [...] last week.”

²⁸²

[...]

Rabobank ([Rabobank employee])	“amazingly it is a CB”
DB ([Deutsche Bank employee])	“sure you can add them”
Rabobank ([Rabobank employee])	“thanks”

(332) On **25 March 2014**, [Rabobank employee] of Rabobank sent a list of [...] ‘mids’ (mid prices) for information to [Deutsche Bank employee] of Deutsche Bank.²⁸³

(333) The objective of providing such commercially sensitive information to a competitor was presumably to enable the recipient bank to use it in the formulation of their own pricing levels.

25 March 2014		
Rabobank ([Rabobank employee]) to DB ([Deutsche Bank employee])	<p>“these are my mids”</p> <p>“{en} {nxtw RABN1 <go>} E/C 97442 Tel 07770795476 (M)”</p> <p>Issue</p> <p>{nxtw LANDER 3.25 4/29/2014 Corp <GO>}</p> <p>{nxtw LANDER 4.25 5/2/2014 Corp <GO>}</p> <p>{nxtw BRABUR 4.25 5/14/2014 Corp <GO>}</p> <p>{nxtw SFEFR 3.125 6/30/2014 Corp <GO>}</p> <p>{nxtw KFW 1.75 8/4/2014 Corp <GO>}</p> <p>{nxtw BERGER 4.25 9/15/2014 Corp <GO>}</p> <p>{nxtw NRWK 4.25 11/27/2014 Corp <GO>}</p> <p>{nxtw HESSEN 4 1/5/2015 Corp <GO>}</p> <p>{nxtw BADWUR 3.5 1/14/2015 Corp <GO>}</p> <p>{nxtw UNEDIC 1.75 2/27/2015 Corp <GO>}</p> <p>{nxtw NRWK 2.5 3/2/2015 Corp <GO>}</p> <p>{nxtw ERSTAA 1.25 3/6/2015 Corp <GO>}</p> <p>{nxtw BERGER 3.75 3/23/2015 Corp <GO>}</p> <p>{nxtw SACHAN 3.375 6/1/2015 Corp <GO>}</p> <p>{nxtw LANDER 2 6/2/2015 Corp <GO>}</p> <p>{nxtw NEDWBK 2.375 6/4/2015 Corp <GO>}</p>	<p>Size mid</p> <p>39,560 22.8 bps</p> <p>5,793 21.9 bps</p> <p>3,800 21.3 bps</p> <p>27,164 20.4 bps</p> <p>6,384 13.6 bps</p> <p>19,264 25.9 bps</p> <p>7,250 24.1 bps</p> <p>33,266 25.1 bps</p> <p>12,744 24.5 bps</p> <p>5,600 26.6 bps</p> <p>3,529 28.8 bps</p> <p>4,700 29.9 bps</p> <p>24,139 27.1 bps</p> <p>6,920 25.0 bps</p> <p>8,069 27.5 bps</p> <p>4,330 29.3 bps</p>

²⁸³

[...]

	{nxtw NIESA 2.125 6/8/2015 Corp <GO>}	8,288 25.9 bps
	{nxtw RENTEN 2 6/15/2015 Corp <GO>}	3,211 21.3 bps
	{nxtw FMSWER 1.875 8/24/2015 Corp <GO>}	5,000 27.6 bps
	{nxtw LANDER 1.875 10/1/2015 Corp <GO>}	11,952 27.8 bps
	{nxtw FMSWER 0.7 10/1/2015 Corp <GO>}	7,900 29.0 bps
	{nxtw HESSEN 3.25 10/14/2015 Corp <GO>}	3,651 27.7 bps
	{nxtw NRW 2 10/15/2015 Corp <GO>}	28,293 28.2 bps
	{nxtw EIB 3.125 10/15/2015 Corp <GO>}	36,666 26.2 bps
	{nxtw NRWK 1 11/10/2015 Corp <GO>}	8,587 30.0 bps
	{nxtw EU 2.5 12/4/2015 Corp <GO>}	3,845 25.5 bps
	{nxtw IBRD 0 12/20/2015 Corp <GO>}	11,030 38.8 bps
	{nxtw BADWUR 3.25 1/18/2016 Corp <GO>}	4,233 25.4 bps
	{nxtw NEDWBK 3.375 1/19/2016 Corp <GO>}	3,100 39.5 bps
	{nxtw NRWK 0.625 1/25/2016 Corp <GO>}	5,000 34.5 bps
	DisclaimerReference: 1010363”	

- (334) On **28 March 2014**, [Deutsche Bank employee] of Deutsche Bank exchanged commercially sensitive information with [Rabobank employee] of Rabobank, seemingly continuing a previous conversation on a counterparty. [...] mentioned that ‘*was 145mio and [...] was happy*’, and ‘*that guys target was bund flat*’ [Rabobank employee] replied that [...] was bidding on some, and more specifically ‘*I am only bidding 19bps and BKO 6/14 is -14/10, not very aggressive*’, and thanked [...] for the information.²⁸⁴
- (335) In that communication of 28 March 2014, [Deutsche Bank employee] exchanged commercially sensitive information regarding a counterparty’s trading volume (‘*145mio and [...] was happy*’) and target (‘*bund flat*’). [Rabobank employee] thanked [Deutsche Bank employee] for the information, and included [...] strategy in the reply (‘*I am only bidding 19bps*’, meaning 19 basis points) benchmarked to some German sovereign bonds with a short maturity period (‘*BKO 6/14 is ~14/10*’).

28 March 2014	
DB ([Deutsche Bank employee])	“doubt it”
DB ([Deutsche Bank employee])	“was 145mio and [...] was happy”
Rabobank ([Rabobank employee])	“thanks, i am biddin gon some but an pretty sure we will sell them”

²⁸⁴

[...]

DB ([Deutsche Bank employee])	“that [...] target was bund flat”
Rabobank ([Rabobank employee])	“I am only bidding 19bps and BKO 6/14 is ~14/10, not very aggressive, thanks for the info”

(336) On **30 April 2014**, [Rabobank employee] of Rabobank informed [Deutsche Bank employee] of Deutsche Bank that [...] was *‘just asked to offer 1m of the 21s and i noticed db had a slightly higher bid.... ‘client’ said [...] would come back...said [...] liked the price but needed to check with [...] client- i had my doubts’*. [Deutsche Bank employee] thanked [...] and said [...] would pass the information on. [Rabobank employee] then added: *‘i was interested to know if the client was genuine’*.²⁸⁵

(337) In the communication of 30 April 2014, the parties exchanged commercially sensitive information regarding a client’s approach towards Rabobank (*‘just asked to offer 1m of the 21s’*) which caused suspicion as to whether the client was genuine (*‘i had my doubts’*, *‘interested to know if the client was genuine’*). This is because [Rabobank employee] was asked to offer bonds for sale at a price lower than the bid price of Deutsche Bank which would have allowed the client to buy from Rabobank at a low price and sell to Deutsche Bank at a higher price, therefore profiting from the differential between ask price and bid price.

30 April 2014	
DB ([Deutsche Bank employee])	“[Deutsche Bank employee] does”
Rabobank ([Rabobank employee])	“thanks, we were just aske to offer 1m of teh 21s and i noticed db had a slightly higher bid. 'client' said [...] woudl coem back”
Rabobank ([Rabobank employee])	“sais [...] liked the price but needed to check with [...] client - i had my doubts”
DB ([Deutsche Bank employee])	“great”
DB ([Deutsche Bank employee])	“i pass the information on”
Rabobank ([Rabobank employee])	“thank you. i was interested to know if the client was genuine”

(338) On **12 June 2014**, [Rabobank employee] of Rabobank exchanged information with [Deutsche Bank employee] of Deutsche Bank in relation to the trading of IBRD 0 15 bonds. On that occasion, [Deutsche Bank employee] informed [Rabobank employee] that [...] was showing [...] bonds to a buyer at ‘.67’ and asked [Rabobank employee] *‘want me to show some too for you ?’*. [Rabobank employee] agreed to this, indicating the amount [...] had available (*‘20m’*). [Deutsche Bank employee] thereafter sold [Rabobank employee]’s bonds (20m IBRD 0 15) and then confirmed

²⁸⁵

[...]

that [...] had sold them at ‘.67’, the same level at which [...] had offered. They finally agreed to book the price level at ‘.66’.²⁸⁶

- (339) This is yet another example of the parties’ practice of exchanging commercially sensitive information with a view to coordinate their trading activity, for onward sale to a counterparty, including the volumes and price level offered to the counterparty.

12 June 2014	
Rabobank ([Rabobank employee])	“at me screen bid”
DB ([Deutsche Bank employee])	“got hit at my creen yesterday afternoon”
DB ([Deutsche Bank employee])	“just showing them to my buyer at .67”
DB ([Deutsche Bank employee])	“11 mio”
DB ([Deutsche Bank employee])	“want me to show some too for you?”
Rabobank ([Rabobank employee])	“please, we have 20m”
DB ([Deutsche Bank employee])	“ok, let you know”
Rabobank ([Rabobank employee])	“great message thank you”
Rabobank ([Rabobank employee])	“not what [...] told us [...] was doing”
DB ([Deutsche Bank employee])	“i know but i didn't mention a word”
DB ([Deutsche Bank employee])	“so [...] is aware now and we will see”
DB ([Deutsche Bank employee])	“can take your 20mio ibrd 0 15”
DB ([Deutsche Bank employee])	“sold them at 67”
DB ([Deutsche Bank employee])	“do it net if you want”

²⁸⁶

[...]

Rabobank ([Rabobank employee])	“thank you, i would have happily sold at 65”
Rabobank ([Rabobank employee])	“65 is fine, [...] margins”
DB ([Deutsche Bank employee])	“book at .66”
Rabobank ([Rabobank employee])	“thank you”
DB ([Deutsche Bank employee])	“welcome”

(340) On **20 August 2014**, [Rabobank employee] of Rabobank informed [Deutsche Bank employee] of Deutsche Bank that, in relation to UNEDIC²⁸⁷ bonds, ‘*in case you are still looking we do have 42m (unedic 1.75 2/15 Corp <Go>)*’, ‘*almost flat vs btns*’ and that [...] ‘*was showing these to [...] ...but [...] price for 3bp did not match mine and [...] decided it was because [...] was using the wrong benchmark*’. This suggests that the counterparty [...] may have been looking at Deutsche Bank bonds as a benchmark for [...] price. Hence, [Deutsche Bank employee] indicated that [...] would check with the sales desk and a few minutes later [...] confirmed that Deutsche Bank was almost flat versus other French bonds (BTNs) and that their prices were very high: ‘*too rich over france...but we try*’. The relevant traders then continued their discussion on recent trades on RESFER bonds, volumes and prices at which they were traded, as well as Rabobank’s need to sell FLEMSH bonds, including the volumes and price at which they wanted to sell them (‘*we have 14.8m FLEMSH...but we cannot sell them at 16bp when lesser rated BGB 3/16 is bid at 3.5*’). [Rabobank employee] then indicated that [...] would send [Deutsche Bank employee] ‘*a list of our agency/gg offers –if only so I can have somebody look at it*’.²⁸⁸

(341) In that communication, the parties exchanged commercially sensitive information regarding their positions on certain bonds (‘*we are now flat*’), prices (‘*at 3.5bp (maybe 4bp)*’, ‘*cannot sell them at 16bp*’) and volumes (‘*we do have 42m*’, ‘*we have 14.8m*’), as well as Rabobank’s internal list of offers for agency and Government Guaranteed bonds.

20 August 2014	
Rabobank ([Rabobank employee])	“good morning and you are welcome”
Rabobank ([Rabobank employee])	“hi, in case you were still looking we do have 42m {unedic1.75 2/15 Corp <Go>} at 3.5bp (maybe 4bp) i was showing these to [...] and i like th e[...] a lot but [...] price for 3½bp did not match mine and [...] decided it was becaue [...] was

²⁸⁷ Union nationale interprofessionnelle pour l’emploi dans l’industrie et le commerce, France’s unemployment insurance management body.

²⁸⁸ [...]

	using the wrong benchmark.”
DB ([Deutsche Bank employee])	“let me check my sales”
DB ([Deutsche Bank employee])	“[...] tried on your rabo but the account didn't have any line for financials in this portfolio”
DB ([Deutsche Bank employee])	“but they try to get one”
Rabobank ([Rabobank employee])	“thank you, for what it is worth unedic is explicitly guaranteed by france (cades is not)”
DB ([Deutsche Bank employee])	“I know but the french say if it wasn't it would be bankrupt, cades not”
Rabobank ([Rabobank employee])	“sorry if i am telling yo somethig you already know but it i have spent too long talking to sales”
Rabobank ([Rabobank employee])	“you make a good point”
DB ([Deutsche Bank employee])	“i never understood why unedic trades cheaper, but that's apparently the reason to the french”
DB ([Deutsche Bank employee])	“first answer, too rich over france, i.e almost flat vs btns”
DB ([Deutsche Bank employee])	“but we try”
Rabobank ([Rabobank employee])	“cades is always very expensive. we have a few guarenteed CCCI & Peugeot at much better levels”
DB ([Deutsche Bank employee])	“yes, but in those names the international comunity isn't playing”
DB ([Deutsche Bank employee])	“somebody was looking for resfer 2016 this am”
DB ([Deutsche Bank employee])	“i passed”
DB ([Deutsche Bank employee])	“hope they came to you, insurer”
Rabobank ([Rabobank employee])	“we have traded a lot of the resfer. i thought it was good value and bought some from the broker but when i showed it to clients i was always undercut. i do not know where they kept tapping it (tapped 4 times so far). we are now flat as we sold to CB about 65m and [...] bought from us on Monday at 14bp vs selling BGB 9/16 at 4. now it is bid without an offer these small issues are difficult as the leads

	always own them cheaper and know where thy can increase them. we are now looking at the {AGFRNC 0.2 6/30/2016 Corp <Go>} but it is only 300m. as you say it is a small investor base who will buy peugot/ccci. i alos bought some sagesse as i thought it looked good value but so far i have only really bought”
Rabobank ([Rabobank employee])	“we have 14.8m {FLEMSH 3.875 7/20/2016 Corp <Go>} but cannot sell them at 16bp when lesser rated BGB 3/16 is bid at 3.5”
DB ([Deutsche Bank employee])	“ok, i keep it in mind”
Rabobank ([Rabobank employee])	“i sent you a list of our agency/gg offers - if only so i can have somebody look at it”
DB ([Deutsche Bank employee])	“merci”

(342) On **10 September 2014**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that, in relation to DEM bonds, *‘the DEM is priced by myself and we get hit only, no buyers’*. [Rabobank employee] thanked [...] and added: *‘these zero are a nuisance. Everybody is the same way round. The ITL are very cheap, more than 2% lower cash price’*. A few minutes later, [Deutsche Bank employee] noted [...] was long and [...] continued to buy the bonds: *‘am long 8mio and continue to get hit...agreed they are cheap...now I understand why the account keeps on asking for size in ibrd...same on bng 0 15, got hit again, but nobody cares...let me try on ibrd’*. [Rabobank employee] thanked [...] and added that there was a seller (*‘english bk’*) in the market for 120 million IBRD bonds that traded with [...]. [Deutsche Bank employee] then noted: *‘I got asked to bid size ebrd 0 18 in itl..today...you mean ibrd 0 16 itl, seen an inquiry but small size only’*, to which [Rabobank employee] replied: *‘the ibrd dem traded last week in dem 120m. I was shown the offer. The [...] who [bought] them still has them but was talking about negative yields’*.²⁸⁹

(343) On that occasion, the parties exchanged commercially sensitive information in relation to recent and ongoing trades (*‘continue to get hit, got hit again’*, *‘I got asked to bid size’*), positions (*‘am long 8mio’*), counterparty trading enquiries (*‘the account keeps on asking for size in ibrd’*) and identity (*‘english bk’*).

10 September 2014	
DB ([Deutsche Bank employee])	“on your DB question, the DEM is priced by myself and we get hit only, no buyers.”
Rabobank ([Rabobank employee])	“thanks. these zero are a nuisance. everybody is always the same way round. the ITL are very cheap, more than 2% lower cash price”
DB ([Deutsche Bank employee])	“am long 8mio and continue to get hit”

²⁸⁹

[...]

employee])	
DB ([Deutsche Bank employee])	“agreed they are cheap”
DB ([Deutsche Bank employee])	“sorry got interrupted”
DB ([Deutsche Bank employee])	“now i understand why the account keeps on asking for size in ibrd”
DB ([Deutsche Bank employee])	“same on bng 0 15, got hit again, but nobody cares”
DB ([Deutsche Bank employee])	“let me try on ibrd”
Rabobank ([Rabobank employee])	“thanks. there was also a seller in the mkt of ~120m ibrd that traded with [...]. this i think is the english bk who has always owned them but offered them cheaply to italians who hit you and me in th epast”
DB ([Deutsche Bank employee])	“i got asked to bid size ebrd 0 18 in itl”
DB ([Deutsche Bank employee])	“today”
DB ([Deutsche Bank employee])	“you mean ibrd 0 16 itl, seen an inquiry but small size only”
Rabobank ([Rabobank employee])	“the ibrd dem traded last week in dem120m. i was shown the offer. teh buy who bt them still has them but was talking abou tnegative yields”
Rabobank ([Rabobank employee])	“did you cover your eu 12/15? you may have just seen it but we bt 7.3m for value tomorrow at 103.11, -2.7bp, i think you sold yesterday at -4.9bp”
DB ([Deutsche Bank employee])	“didn't manage to cover”
Rabobank ([Rabobank employee])	“i can offer 7.3m at 103.105 T+2 for when you are short”
DB ([Deutsche Bank employee])	“i take them”
DB ([Deutsche Bank employee])	“let my apply”
Rabobank ([Rabobank employee])	“can we make it 6.3 sorry”

DB ([Deutsche Bank employee])	“sure”
Rabobank ([Rabobank employee])	“thank you sorry”
DB ([Deutsche Bank employee])	“thank you”
Rabobank ([Rabobank employee])	“you are welcome, i am off soon so if we do not speak have a great evening”

- (344) On **17 September 2014**, [Deutsche Bank employee] of Deutsche Bank messaged [Rabobank employee] of Rabobank informing [...] that in comparison with the level at which Deutsche Bank’s bid for a certain bond had been ‘*hit*’ Rabobank’s price was high (*‘you are high on eib 2.75 9/21...got hit at .15’*). [Rabobank employee] thanked [Deutsche Bank employee] and added that *‘after you mentioned the ibrd 19 to me and kindly covered my short, I moved my price down, was lifted and cannot get them back’*, indicating that [Rabobank employee] had adjusted Rabobank’s price on the basis of similar information that [Deutsche Bank employee] had given to [...] on another bond. [Deutsche Bank employee] then offered to cover Rabobank’s position on the bonds [...] did not manage to recover: *‘got 50k ibrd if that helps’*. Later, [Deutsche Bank employee] asked [Rabobank employee] whether [...] managed to cover the IBRD bonds, as [...] *‘missed a few small tickets’*, to which [Rabobank employee] replied: *‘I bid on ~2m but was the cover’*.²⁹⁰
- (345) In the communication of 17 September 2014, the parties exchanged commercially sensitive information about recent trades and price levels. The exchanges suggest that the parties regularly helped each other and protected each other’s trading interests.

17 September 2014	
Rabobank ([Rabobank employee])	“hi”
DB ([Deutsche Bank employee])	“you are high on eib 2.75 9/21”
DB ([Deutsche Bank employee])	“got hit at.15”
Rabobank ([Rabobank employee])	“thanks, you always manage to get hit a good levels, after you mentioned the ibrd 19 to me and kindly covered my short i moved my price down, was lifted and cannot get them back”
DB ([Deutsche Bank employee])	“that wasn't the purpose of my message”

²⁹⁰

[...]

DB ([Deutsche Bank employee])	“sorry”
DB ([Deutsche Bank employee])	“got 50k ibrd if that helps”
Rabobank ([Rabobank employee])	“I know and I would not mention it if i did not find it funny”
Rabobank ([Rabobank employee])	“thanks for the offer, i think i will get them back some day”
DB ([Deutsche Bank employee])	“thank you!”
Rabobank ([Rabobank employee])	“you are welcome”
DB ([Deutsche Bank employee])	“did you manage to cover the ibrd, some have come out but i missed, a few small tickets”
Rabobank ([Rabobank employee])	“i bid on ~2m but was the cover”
DB ([Deutsche Bank employee])	“mmhh, those ones i saw too and a few less than 1 mio tickets”

(346) On **6 October 2014**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that Deutsche Bank just ‘*got hit asfing 2017 at .28 for info...5mio only*’. [Rabobank employee] replied: ‘*thank you. I only ever win if I pay more than anybody else and then some! I am short 550k if [you] can spare any...understand if you do not want to split the 5m*’. A minute later, [Rabobank employee] thanked [...] and [Deutsche Bank employee] said ‘*welcome*’, suggesting that Deutsche Bank had sold to Rabobank a sufficient amount of ASFING 2017 so that Rabobank could cover its short position in that bond.²⁹¹

(347) The communication of 6 October 2014 is an example of the parties exchanging commercially sensitive information regarding recent trades and positions.

6 October 2014	
Rabobank ([Rabobank employee])	“hi”
DB ([Deutsche Bank employee])	“got hit asfing 2017 at .28 for info”
DB ([Deutsche Bank employee])	“5mio only”

²⁹¹

[...]

DB ([Deutsche Bank employee])	“for into”
Rabobank ([Rabobank employee])	“thank you. i only ever win if i pay more than anybody else and then some! i am short 550K if you can spare any”
Rabobank ([Rabobank employee])	“understand if you do not want to split the 5m”
Rabobank ([Rabobank employee])	“thank you”
DB ([Deutsche Bank employee])	“welcome”
DB ([Deutsche Bank employee])	“asfing 20 offered at .26 after they hit me at .29”

(348) The next extract is from an email sent by [Rabobank employee] of Rabobank to [Deutsche Bank employee] of Deutsche Bank on **26 November 2014**. During this exchange, [Deutsche Bank employee] told [Rabobank employee] that [...] thought that in terms of pricing, Rabobank was ‘*high on nedwbk*’ and that Deutsche Bank could offer below this bid. [Deutsche Bank employee] then noted: ‘*just be aware of any funny guys if they hit you...i make them 122.03-122.33 on screen...for info*’. [Rabobank employee] then responded ‘*we are short 13.2m (bng 2.25 23 Corp <Go>) since May! These would make a good alternative and think we have a holder who would look at it. can i ask where you offer please*’ to which [Deutsche Bank employee] replied ‘*122.31 ref.34*’. Further to some further information exchanges on the size of the order, [Rabobank employee] then stated ‘*interesting, thank you. I will leave my screen as it is and offer on my bid, thank you*’. In reply to this, [Deutsche Bank employee] replied ‘*great*’, ‘*protects me too*’.²⁹²

(349) In the communication of 26 November 2014, the parties exchanged commercially sensitive information about ongoing and recent trades, as well as positions and price levels and warned each other about potential counterparties. The exchange is another example of the parties trying to protect and assist each other in executing trades.

26 November 2014	
Rabobank ([Rabobank employee])	“good morning”
DB ([Deutsche Bank employee])	“i think you are high on nedwbk 31”
DB ([Deutsche Bank employee])	“had to leave early yesterday and we got hit in a block”
DB ([Deutsche Bank employee])	“I can offer below your bid”

²⁹²

[...]

employee])	
Rabobank ([Rabobank employee])	“thanks, we weer asked ot bid on 7m by an italiam 'family' office yesterday”
DB ([Deutsche Bank employee])	“been told the seller requested a few times”
DB ([Deutsche Bank employee])	“we bid 35cent back from screen, covere was another 60cent lower than where we got hit”
DB ([Deutsche Bank employee])	“so in case you got on buying cares, let me know”
Rabobank ([Rabobank employee])	“I would quite like to buy these but we ae having a few limit problems and need to sell something first”
DB ([Deutsche Bank employee])	“just be aware of any funny guys if they want to hit you”
DB ([Deutsche Bank employee])	“I make them 122.03-122.33 on screen”
DB ([Deutsche Bank employee])	“for info”
Rabobank ([Rabobank employee])	“we aer short 13.2m {bng 2.25 23 Corp <Go>} since May! these would make a good alternative and i think we have a holder qwho woudl look at it. can i ask where you offer please”
DB ([Deutsche Bank employee])	“122.31 ref .34”
Rabobank ([Rabobank employee])	“thanks I will give it a go. is it 7m?”
DB ([Deutsche Bank employee])	“no more”
DB ([Deutsche Bank employee])	“40mio”
Rabobank ([Rabobank employee])	“interesting, thank you. i will leave my screen as it is and offer on my bid, thank you”
DB ([Deutsche Bank employee])	“great”
DB ([Deutsche Bank employee])	“protects me too”

5.2.10. 2015

- (350) On **9 January 2015**, [Rabobank employee] of Rabobank asked [Deutsche Bank employee] of Deutsche Bank whether [...] had recently seen a lot of interest in a certain bond. Whilst [Deutsche Bank employee] confirmed that this was not the case, [Rabobank employee] then informed [...] that Rabobank had been checked by brokers and that they had 25 million on their books. In return, [Deutsche Bank employee] informed [Rabobank employee] that [...] had 7+. [...] further revealed that [...] was now showing the bond at 81.00 and that [...] target was 80.80. However, if [Rabobank employee] was amenable to the idea [...] would add 5 million of [...]bonds ‘*at the figure*’ to [...]. In the event, [Rabobank employee] informed [...] that [...] thought that Rabobank had shown the bonds to the market at 81.05 and that there was a broker bidding them 80.85 for their full size. [Deutsche Bank employee] then instructed [...] ‘*show [...] the figure*’ and let [...] know that there was ‘*nobody back with me*’. [...] thanked [...] for this and let [...] know that ‘*we are not budging*’.²⁹³
- (351) The communication of 9 January 2015 is another example of the parties exchanging commercially sensitive information in relation to prices (*‘I am showing 81.00... target 80.80’*, *‘we showed 81.05’*) and current market trends (*‘offer wanted..’*, *‘have you seen a lot of interest recently..none...mostly selling’*, *‘have been checked by brokers’*) with a view to coordinating their trading strategies by combining their positions for onward sale to a counterparty at pre-agreed prices.

9 January 2015	
DB ([Deutsche Bank employee])	“yes”
DB ([Deutsche Bank employee])	“offer wanted in 11+mio”
Rabobank ([Rabobank employee])	“have you seen a lot of interest recently?”
DB ([Deutsche Bank employee])	“none”
DB ([Deutsche Bank employee])	“mostly selling”
Rabobank ([Rabobank employee])	“we have been checked by brokers and we have 25m. we showed screen less â...>”
DB ([Deutsche Bank employee])	“got 7+”
DB ([Deutsche Bank employee])	“oho”
Rabobank ([Rabobank employee])	“but they said there was a much cheaper offer.”

²⁹³

[...]

employee])	
DB ([Deutsche Bank employee])	“didnm't dare to ask if you want to show the balance”
Rabobank ([Rabobank employee])	“we did see teh 11 m enquiry but did not trade”
DB ([Deutsche Bank employee])	“I am showing 81.00”
DB ([Deutsche Bank employee])	“target 80.80”
DB ([Deutsche Bank employee])	“said no way”
DB ([Deutsche Bank employee])	“so if you want me to add 5mio of yours at the figure let me know”
DB ([Deutsche Bank employee])	“or slightly below the figure”
Rabobank ([Rabobank employee])	“we were asked to offer 11m. there has also been a broker (office in Paris and London) checking since the end of last week”
Rabobank ([Rabobank employee])	“I think we showed 81.05”
Rabobank ([Rabobank employee])	“broker bidding us 80.85 for our full size”
DB ([Deutsche Bank employee])	“show [...] the figure”
DB ([Deutsche Bank employee])	“doubt that anybody has some”
DB ([Deutsche Bank employee])	“nobody back with me”
Rabobank ([Rabobank employee])	“thanks, we are not budging.”

- (352) On **18 February 2015**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank exchanged commercially sensitive information in relation to certain bonds. [Deutsche Bank employee] indicated: *‘indeed just been asked’*, to which [Rabobank employee] replied: *‘i see the client passed which perhaps [meant][...] tried the bid but it did not work’*. [...] then added [...] was long 22 million of that issue which became only a bit expensive since other EIB bonds had tightened. [Deutsche Bank employee] replied [...] had not had anything in it which might be because *‘you are always way higher bid’* and adding: *‘sold 5mio of db 0 26 last week...no cover price...have left 2mio only...agree they are cheap and saw your msg*

but had them on board since a long time'. [Rabobank employee] then reacted: 'we have been losing our db 0 26 in DEM...i just sent you our positions as mostly [are] in DB', to which [Deutsche Bank employee] replied: 'never show up with me'.²⁹⁴

- (353) The communication of 18 February 2015 is another example of the parties exchanging commercially sensitive information, including recent trades, clients' trading strategy, price levels, volumes and positions. Information such as *'you are always way higher bid', 'agree they are cheap and saw your msg', 'i just sent you our positions'* suggest that the parties protected and assisted each other in setting their prices and covering their positions.

18 February 2015	
DB ([Deutsche Bank employee])	"ah"
DB ([Deutsche Bank employee])	"indeed just been asked"
Rabobank ([Rabobank employee])	"i see the client passed which perhaps meant [...] tried the bid but it did not work."
DB ([Deutsche Bank employee])	"will it ever stop?"
Rabobank ([Rabobank employee])	"we are long 22m of this issue which used to be outrageously expensive. as other eibs have tightened about 20bp it is now only a little expensive. it still irritates me and if i had the power most of our clients would have gone"
DB ([Deutsche Bank employee])	"haven't had anything in it really"
DB ([Deutsche Bank employee])	"but think it was because you are always way higher bid"
DB ([Deutsche Bank employee])	"sold 5mio of db 0 26 last week"
DB ([Deutsche Bank employee])	"no cover price"
DB ([Deutsche Bank employee])	"have left 2mio only"
DB ([Deutsche Bank employee])	"agree they are cheap and saw your msg but had them on board since a long time"
Rabobank ([Rabobank employee])	"thanks, we have been losing our db 0 26 in DEM (german exchange has bought about 8m in 4 or 5 trades)"

²⁹⁴

[...]

DB ([Deutsche Bank employee])	“great they come to you”
Rabobank ([Rabobank employee])	“i just sent you our positions as mostly arwe in DB”
DB ([Deutsche Bank employee])	“never show up with me”
Rabobank ([Rabobank employee])	“[...] lifted us 1 minute after [...] and when i asked [...] [...] said [...] had absolutely no idea who the buyer was, at least [...] was honest”
DB ([Deutsche Bank employee])	“strange, i talk to [...] ”
DB ([Deutsche Bank employee])	“was that [...] i guess”

(354) On **8 July 2015**, [Rabobank employee] of Rabobank sent the following message to [Deutsche Bank employee] of Deutsche Bank: *‘[thank] you...only long 115k!’* to which [...] replied: *‘got hit market here at .88 and would have sold on’*. [Rabobank employee] then added: *‘along with the rest of the mkt we are long gpps 16. We have 65m we would offer at +6.5bp. the usual buyer is on strike at the moment. we are bidding 5bp...’*.²⁹⁵

(355) In that instance, the parties exchanged commercially sensitive information in relation to their positions, volumes and price level for specific bonds.

8 July 2015	
Rabobank ([Rabobank employee])	“thakn oyu”
Rabobank ([Rabobank employee])	“only long 115k!!”
DB ([Deutsche Bank employee])	“got hit market here at .88 and would have sold on”
Rabobank ([Rabobank employee])	“along with the rest of the mkt we are long gpps 16. we have 65m we would offer at +6.5bp. the usual buyer is on strike at teh moment. we are bidding 5bp for {rabobk 3.375 1/16 Corp <Go>} gpps was taken off negative yesterday by S&P and is now stable AAA with the 3 major agencies. I am amzed we cannot sell them as i tried to explain to sales In moving GPPS from negative to stable S&P yesterday re-affirmed its primary reason for assigning GGPS a triple A rating 'Our 'AAA (sf)' ratings on the notes continue to rely on the ultimate obligation of the Federal Republic of Germany (AAA/Stable/A-1+; unsolicited) to ensure BAnst PT's liquidity and on BAnst PT's

²⁹⁵ [...]

	payment undertaking toward the issuers'."
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- (356) On **22 October 2015**, [Deutsche Bank employee] of Deutsche Bank informed [Rabobank employee] of Rabobank that *'an account looking for out to one year paper...laender, ssa, covered...not sure whether financials too...no yield target min 10mio...if you have anything you need to shift I can give it a try'*. [Rabobank employee] replied that [...] was *'happy to show you what we have but it is really very little at the moment ... all we have is rabo'*, to which [Deutsche Bank employee] reacted: *'...thought so...guess on rabo they would check with you but let me try'*. [Rabobank employee] then sent [Deutsche Bank employee] a list with prices and yields and asked [...] whether the client would be interested in switches. After a discussion on volumes and prices and the client's needs, [Deutsche Bank employee] informed [Rabobank employee] that the client *'want the short paper'* and so *'switch won't work'*.²⁹⁶
- (357) In the exchange of 22 October 2015, the two traders discussed their trading strategy towards a counterparty that was looking for different types of bonds, including SSA bonds. This is another example of the parties exchanging commercially sensitive information on prices and trading positions.

22 October 2015	
DB ([Deutsche Bank employee])	"hope all fine on your side"
DB ([Deutsche Bank employee])	"not sure whether you have the inquiry as it's ongoing"
DB ([Deutsche Bank employee])	"an account looking for out to one year paper"
DB ([Deutsche Bank employee])	"laender, ssa, covered etc"
DB ([Deutsche Bank employee])	"you name it"
DB ([Deutsche Bank employee])	"not sure whether financials too"
DB ([Deutsche Bank employee])	"no yiled target min 10mio"
DB ([Deutsche Bank employee])	"if you have anything you need to shift I can give it a try"
Rabobank ([Rabobank employee])	"hi, i am happy to show you what we have but it is really very little at the moment as we usually sell what we have very quickly. i have also noticed yields slipping further negative over the last few days. now i look i can see we do not have anything >10m. we sold what

²⁹⁶

[...]

	we had earlier. all we have is rabo”
DB ([Deutsche Bank employee])	“ok, fair enough”
DB ([Deutsche Bank employee])	“thought so”
DB ([Deutsche Bank employee])	“guess on rabo they would check with you but let me try”
Rabobank ([Rabobank employee])	<p>“we only have Jan 17 fixed but it is attractive relative to the shorter issues. Once an issue drops below 1yr to maturity it attracts a lot more interest and becomes much more expensive. We are buyers of the 16 issues and have been working (with little success) these switches</p> <p>Clients Price Yield</p> <p>Sell {RABOBK 3.375 1/2016 Corp <Go>} 100.776 0.004</p> <p>Sell {RABOBK 3.875 4/2016 Corp <Go>} 101.858 0.033</p> <p>Sell {RABOBK 4.375 5/2016 Corp <Go>} 102.278 0.031</p> <p>Buy</p> <p>77,547 {RABOBK 4.25 1/2017 Corp <Go>} 105.039 0.129</p> <p>Would they look at FRNs? we have a Rabo Nov 16 (just over 1 yr) in very good size (200m+) offered at DM+16”</p>
DB ([Deutsche Bank employee])	“let me check”
DB ([Deutsche Bank employee])	“switch won't work”
DB ([Deutsche Bank employee])	“as they want the short paper”
Rabobank ([Rabobank employee])	“i was hoping that the switch shows the value in the 17s and it is amazing how many a/cs are limited to 1yr so as soon as an issue drops <1yr there is fierce competition, particularly as there is a Jan 16 {rabobk 3.375 16 Corp phdc1 <Go>} and holders will immediately look to switch as soon as they can”
DB ([Deutsche Bank employee])	“sorry but the one month is too long for the frn”
Rabobank ([Rabobank employee])	“we have switched a few holders out of the feb 16 frn for +10 vs DM into the Nov 16 but we then sell the febs because a/cs can't buy >1yr”

(358) On **4 November 2015**, there was another exchange between [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank. This exchange

shows continued information exchanges and coordination between the parties in relation to certain bonds. For example, [Deutsche Bank employee] indicated that Deutsche Bank had 18.1 million of a specific bond, to which [Rabobank employee] replied: *'thanks i 116.11. i would like to show that if you are ok'*. [Deutsche Bank employee] then indicated that [...] agreed with that: *'that's fine'*.²⁹⁷

- (359) In other words, [Rabobank employee] sought authorisation from [Deutsche Bank employee] as to what [...] would show for Rabobank, so the parties would not undermine each other's trading strategy.

4 November 2015	
DB ([Deutsche Bank employee])	"still got them"
DB ([Deutsche Bank employee])	"but not desperate, come on your offer side"
DB ([Deutsche Bank employee])	"which doesn't help"
Rabobank ([Rabobank employee])	"we have a small amount 2.6 but trying to build it up"
DB ([Deutsche Bank employee])	"I have 18.1mio"
Rabobank ([Rabobank employee])	"thanks i 116.11. i would like to show that if you are ok"
DB ([Deutsche Bank employee])	"that's fine"

- (360) On **6 November 2015**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to discuss the EIB 0 26 and to inform [...] that [...] had had a request from a Dutch insurer whom [...] believed to be a counterparty known to both of them. In this context, [...] suggested that if [...] did not hear from this counterparty [...] would *'happily suggest your eib 0 26 if you cared to'*. [Deutsche Bank employee] responded that Deutsche Bank had *'15+ at 89 82'* if Rabobank would like to show them. [Rabobank employee] responded that [...] would *'do so now, thank you'*.²⁹⁸

- (361) In that instance, it would appear that the counterparty was in contact with only one of the parties, namely Rabobank. Nonetheless, [Rabobank employee] and [Deutsche Bank employee] decided that Rabobank would offer Deutsche Bank's bonds for onward sale to this counterparty at a pre-agreed price.

6 November 2015	
Rabobank ([Rabobank employee])	"fyi we just had a dutch insurer buy long dated zero from us. they

²⁹⁷ [...]

²⁹⁸ [...]

employee])	have bt the eib 0 26 before and might look at it again. i know you also speak to them so if you do not hear i would happily suggest your eib 0 26 if you cared to”
DB ([Deutsche Bank employee])	“great info”
DB ([Deutsche Bank employee])	“when you give me this head ups is like cross words for me”
DB ([Deutsche Bank employee])	“trying to find the sales missing out on the client”
Rabobank ([Rabobank employee])	“i can provide cryptic clues”
DB ([Deutsche Bank employee])	“the one I thought is not reacting”
DB ([Deutsche Bank employee])	“got 15+ at 89.82 if you want to show”
Rabobank ([Rabobank employee])	“i will do so now, thank you”

(362) On **30 November 2015**, [Deutsche Bank employee] of Deutsche Bank entered into a conversation with [Rabobank employee] of Rabobank. It appears that the conversation below is a continuation of a discussion in relation to pricing, more particularly Rabobank’s pricing, because [Deutsche Bank employee] told [Rabobank employee] *‘I doubt it’s below my bid because I widened bid/offer tremendously’*. [...] then continued to inform [Rabobank employee] that [...] had *‘no more line at the moment’* and that [...] was *‘only showing 76.25 bid’*.²⁹⁹

(363) The communication of 30 November 2015 shows that the two parties were comparing their pricing levels. The disclosure by [Deutsche Bank employee] of where Deutsche Bank was bidding was a useful benchmark for [Rabobank employee] in setting Rabobank’s own pricing.

30 November 2015	
DB ([Deutsche Bank employee])	“morning”
DB ([Deutsche Bank employee])	“I doubt it's below my bid because I widened bid/offer tremendously”
DB ([Deutsche Bank employee])	“have no more line at the moment”
DB ([Deutsche Bank employee])	“only showing 76.25 bid”

²⁹⁹ [...]

employee])	
Rabobank ([Rabobank employee])	“21s not 26s”
Rabobank ([Rabobank employee])	“i made the sme mistake when asked as the 26s have been popular”
DB ([Deutsche Bank employee])	“ah”
DB ([Deutsche Bank employee])	“ah”
DB ([Deutsche Bank employee])	“i saw it but thought was a typo”
DB ([Deutsche Bank employee])	“the 21 are not traded by me”
Rabobank ([Rabobank employee])	“ah...sorry”
DB ([Deutsche Bank employee])	“no worries”

- (364) On **3 December 2015**, [Rabobank employee] of Rabobank contacted [Deutsche Bank employee] of Deutsche Bank to cross check on an account that had been in contact with [...], as [...] expected that Deutsche Bank would also hear from this counterparty [Deutsche Bank employee] indicated that there had been no approach. This interaction shows that the parties were in contact with each other with a view to discussing trading with counterparties approaching both Rabobank and Deutsche Bank.
- (365) The conversation continued with a real time information exchange about the approach from the counterparty to Rabobank, with [Rabobank employee] informing [Deutsche Bank employee] how much [...] was showing (15 million at 90.20). Whilst it appears that the two parties then entered into a trade with each other in order to facilitate a trade with the counterparty, [Rabobank employee] told [Deutsche Bank employee] that [...] felt [...] had to show the amount Rabobank actually owned and that [...] did not want the counterparty to know that [...] was in parallel contact with [Deutsche Bank employee]. This is both a reference to their ongoing practice of combining their portfolios together at agreed prices for sale to designated counterparties, prior to any bilateral trade and an acknowledgement that [Rabobank employee] knew that [...] should not be coordinating on trades with [Deutsche Bank employee]: *‘I did not really want them to know that we were communicating. not wrong, but might not look good’*.³⁰⁰

3 December 2015	
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³⁰⁰ [...]

DB ([Deutsche Bank employee])	“no”
Rabobank ([Rabobank employee])	“we have an account asking and it is one i would expect you to hear from”
DB ([Deutsche Bank employee])	“hasn't materialized lately”
Rabobank ([Rabobank employee])	“do you still own some”
DB ([Deutsche Bank employee])	“I think you think my sales are better than what they are”
DB ([Deutsche Bank employee])	“yes”
DB ([Deutsche Bank employee])	“12mio+”
Rabobank ([Rabobank employee])	“we have 2.2m.”
DB ([Deutsche Bank employee])	“I am showing 90.11 on screen”
Rabobank ([Rabobank employee])	“i find it difficult to think there is a sales force worse than ours”
DB ([Deutsche Bank employee])	“guess that's why they come to you”
Rabobank ([Rabobank employee])	“cani take your screen”
DB ([Deutsche Bank employee])	“sure”
DB ([Deutsche Bank employee])	“think your colleague can see my prices”
DB ([Deutsche Bank employee])	“have ssen [...] executing sometimes”
DB ([Deutsche Bank employee])	“just let me know what you need in case”
Rabobank ([Rabobank employee])	“i am showing 15m at your screen”
DB ([Deutsche Bank employee])	“ok”

employee])	
Rabobank ([Rabobank employee])	“we showed 15m at 90.20”
DB ([Deutsche Bank employee])	“ok”
DB ([Deutsche Bank employee])	“nothing at my end”
Rabobank ([Rabobank employee])	“very odd. you may yet be checked”
DB ([Deutsche Bank employee])	“now they are here”
DB ([Deutsche Bank employee])	“should i offer yours?”
Rabobank ([Rabobank employee])	“we have 2.295 yes please”
DB ([Deutsche Bank employee])	“will do”
Rabobank ([Rabobank employee])	“you traded i believe”
DB ([Deutsche Bank employee])	“would need to buy 1.539.646.82 if possible at 90.05”
DB ([Deutsche Bank employee])	“if ok with you”
Rabobank ([Rabobank employee])	“great”
Rabobank ([Rabobank employee])	“that is great”
Rabobank ([Rabobank employee])	“we are short 1.5m now as we had to sell the amount we said we actually owned”
DB ([Deutsche Bank employee])	“mmmh”
DB ([Deutsche Bank employee])	“no good”
DB ([Deutsche Bank employee])	“does it cause a problem?”

Rabobank ([Rabobank employee])	“i hope not”
DB ([Deutsche Bank employee])	“let you know if i get hit in any”
Rabobank ([Rabobank employee])	“i felt we had to show the amoutn we said we actually owned”
Rabobank ([Rabobank employee])	“thank you”
DB ([Deutsche Bank employee])	“you are tooo brave”
Rabobank ([Rabobank employee])	“i did not really want them to know we were communicating. not wrong but might not look good.”
DB ([Deutsche Bank employee])	“got you”
DB ([Deutsche Bank employee])	“want to buy 20k?”
DB ([Deutsche Bank employee])	“eib 0 26”
Rabobank ([Rabobank employee])	“sorry missed this, i have bt 150 so far!!!”
DB ([Deutsche Bank employee])	“sold them to you”
DB ([Deutsche Bank employee])	“somebody accepted it”
DB ([Deutsche Bank employee])	“i leave my screen below yours”
Rabobank ([Rabobank employee])	“i missed it thank you”
Rabobank ([Rabobank employee])	“thanks, much apprecaited”

- (366) On **15 December 2015**, [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank discussed the EIB 0 26 bonds. [Rabobank employee] revealed that Rabobank was long in this bond by 8 million and [Deutsche Bank employee] informed [...] that Deutsche Bank was ‘*showing them out in case you are being put in comp[etition]*’. [Rabobank employee] thanked [...] and let [...] know that, if [...] did find a buyer, Rabobank would also offer, to which [Deutsche Bank employee] replied by providing information on [...] current pricing

level (‘.45’). [Rabobank employee] then told [Deutsche Bank employee]: ‘*If I am checked I will let you know and not undercut you of course*’.³⁰¹

- (367) In other words, rather than entering into competition, the parties decided to collaborate together on an offer to the market.
- (368) [Deutsche Bank employee] then informed [Rabobank employee] that [...] would go back and show a total of 18 million and[...] responded by indicating that Rabobank would sell ‘*there or better*’, disclosing Rabobank’s size (‘7,558’).
- (369) The two traders then continued discussing the size and prices to be shown to a counterparty that Rabobank ‘*previously had in holland*’. [Deutsche Bank employee] indicated that Deutsche Bank sold the bonds at ‘.42’ and it would be willing to buy them at ‘.41’. In response, [Rabobank employee] copied in the chat the client’s response indicating that they were willing to sell at ‘.40’ (‘*i can sell at 35 we have 5.5 {eib 5.625 28 Corp <GO>} whcih we offer at ASW plus 5*’). [Deutsche Bank employee] agreed to the price ‘.40’, but eventually [Rabobank employee] negotiated the price at ‘.38’.

15 December 2015	
DB ([Deutsche Bank employee])	“just got hit in eib 0 26, probably the ones you have been mentioning last week”
Rabobank ([Rabobank employee])	“we are long as well now”
Rabobank ([Rabobank employee])	“8m”
DB ([Deutsche Bank employee])	“showing them out in case you are being put in comp”
Rabobank ([Rabobank employee])	“thank you”
Rabobank ([Rabobank employee])	“if you do find a buyer we would also offer”
DB ([Deutsche Bank employee])	“ok”
DB ([Deutsche Bank employee])	“my current price is .45”
Rabobank ([Rabobank employee])	“if i am checked i will let you know and not undercut you of course”
DB ([Deutsche Bank employee])	“would go back and show a total of 18mio, not sure if I should or not”

³⁰¹ [...]

DB ([Deutsche Bank employee])	“over to you”
Rabobank ([Rabobank employee])	“we would sell there or better”
Rabobank ([Rabobank employee])	“7.558 our size”
DB ([Deutsche Bank employee])	“sales doesn't want to go back to the [...]”
DB ([Deutsche Bank employee])	“thinks it doesn't make [...] look good”
DB ([Deutsche Bank employee])	“keep you posted”
Rabobank ([Rabobank employee])	“interesting, is that because [...] is not good?”
Rabobank ([Rabobank employee])	“i will try the one buyer we had prvisouly in holland”
DB ([Deutsche Bank employee])	“give 2 sec”
DB ([Deutsche Bank employee])	“they took mine and now [...] is showing another 7.5mio on top”
DB ([Deutsche Bank employee])	“can buy 7.5mio”
DB ([Deutsche Bank employee])	“sold them at .42”
DB ([Deutsche Bank employee])	“.41 ok?”
Rabobank ([Rabobank employee])	“i can sell at 35 we have 5.5 {eib 5.625 28 Corp <GO>} whcih we offer at ASW plus 5, with a centrally cleared swap that is +10”
DB ([Deutsche Bank employee])	“.40 is fine”
Rabobank ([Rabobank employee])	“38”
DB ([Deutsche Bank employee])	“great, thank you”

5.2.11. 2016

- (370) On **5 January 2016**, [Deutsche Bank employee] of Deutsche Bank warned [Rabobank employee] of Rabobank that Rabobank's price for BNG bonds was too high and that [...] was offered close to its bid. [Rabobank employee] replied: *'we [were] just hit by somebody...the new 10yr is very cheap...the bng and nwb 25s were already cheap'*.³⁰²
- (371) In the communication of 5 January 2016, the parties exchanged commercially sensitive information about price levels (*'bng 0.25 5/25 you are a bit high'*), recent trade opportunities and trades (*'am offered close to your bid'*, *'we [were] just hit by somebody'*).

5 January 2016	
DB ([Deutsche Bank employee])	"bng 0.25 5/25 you are a bit high in my view"
DB ([Deutsche Bank employee])	"am offered close to your bid"
Rabobank ([Rabobank employee])	"i see that now"
Rabobank ([Rabobank employee])	"we weer just hit by sopmebody"
Rabobank ([Rabobank employee])	"the new 10yr is very cheap"
Rabobank ([Rabobank employee])	"the bng and nwb 25s were already very cheap"
DB ([Deutsche Bank employee])	"indeed"
Rabobank ([Rabobank employee])	"the bng 25 has really suffered."
DB ([Deutsche Bank employee])	"a french broker destroying it with [...] offers"
DB ([Deutsche Bank employee])	"first showed pyper at ms+2"
DB ([Deutsche Bank employee])	"then +5"
Rabobank ([Rabobank employee])	"7.5 now i think"

³⁰²

[...]

DB ([Deutsche Bank employee])	“and spread not being revised on the new deal either which isn't promising I think”
Rabobank ([Rabobank employee])	“i was very surprised about htat”
Rabobank ([Rabobank employee])	“we priced it tighter”
Rabobank ([Rabobank employee])	“but they wanted to go 'with the big boys”
DB ([Deutsche Bank employee])	“the size could explain the spread but still”
Rabobank ([Rabobank employee])	“i agree, bng rarely performs, the 24 did but that came when bng was declared level 1 and treasury desks had room”

- (372) On **11 January 2016**, there was an exchange of commercially sensitive information between [Deutsche Bank employee] of Deutsche Bank and [Rabobank employee] of Rabobank, whereby [Deutsche Bank employee] confirmed to [Rabobank employee] that a specific bond was [...] colleague's and that Deutsche Bank had indeed been asked to make a bid. [Rabobank employee] replied: *'Italian ... they were bidding us 50 for our 5.688 ... 106.50 that is'*. [Deutsche Bank employee] then indicated that *'we bid .49 and they passed'*. [Rabobank employee] thanked [...] for the information and indicated that it was *'much appreciated'*.³⁰³
- (373) In the communication of 11 January 2016, the relevant traders exchanged commercially sensitive information in relation to current trades, including prices and volumes (*'been asked to bid'*, *'they were bidding us 50 for our 5.688'*, *'we bid .49 and they passed'*), and the counterparty's identity (*'italian'*). As such, the traders clearly increased transparency between the parties allowing them to understand how competitive their own pricing was, but also how to position themselves in future trades.

11 January 2016	
DB ([Deutsche Bank employee])	“it's my colleagues bond”
DB ([Deutsche Bank employee])	“but indeed been asked to bid”
Rabobank ([Rabobank employee])	“italian”
Rabobank ([Rabobank employee])	“they were bidding us 50 for our 5.688”

³⁰³ [...]

Rabobank ([Rabobank employee])	“106.50 that is”
DB ([Deutsche Bank employee])	“we bid .49 and they passed”
Rabobank ([Rabobank employee])	“thank you much appreciated.”

(374) On **24 February 2016**, [Deutsche Bank employee] of Deutsche Bank contacted [Rabobank employee] of Rabobank to discuss trading in Eurofima 3.125 22. [Deutsche Bank employee] asked [Rabobank employee] ‘*Where do you offer if you want to show them*’ to which [Rabobank employee] replied ‘*If you let me know where you need them then I am sure we will get there*’. Having gotten the information [...] needed about Rabobank’s size in the product (‘6.828’), [Deutsche Bank employee] indicated that [...] would set Deutsche Bank’s pricing at ‘.21-.61’ and in return [...] told [...] that [...] found this ‘*cheap*’. [...] then provided [...] with the price range [...] would use (‘41-56’). As the parties realised that they would be in competition on this trade the following day, they informed each other of their intended trading strategies, confirming that they both would not go short. [Rabobank employee] also indicated that [...] would widen [...] quote.³⁰⁴

(375) That exchange shows coordination between the parties on pricing and trading strategy with a view to taking a common approach towards the rest of the market.

24 February 2016	
DB ([Deutsche Bank employee])	“quick question” “eurofima 3.125 22” “i have got 10mio, but for a client to get credit approval [...] would need at least 20mio” “won’t happen today” “but would you have any?” “10mio?” “forget it” “not level 1 eligible”
Rabobank ([Rabobank employee])	“2a sadly”
DB ([Deutsche Bank employee])	“where do you offer if you want to show them”
DB ([Deutsche Bank employee])	“got somebody coming back on my offer”

³⁰⁴ [...]

DB ([Deutsche Bank employee])	“maybe can sell more to [...]”
DB ([Deutsche Bank employee])	“worth a try”
Rabobank ([Rabobank employee])	“if you let me know where you need them i am sure we will get there”
DB ([Deutsche Bank employee])	“what's your size”
DB ([Deutsche Bank employee])	“pleae?”
Rabobank ([Rabobank employee])	“i usually ask [...]”
DB ([Deutsche Bank employee])	“nice one”
Rabobank ([Rabobank employee])	“6.929”
DB ([Deutsche Bank employee])	“tks”
Rabobank ([Rabobank employee])	“6.828”
Rabobank ([Rabobank employee])	“sorry”
DB ([Deutsche Bank employee])	“ok”
DB ([Deutsche Bank employee])	“i'll try”
DB ([Deutsche Bank employee])	“.21-.61 i make them”
Rabobank ([Rabobank employee])	“these are very cheap, we were showing 1 swiss client for a number of days and [...] eventually came through for just 1m and then traded away from us this morning”
Rabobank ([Rabobank employee])	“we are 41-56”
DB ([Deutsche Bank employee])	“ok”
DB ([Deutsche Bank employee])	“will trade tomorrow only and start with 10mio, maybe add on

employee])	later”
DB ([Deutsche Bank employee])	“guess we will be in comp then”
Rabobank ([Rabobank employee])	“i would not go short, i will widen my quote”
DB ([Deutsche Bank employee])	“nor will I”

6. APPLICATION OF ARTICLE 101 OF THE TREATY AND ARTICLE 53 OF THE EEA AGREEMENT

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

(377) Article 53 of the EEA Agreement is modelled on Article 101 of the Treaty.³⁰⁵ Therefore, where in this Decision explicit reference is made to Article 101 of the Treaty alone, this reference also includes and applies to Article 53 of the EEA Agreement.

6.1. Jurisdiction

(378) In order to justify the Commission’s jurisdiction, it is sufficient that the conduct is either implemented in the EEA (‘implementation doctrine’³⁰⁶) or is liable to have immediate, substantial and foreseeable effects in the EEA (‘qualified effects doctrine’³⁰⁷).³⁰⁸

(379) The Commission has jurisdiction to apply both Article 101 of the Treaty and, on the basis of Article 56 of the EEA Agreement, Article 53 of the EEA Agreement in this case since, on the basis of the circumstances described in Section 6.2.4, the cartel had

³⁰⁵ In the EEA Agreement, only the reference of Article 101(1) to trade ‘*between Member States*’ is replaced by a reference to trade ‘*between contracting parties*’ and the reference to competition ‘*within the internal market*’ is replaced by a reference to competition ‘*within the territory covered by the ... [EEA] Agreement*’. The case-law of the Court and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See recitals 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement and Case E-1/94 of 16 December 1994, paragraphs 32-35.

³⁰⁶ Judgment of the Court of 27 September 1988, *Ahlström Osaakeyhtiö a.o. v Commission*, Joined Cases 89, 104, 114, 116, 117 and 125 to 129/85, EU:C:1988:447, paragraphs 11-18.

³⁰⁷ Judgment of the Court of First Instance of 25 March 1999, *Gencor v Commission*, T-102/96, EU:T:1999:65, paragraphs 89-101; Judgment of the Court of 6 September 2017, *Intel v Commission*, C-413/14 P, EU:C:2017:632, paragraphs 42-46.

³⁰⁸ For the avoidance of doubt, the Commission recalls that the implementation doctrine and the qualified effects doctrine constitute alternative and not cumulative approaches to establishing the Commission’s jurisdiction. See, to that effect, Judgment of the General Court of 12 July 2018, *NKT Verwaltungen and NKT v Commission*, T-447/14, EU:T:2018:443, paragraphs 79-82.

an appreciable effect on trade between EU Member States and between the Contracting Parties to the EEA Agreement.

- (380) The parties, which are the addressees of this Decision, were trading Euro-denominated SSA and Government Guaranteed bonds issued by authorities and institutions throughout the European Union and the EEA. The relevant traders all worked at desks in financial centres situated (during the infringement period) within the EEA. In any event, the international nature of the bond markets and instant communication and trading facilities means that, irrespective of the location of their trading desks, the relevant traders carried out transactions across the EEA throughout the day.
- (381) The conduct in which the parties participated therefore satisfies both the implementation test and the qualified effects test held by the Courts of the European Union to establish the Commission's jurisdiction under public international law.³⁰⁹

6.2. Application of the competition rules in this case

6.2.1. Agreements and concerted practices

6.2.1.1. Principles

- (382) Article 101(1) of the Treaty prohibits *agreements and concerted practices* between undertakings, which have as their *object or effect* the prevention, restriction or distortion of competition within the internal market.
- (383) 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 fact of 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 would apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.³¹⁰
- (384) It is well established in the Union 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.³¹¹

³⁰⁹ See Judgment of the General Court of 12 June 2014, *Intel Corporation Inc. v Commission*, T-286/09, EU:T:2014:547, paragraph 244, and Judgment of 6 September 2017, *Intel Corporation Inc. v Commission*, C-413/14P, EU:C:2017:632, paragraphs 40-46, 62. See also Judgments of the General Court of 30.3.2022 in Cases T-323/17, *Martinair Holland v Commission*, EU:T:2022:174, paragraphs 102-103; T-324/17, *SAS Cargo Group and Others v Commission*, EU:T:2022:175, paragraphs 129-130; T-326/17, *Air Canada v Commission*, EU:T:2022:177, paragraphs 212-213; T-337/17, *Air France-KLM v Commission*, EU:T:2022:179, paragraphs 100-101; T-338/17, *Air France v Commission*, EU:T:2022:180, paragraphs 97-98; T-340/17, *Japan Airlines v Commission*, EU:T:2022:181, paragraphs 78-79; T-341/17, *British Airways v Commission*, EU:T:2022:182, paragraphs 98-99; T-342/17, *Deutsche Lufthansa and Others v Commission*, EU:T:2022:183, paragraphs 84-85.

³¹⁰ Judgment of the Court of First Instance of 20 March 2002, *HFB a.o. v Commission*, T-9/99, EU:T:2002:70, paragraphs 196 and 207.

³¹¹ Judgment of the Court of First Instance of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. a.o. v Commission (PVC II)*, Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, EU:T:1999:80, paragraph 715.

- (385) Agreements may be entered into expressly or tacitly. A party, which tacitly approves of an unlawful initiative without publicly distancing itself from its content or reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery.³¹²
- (386) 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. It may arise not only from an isolated act but also from a series of acts or from a course of conduct.³¹³ The term agreement can be properly applied not just to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose.
- (387) Article 101(1) of the Treaty draws a distinction between the concepts of ‘concerted practices’ and ‘agreements between undertakings’, but the object of this distinction is to also bring within the prohibition of that Article the forms of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition.³¹⁴
- (388) The criteria of coordination and cooperation, 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 [...] intends to adopt in the internal 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 of which 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 which they contemplate adopting on the market.³¹⁵
- (389) Thus, a 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

³¹² Judgment of the Court of 21 January 2016, *Eturas a.o. v Commission*, C-74/14, EU:C:2016:42, paragraph 28.

³¹³ Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92 P, EU:C:1999:356, paragraph 81.

³¹⁴ Judgment of the Court of 14 July 1972, *Imperial Chemical Industries Ltd. v Commission*, Case 48-69, EU:C:1972:70, paragraph 64.

³¹⁵ Judgment of the Court of 16 December 1975, *Suiker Unie a.o. v Commission*, Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, EU:C:1975:174, paragraphs 173-174; Judgment of the Court of 4 June 2009, *T-Mobile Netherlands a.o.*, C-8/08, EU:C:2009:343, paragraphs 32-33; Judgment of the Court of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 120; Judgment of the General Court of 10 November 2017, *ICAP a.o. v Commission*, T-180/15, EU:T:2017:795, paragraph 50; Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v Commission*, T-105/17, EU:T:2019:675, paragraph 60; Judgment of the Court of 14 July 1981, *Gerhard Züchner v Bayerische Vereinsbank AG*, Case 172/80, EU:C:1981:178, paragraph 13; Judgment of the Court of 31 March 1993, *A. Ahlström Osakeyhtiö a.o. v Commission*, Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, EU:C:1993:120, paragraph 63; Judgment of the Court of 28 May 1998, *John Deere Ltd v Commission*, C-7/95 P, EU:C:1998:256, paragraph 86.

facilitate the coordination of their commercial behaviour.³¹⁶ Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the market may well also (depending on the circumstances) be correctly characterised as a concerted practice.

- (390) Although in terms of Article 101(1) of the Treaty the concept of 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 on the market will take account of the information exchanged with competitors when determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period.³¹⁷ Such a concerted practice is caught by Article 101(1) of the Treaty even in the absence of anticompetitive effects on the market.³¹⁸
- (391) Furthermore, a unilateral disclosure of strategic information³¹⁹ to a competitor, where that competitor accepts such information, can also be considered to constitute a concerted practice.³²⁰ In this regard, an undertaking receiving strategic information from a competitor will be presumed to have accepted this information and adapted its market conduct accordingly unless it has responded with a clear statement that it did not wish to receive such information.³²¹
- (392) Information exchanges can create mutually consistent expectations regarding the uncertainties present in the market. On that basis, companies can then reach a common understanding on the terms of coordination of their competitive behaviour,

³¹⁶ Judgment of the Court of First Instance of 17 December 1991, *SA Hercules Chemicals NV v Commission*, T-7/89, EU:T:1991:75, paragraph 256.

³¹⁷ Judgment of the Court of 8 July 1999, *Hüls AG v Commission*, C-199/92 P, EU:C:1999:358, paragraph 162; Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 121. See also Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 67 and the case-law cited; Judgment of the Court of 4 June 2009, *T-Mobile Netherlands BV a.o. v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, EU:C:2009:343, paragraph 62.

³¹⁸ Judgment of the Court of 8 July 1999, *Hüls AG v Commission*, C-199/92 P, EU:C:1999:358, paragraphs 158-166. See also Judgment of the General Court of 10 November 2017, *ICAP a.o. v Commission*, T-180/15, EU:T:2017:795, paragraph 56-57; and Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v Commission*, T-105/17, EU:T:2019:675, paragraph 67.

³¹⁹ Strategic information is information that is commercially sensitive and that is crucial to maintain uncertainty in the market. Sharing of strategic information can restrict competition because it reduces the parties' decision-making independence by decreasing their incentive to compete. Strategic information can be related to (actual and future) prices, customers, sales, risks, etc. Commission Guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements, OJ C 11, 14.1.2011, p. 1, point 86.

³²⁰ Commission Guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements, OJ C 11, 14.1.2011, p. 1, point 62; Judgment of the Court of First Instance of 15 March 2000, *Cimenteries CBR a.o. v Commission*, Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, EU:T:2000:77, paragraph 1849 – '*the concept of concerted practice does in fact imply the existence of reciprocal contacts...That condition is met where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least, accepts it*'.

³²¹ Commission Guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements, OJ C 11, 14.1.2011, p. 1, point 62; Judgment of the Court of 8 July 1999, *Hüls AG v Commission*, C-199/92 P, EU:C:1999:358, paragraph 162; Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 121.

even without an explicit agreement on coordination. Exchanges of information about intentions concerning future conduct is the most likely means to enable companies to reach such a common understanding.³²²

- (393) 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 services, which not only covers services delivered but is intended to facilitate constant monitoring in order to ensure that the cartel is effective, constitutes a concerted practice within the meaning of that Article.³²³
- (394) Even the exchange of information in the public domain or relating to historical and purely statistical prices falls under Article 101(1) of the Treaty where it underpins an anticompetitive arrangement. The circulation of price information limited to the members of an anticompetitive cartel increases the transparency of this information between them in circumstances where competition is already reduced. Furthermore, this can facilitate the control of compliance within the cartel by its members.³²⁴
- (395) Furthermore, in the specific context of financial services markets, the General Court has held that an exchange of information between competitors on a factor that is relevant for pricing and is not publicly available is all the more sensitive in terms of competition where it takes place between traders acting as ‘*market-makers*’. In the *HSBC Holdings* case,³²⁵ the General Court noted that ‘*market-makers*’ are generally and continuously active on the market and as such enter into a larger number of transactions than other market participants. As noted by the Court in that case, from the point of view of competition in the market, it is therefore particularly fundamental in that context that prices be determined independently.
- (396) In the case of a complex infringement of long duration, it is not necessary for the Commission to characterise the overall conduct or the different instances of the behaviour as being exclusively agreements or concerted practices, since Article 101 of the Treaty aims at capturing all forms of collusion between competitors and the concepts of agreement and concerted practice are fluid and may overlap. Their 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 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 consist of one or several agreements and concerted practices subsequently or at the same time.³²⁶

³²² Commission Guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements, OJ C 11, 14.1.2011, p. 1, point 66.

³²³ Judgment of the Court of First Instance of 6 April 1995, *Tréfilunion SA v Commission*, T-148/89, EU:T:1995:68, paragraph 72; Judgment of the Court of 6 April 1995, *Société des treillis et panneaux soudés v Commission*, T-151/89, EU:T:1995:71, paragraph 142.

³²⁴ Judgment of the Court of 7 January 2004, *Aalborg Portland a.o. v. Commission*, Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 281.

³²⁵ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v Commission*, T-105/17, EU:T:2019:675, paragraph 145; see also judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraphs 195-206.

³²⁶ Judgment of the Court of First Instance of 17 December 1991, *SA Hercules Chemicals NV v Commission*, T-7/89, EU:T:1991:75, paragraph 264.

(397) In its judgment in the PVC II case,³²⁷ 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’.

6.2.1.2. Application in this case

(398) The facts described in Section 5.2 of this Decision show that the relevant traders identified in recitals (82) and (87) engaged in agreements and/or concerted practices in respect of the trading of Euro-denominated SSA and Government Guaranteed bonds on the secondary market. The overall aim of those agreements/and or concerted practices was to maximise the parties’ profit margins with respect to the trading of those bonds.

(399) The elements of their collusive conduct were interrelated and overlapping. For example, instances of exchanging commercially sensitive information allowed the parties to coordinate their trading and pricing strategies and conditions. In their contacts, the parties expressed a joint intention to behave on the market in a certain way and knowingly substituted practical cooperation between them for the risks of competition. The parties’ interaction thus resulted in the conclusion of explicit or implicit agreements and/or the adoption of concerted practices between the parties within the meaning of Article 101(1) of the Treaty, and in particular:

- (a) bilateral exchanges 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 screens or in response to trading enquiries, through combining the parties’ positions for onward sale to counterparties at pre-agreed prices or through agreement and/or concerted practice to remove the access rights of specific counterparties to the parties’ trading systems. The parties also agreed and/or concerted on occasion that one would adjust its 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.

(400) The exchange of commercially sensitive information, noted in recital (399), point (a) and contained in the contemporaneous evidence presented and discussed in Section 5.2, is evidenced by the following examples: *‘got lifted at 94.00, 94.01, 94.00 each in 2mio... if you cancel yours we will hold them to ours’, ‘we are trying to sell 16s at -3...do you mind showing me where you would be happy to offer?’, ‘you may be a little high on this one and I am probably a little low...in case you are asked to bid/I send the [...] to hell...tks anyway’, ‘your price looks low on the eec 3.25 11. There are bids higher and we have been lifted above your offer/tks for telling me...will*

³²⁷ Judgment of the Court of First Instance of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. a.o. v Commission (PVC II)*, Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, EU:T:1999:80, paragraph 696.

adjust the price', '[...] trying to hit us in 1.5 much higher... reject [...] [...] just lifted me/ we moved it down but not enough', 'ok if I quote 48–63 (dont want to undercut you/sure', 's[e]ller going around in FLEMSH 2016, 13 mio [million] be aware I am not paying my screen/ I can show 23m to [...] at say 104.67 if you care at that level...thank you, I will see what I can do', 'screen works if you want to follow it/ tha[n]ks,I show 30 at 5cts above your screen', 'spanish [...] just hit us in 5m rbs 11(thanks to you i moved the price down 20 cts from where i was hit this morning)', 'cheap seller is going around again, size 20 to 30mio/ Let me push my [...] from yesterday. Have them 103.32-44. Agree?', 'can i show 40 at 100.12 or wherever you care/sure', 'tks for making me aware.! almost flat in it, will tighten', 'am offered 99.56 in 26.6mio...talking 2.625 1/14/ i will move it down a couple of cents or if you prefer i can leave it there?', 'don't bid to [...] on nedwbk 23, it's me on the offer/ thank you I will not', 'we were just lifted in 595 by [...] looked at the eib and thought they are to cheap, am flat, will adjust', 'I showed [...] .50 but said that I would pay better/if you can use them and we can both make money, more than welcome/Ok - 20 m done at .65. Mind moving your screen up a bit?/will do', '99.36 and 116.14 would be the terms, if agreed in 5mio', 'sold sfefr jun 14 yesterday to cb at 10bps/ can mark them a touch higher again', 'I am showing mine at 98.23 (4.9m) if [...] would you like to sell yours there/ sure, you can add them', 'thanks, we are not budging', 'thanks i 116.11. i would like to show that if you are ok/that's fine', 'just had a dutch insurer buy long dated zero from us... i would happily suggest your eib 0 26 if you cared to/ got 15+ at 89.82 if you want to show/ i will do so now, thank you', 'should i offer yours?/ we have 2.295 yes please/will do', 'my current price is .45/ if i am checked i will let you know and not undercut you of course'.³²⁸

- (401) The coordination of trading and pricing strategies, noted in recital (399), point (b), and contained in the contemporaneous evidence presented and discussed in Section 5.2, is evidenced by the following examples: *'if you cancel yours we will hold them to our..', 'Our buyer has asked if we can offer this issue, I thought I would come to you first. If there is anything else you care to show we can try, the EIB 10 for example... I am short on those ones, still got my EIB 5 10, cross .41 offered at 101.66', 'reject [...] [...] just lifted me', 'I will change my price', 'Better adjust your price in EEC 2016..ok if I quote 48–63 (don't want to undercut you)', 'if you like, I can move them back a little', 'i moved the price down 20 cts', 'I can show 23m to [...] at say 104.67 if you care at that level', 'don't know if you where my comp[etition] but maybe you want to drop your price', 'I have moved it down but will not beat your offer', 'Can I show 40 at 100.12 or wherever you care', 'i will move it down a couple of cents or if you prefer i can leave it there?', 'don't bid to [...] on nedwbk 23, it's me on the offer', 'I will tell them I can only pay 67; see if they move their bid to you', 'if you have a target i would be interested...woul beat 18.. i might show a low offer, that ok with you at [...]', 'I am showing mine at 98.23 (4.9m) if I can would you like to sell yours there', 'showing them out in case you are put in comp[etition]..If I am checked I will let you know and not undercut you of course', 'Where do you offer if you want to show them...If you let me know where you need them then I am sure we will get there', 'Would you mind telling me please if they did lift you again', 'my price on ITL EIB 0 11 works, just want to avoid arbitrage/ I think we will move it down, thank you for the info', 'been asked to bid by a spiv.. you look a little low...we are too high', 'adjust your price for our arbitrage*

³²⁸

See recitals (148)-(150), (173), (176), (184)-(186), (197)-(199), (212), (222)-(223), (224)-(225), (237)-(239), (242), (255)-(256), (261)-(263), (264), (282), (287), (295)-(296), (300), (306), (330)-(331), (350)-(351), (358)-(359), (360)-(361), (364)-(365) and (366)-(369).

*friends’, ‘if you pay around 102.43 I will move my price up...no arbitrage this time’, ‘probably they check to make sure they can arbitrage’, ‘I am very keen to remove this [...]’, ‘[...] boss wouldn’t mind that we take [...] off’, ‘slowly taking these guys off... we have taken them off, we have caught out’, ‘if some spiv comes around’.*³²⁹

- (402) In conclusion, by exchanging commercially sensitive information and coordinating their trading and pricing strategies on the Euro-denominated SSA and Government Guaranteed bond markets in the ways described in recital (399), points (a) and (b), the parties expressed a joint intention to behave on the market in a certain way and substituted practical cooperation between them for the risks of competition. This type of collusive behaviour runs counter to the concept inherent in competition law according to which each economic operator must determine independently the policy which it intends to adopt on the market, since the requirement of independence strictly precludes any direct or indirect contact between such operators with the object or effect of either influencing the conduct on the market of an actual or potential competitor or of disclosing to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.³³⁰
- (403) On the basis of the considerations set out in recitals (400)-(402), it is considered that the instances of exchanges of commercially sensitive information and of coordination of the parties’ trading and pricing strategies in relation to specific counterparties and to the market more generally in this case present all the characteristics of agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty.

6.2.1.3. Assessment of Rabobank’s arguments

6.2.1.3.1. Joint intention and evidentiary threshold

- (404) Rabobank submits that (i) the mere exchange of information between competitors does not automatically constitute a consensus to collude;³³¹ (ii) in order to establish whether information exchanges constitute agreements and/or concerted practices within the meaning of Article 101 of the Treaty it is necessary not only to demonstrate that the parties had ‘*a joint intention to collude*’, but also that ‘*such a joint intention [concerned] a restriction of competition*’;³³² and (iii) the 136 trader communications are not sufficient to show on the part of the parties a ‘*joint intention*

³²⁹ See recitals (125), (131)-(132), (148)-(150), (156)-(157), (167), (170), (171)-(172), (175), (180)-(181), (197)-(199), (212), (213)-(214), (215)-(216), (222)-(223), (237)-(239), (249), (253)-(254), (257)-(258), (261)-(263), (264)-(265), (282), (289), (290)-(291), (300)-(301), (312), (330)-(331), (366)-(369) and (374)-(375).

³³⁰ Judgment of the Court of 16 December 1975, *Suiker Unie a.o. v Commission*, Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, EU:C:1975:174, paragraphs 173-174; Judgment of the Court of 14 July 1981, *Gerhard Züchner v Bayerische Vereinsbank AG*, 172/80, EU:C:1981:178, paragraph 13; Judgment of the Court of 31 March 1993, *A. Ahlström Osakeyhtiö a.o. v Commission*, Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, EU:C:1993:120, paragraph 63; Judgment of the Court of 28 May 1998, *John Deere Ltd v Commission*, C-7/95 P, EU:C:1998:256, paragraph 86; Judgment of the Court of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C 286/13 P, EU:C:2015:184, paragraph 120; Judgment of the Court of 4 June 2009, *T-Mobile Netherlands BV a.o. v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, EU:C:2009:343, paragraphs 32-33; Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, EU:T:2019:675, paragraphs 59-60.

³³¹ [...]

³³² [...]

to behave on the market in a certain way’ or mental consensus to collude such that they *‘no longer determined their commercial policy independently’*.³³³

- (405) First, the Commission’s assessment of the infringement does not rely solely on the exchanges of information, but also on the coordination of the parties’ pricing and trading strategies, the two elements of the conduct being interlinked and overlapping.³³⁴ On this basis, as explained in Section 6.2.1.2, in this case it is concluded that the instances of exchanges of commercially sensitive information and of coordination of the parties’ trading and pricing strategies in relation to specific counterparties and to the market more generally present all the characteristics of agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty. In this context, it should in the first place be recalled that, according to settled case-law, in order for there to be an agreement within the meaning of Article 101(1) of the Treaty, it is sufficient that the undertakings in question expressed their joint intention to conduct themselves on the market in a specific way. This also follows necessarily from the fact that the Court does not require that the parties to an agreement under Article 101(1) of the Treaty have the intention to restrict competition to establish the restrictive character of the said agreement.³³⁵ In the second place, it should be recalled that the concept of concerted practice does not require that the parties have expressed their joint intention to conduct themselves on the market in a specific way but covers those forms of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition. In this case, the fact that, through their contacts over a period of more than ten years, the same traders³³⁶ knowingly and continuously exchanged information and coordinated their pricing and trading strategies allows the conclusion that the parties not only substituted practical cooperation between them for the risk of competition but also, at least tacitly, expressed a joint intention to behave on the market in a certain way.³³⁷
- (406) Second, as explained in Section 6.2.2.2, the parties, through their traders, knowingly and jointly engaged in conduct that brought about a restriction of competition.
- (407) Third, there is no established threshold for the number and frequency of communications between undertakings to determine that there is a joint intention of the parties to conduct themselves in a certain way or a deliberate attempt to substitute practical cooperation for the risks of competition.³³⁸ Nevertheless, the fact that the anticompetitive trader communications continued for more than ten years, essentially involving the same two main traders and on limited occasions with other traders from

³³³ [...]

³³⁴ See recitals (120)-(121) and Section 6.2.1.2.

³³⁵ According to settled case-law, the parties’ intention is not a necessary factor in determining whether an agreement and/or concerted practice is restrictive but rather a circumstantial factor that may be taken into account. Judgment of the Court of 6 October 2009, *GlaxoSmithKline Services Unlimited v Commission et al.*, Joined cases C-501, C-513, C-515 and 519/06 P, EU:C:2009:610, paragraph 58; Judgment of the Court of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraphs 117-118; Judgment of the Court of 14 March 2013, *Allianz Hungária Biztosító a.o., C-32/11*, EU:C:2013:160, paragraph 37; Judgment of the Court of 6 April 2006, *General Motors BV v Commission*, C-551/03 P, EU:C:2006:229, paragraphs 77-78.

³³⁶ See recital (110).

³³⁷ See also the case-law according to which the form taken by the concurrence of wills is not decisive in establishing an agreement within the meaning of Article 101(1) of the Treaty; Judgment of the Court of 13 July 2006, *Commission v. Volkswagen AG*, C-74/04, EU:C:2006:460, paragraph 37.

³³⁸ See also recitals (459) and (558).

the same two banks involved³³⁹ is indicative of the fact, on the one hand, that the parties could not have failed to take into account the information received or disclosed by the other party when determining their conduct on the market³⁴⁰ and, on the other hand, that they had the shared intention to coordinate their pricing and trading strategies towards specific counterparties, and in relation to the market more generally.

6.2.1.3.2. Trader Communications

- (408) Rabobank asserts that the trader communications did not amount to an agreement and/or concerted practice because (i) they took place in pursuit of legitimate and/or pro-competitive aims, specifically the fulfilment of a market-maker's role and/or the principled opposition to arbitrageurs' trading activities, which were perceived as unethical and abusive,³⁴¹ and (ii) these legitimate and/or pro-competitive aims prevent the finding that the parties had a joint intention of maximising their profit margins.³⁴² Rabobank further submits (iii) that there is nothing inherently problematic with the parties granting each other access to their indicative prices on AllQ.³⁴³
- (409) First, Rabobank has not demonstrated why the fact that the relevant traders in their communications (allegedly) pursued legitimate and/or pro-competitive aims would prevent the finding that through the trader communications the parties expressed their joint intention to conduct themselves on the market in a specific way, thereby establishing and maintaining an agreement and/or concerted practice.³⁴⁴ Insofar as Rabobank claims that the joint intention must concern a restriction of competition, reference is made to Section 6.2.2.2. Furthermore, Section 6.2.2.3.3 explains why Rabobank's claim that the parties' conduct pursued legitimate and pro-competitive aims and produced pro-competitive effects does not prevent the finding that this conduct amounted to a restriction of competition by object and ultimately pursued the aim of maximising the parties' profit margins.
- (410) Second, in view of Rabobank submitting that it is integral to the role of market-makers to be able to communicate and trade with other market-makers,³⁴⁵ it is acknowledged in Section 6.2.2.2³⁴⁶ that it is normal in the process of market-making that market-makers trade with each other in view of liquidity sourcing for the purpose of risk mitigation³⁴⁷ and thus exchange information needed for such trade. As further explained in Section 6.2.2.2,³⁴⁸ in this Decision however the Commission takes issue with the exchanges of commercially sensitive information going beyond what was necessary to achieve these purposes in the context of market-making. In any event, the relevant traders fulfilled the market-making role on a voluntary

³³⁹ See recital (110).

³⁴⁰ Judgment of the Court of 2009, *T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV and Vodafone Libertel NV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, EU:C:2009:343, paragraphs 58 and 62.

³⁴¹ [...]

³⁴² [...]

³⁴³ [...]

³⁴⁴ See recitals (402)-(403).

³⁴⁵ [...]

³⁴⁶ See recital (429).

³⁴⁷ See recital (33).

³⁴⁸ See recitals (436) and (442).

basis³⁴⁹ and were under no formal obligation to quote two-way prices on a continuous basis.

- (411) Third, the Commission does not take issue with the fact that the AllQ platform is designed and used for legitimate purposes to facilitate the trading between clients and dealers. The Commission has stated that the anticompetitive conduct was facilitated by the parties giving access to each other's indicative prices on AllQ³⁵⁰ and that, in light of the contradictory statements of Rabobank and Deutsche Bank about access rights, it listed several reasons for which a market-maker may choose to restrict access to another market-maker.³⁵¹

6.2.2. *Restriction of competition*

6.2.2.1. Principles

- (412) Article 101(1) of the Treaty expressly includes as restrictive of competition agreements and concerted practices which:³⁵²
- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply.
- (413) According to settled case-law, certain types of coordination between undertakings reveal a sufficient degree of harm to competition for the examination of their effects to be considered unnecessary. In this regard, the distinction between '*infringements by object*' and '*infringements by effect*' arises from the fact that certain types of collusion between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition³⁵³ and thus are classified as '*infringements by object*'.³⁵⁴
- (414) To determine whether an agreement or concerted practice or a combination of them satisfies this criterion, regard must be had to the content, objectives and the economic

³⁴⁹ See recitals (81) and (88).

³⁵⁰ See recital (112) and (113).

³⁵¹ See recital (113).

³⁵² The list is not exhaustive. See Judgment of the Court of 20 November 2008, *The Competition Authority v Beef Industry Development Society Ltd and Barry Brothers (Carrigmore) Meats Ltd*, C-209/07, EU:C:2008:643, paragraph 23, and the reference to the Opinion of Advocate General Trstenjak, delivered on 4 September 2008, EU:C:2008:467, paragraph 48.

³⁵³ Judgment of the Court of 30 June 1966, *Société Technique Minière v Maschinenbau Ulm GmbH*, C-56/65, EU:C:1966:38; Judgment of 6 July 2000, *Volkswagen AG v Commission*, T-62/98, EU:T:2000:180, paragraph 178; Judgment of the Court of 14 March 2013, *Allianz Hungária Biztosító a.o. v Gazdasági Versenyhivatal*, C-32/11, EU:C:2013:160, paragraph 34; Judgment of the Court of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 115 and the case-law cited; Judgment of the General Court of 8 September 2016, *H. Lundbeck A/S and Lundbeck Ltd v Commission*, T-472/13, EU:T:2016:449, paragraph 434; Judgment of the Court of 30 January 2020, *Generics (UK) Ltd a.o. v Competition and Markets Authority CMA*, C-307/18, EU:C:2020:52, paragraphs 64, 67, 83 and the case-law cited.

³⁵⁴ Judgment of the Court of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 114 and the case-law cited; Judgment of the Court of 14 March 2013, *Allianz Hungária Biztosító a.o. v Gazdasági Versenyhivatal*, C-32/11, EU:C:2013:160, paragraph 35.

and legal context of which the conduct forms a part.³⁵⁵ When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.³⁵⁶ Intention is not a necessary factor, but it may be taken into account as well.³⁵⁷

- (415) More generally, in line with the other competition rules of the Treaty, Article 101 of the Treaty is designed to protect not only the immediate interests of individual competitors or consumers, but also the structure of the market and thus competition as such.³⁵⁸
- (416) The requirement that each economic operator determines independently its policy strictly precludes any direct or indirect contact between such operators by which an undertaking may influence the conduct of its competitors or disclose to them its decisions or intentions concerning its own conduct where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions on the market in question.³⁵⁹
- (417) The exchange of commercially sensitive information between competitors is therefore 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.³⁶⁰ 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.³⁶¹ Exchanges of information about the future intentions of competitors in relation to their market conduct are likely to enable competitors to

³⁵⁵ Judgment of the Court of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13 P, EU:C:2014:2204, paragraphs 53 and 57. See also Judgment of the Court of 27 April 2017, *FSL Holdings v Commission*, C-469/15 P, EU:C:2017:308, paragraph 104.

³⁵⁶ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 57 and the case-law cited and Judgment of the Court of 14 March 2013, *Allianz Hungária Biztosító Zrt and Others v Gazdasági Versenyhivatal*, C-32/11, EU:C:2013:160, paragraphs 35 to 38.

³⁵⁷ Judgment of the Court of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraphs 117-118; Judgment of the Court of 14 March 2013, *Allianz Hungária Biztosító a.o.*, C-32/11, EU:C:2013:160, paragraphs 36-37. See also to that effect Judgment of the General Court of 8 September 2016, *Lundbeck v Commission*, T-472/13, EU:T:2016:449, paragraph 438; Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 58 and the case-law cited; Judgment of the Court of 30 January 2020, *Generics (UK) Ltd and Others v Competition and Markets Authority*, C-307/18, EU:C:2020:52, paragraph 67 and the case-law cited; and Judgment of the Court of 2 April 2020, *Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others*, C-228/18, EU:C:2020:265, paragraphs 35, 54 and 76 and the case-law cited.

³⁵⁸ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 65 and the case-law cited; Judgment of the Court of 4 June 2009, *T-Mobile Netherlands BV a.o. v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, EU:C:2009:343, paragraph 38.

³⁵⁹ Judgment of the Court of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraphs 119-120; Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 60 and the case-law cited.

³⁶⁰ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 61 and the case-law cited.

³⁶¹ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 62 and the case-law cited.

reach a common understanding on the coordination of competitive conduct amongst themselves (as they remove strategic uncertainty) and consequently facilitate collusion.³⁶² Therefore, exchanges of information about such future intentions are, by their very nature, harmful to the proper functioning of normal competition. Exchanges of information on undertakings' individualised intentions concerning future conduct regarding prices or quantities are particularly likely to lead to a collusive outcome on the market.³⁶³ It is well established that exchanges of information between competitors in respect of pricing matters replace the risks of pricing competition with practical cooperation.³⁶⁴ Also, agreements and concerted practices on price elements, cost components or indicative prices are prohibited by competition rules.³⁶⁵ This includes exchanges of information on so-called mid-prices between traders in the financial sector.³⁶⁶

- (418) Furthermore, it is necessary to make a distinction between, on the one hand, a situation where a party unilaterally gains information about the market or discusses future pricing with customers or other third parties and, on the other hand, a situation where two or more competitors discuss pricing prior to establishing their quotation prices. Whereas unilateral conduct of the kind mentioned does not raise any difficulty in terms of competition, the same cannot be said of the second type of behaviour, which runs counter to the requirement that each economic operator must determine independently the policy which it intends to adopt on the internal market. It is clear that the requirement of independence strictly precludes any direct or indirect contact between parties such as would lead to one party having an influence on the conduct of their competitor. This includes the disclosure of information to a competitor concerning the course of conduct which that party contemplates or has decided to adopt on the market, where the object or effect of the disclosure is to create conditions of competition which do not correspond to the normal conditions on the market in question.³⁶⁷
- (419) In the case of a cartel based on a series of contacts between competitors, the Commission is not required to establish in respect of each unlawful discussion that the discussion constitutes a restriction of competition by object, provided that it

³⁶² Horizontal Guidelines on the applicability of Article 101 of the Treaty to horizontal co-operation agreements, paragraphs 65-66, 73 and 74, OJ C 11/1, 14.01.2011.

³⁶³ Horizontal Guidelines on the applicability of Article 101 of the Treaty to horizontal co-operation agreements, paragraphs 72-74, OJ C 11/1, 14.01.2011.

³⁶⁴ Judgment of the Court of 15 March 2000, *Cimenteries CBR a.o. v Commission*, Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, EU:T:2000:77, paragraphs 1936-1937.

³⁶⁵ Judgment of the Court of First Instance of 13 December 2001, *Acerinox v Commission*, T-48/98, EU:T:2001:289, paragraph 115; Judgment of the Court of First Instance of 21 February 1995, *SPO and others v Commission*, T-29/92, EU:T:1995:34, paragraph 146; Judgment of the Court of 4 June 2009, *T-Mobile Netherlands*, C-8/08, paragraphs 37-39; Judgment of the General Court of 3 July 2018, *Keramag Keramische Werke and Others v Commission*, T-379/10, EU:T:2013:457, paragraphs 51-67.

³⁶⁶ See in that respect Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraphs 125-161.

³⁶⁷ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 144; Judgment of the Court of 19 March 2015, *Dole Food Company, Inc. and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraphs 119-120.

establishes that the practices in question, taken together in an overall assessment, constitute a restriction of competition by object.³⁶⁸

- (420) Agreements and concerted practices which fix or coordinate prices represent particularly serious restrictions of competition.³⁶⁹ Such practices may have an anticompetitive object if they directly or indirectly fix purchase or selling prices or any other trading conditions.³⁷⁰ It has also been held that a concerted action on indicative prices affects competition because it allows the participants in such arrangements to foresee with a reasonable degree of certainty what pricing policy will be pursued by their competitors.³⁷¹
- (421) The Commission is not required to show systematically that an agreement on prices allowed the cartel participants to obtain different prices from those they would have obtained in the absence of such agreements. It is sufficient that agreed and/or concerted prices serve as the basis for individual negotiations as they limit clients' margin of negotiation.³⁷²
- (422) Moreover, the Court has held that market-sharing agreements constitute particularly serious breaches of competition rules.³⁷³ The Court has also held that agreements which aim to share markets have, in themselves, an object restrictive of competition and fall within a category of agreements expressly prohibited by Article 101(1) of the Treaty, and that such an object cannot be justified by an analysis of the economic context of the anticompetitive conduct concerned.³⁷⁴
- (423) The Commission is not required to prove the actual effect on competition when the coordination between undertakings involves a restriction of competition by object.³⁷⁵
- (424) Finally, the Court has made clear that a concerted practice may be regarded as having an anticompetitive object even where there is no direct connection between that practice and consumer prices. This is because it is not possible on the basis of the wording of Article 101(1) of the Treaty to conclude that only concerted practices which have a direct effect on the prices paid by end users are prohibited. Referring to the wider concept under Article 101(1)(a) of the Treaty, the Court underlined that, on

³⁶⁸ Judgment of the General Court of 15 December 2016, *Infineon Technologies AG v Commission*, T-758/14, EU:T:2016:737, paragraph 185; Judgment of the Court of 26 September 2018, *Infineon Technologies AG v Commission*, C-99/17 P, EU:C:2018:773, paragraphs 145-147.

³⁶⁹ Judgment of the Court of 27 April 2017, *FSL Holdings a.o. v Commission*, C-469/15 P, EU:C:2017:308, paragraphs 106-107.

³⁷⁰ Judgment of the Court of 19 March 2015, *Dole Food Company, Inc. and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraphs 115, 123-124.

³⁷¹ Judgment of the Court of 16 September 2013, *Keramag Keramische Werke AG a.o. v Commission*, T-379/10, EU:T:2013:457, paragraphs 51-67.

³⁷² Judgment of the General Court of 14 December 2006, *Raiffeisen Zentralbank Österreich a.o. v Commission*, Joined Cases T-259/02 to T-264/02 and T-271/02, EU:T:2006:396, paragraphs 285-286.

³⁷³ Judgment of the Court of 20 January 2016, *Toshiba Corporation v Commission*, C-373/14P, EU:C:2016:26, paragraph 28; Judgment of the Court of 5 December 2013, *Solvay Solexis v Commission*, C-449/11 P, EU:C:2013:802, paragraph 82; and Judgment of the Court of 4 September 2014, *YKK and Others v Commission*, C-408/12 P, EU:C:2014:2153, paragraph 26.

³⁷⁴ Judgment of the Court of 20 January 2016, *Toshiba Corporation v Commission*, C-373/14P, EU:C:2016:26, paragraph 28; Judgment of the Court of 19 December 2013, *Siemens and Others v Commission*, Joined Cases C-239/11 P, C-489/11 P and C-498/11 P, EU:C:2013:866, paragraph 218.

³⁷⁵ Judgment of the Court of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13, EU:C:2014:2204, paragraph 51; Judgment of the Court of 20 November 2008, *Competition Authority v Beef Industry Development Society Ltd and Barry Brothers (Carrigmore) Meats Ltd.*, C-209/07, EU:C:2008:643, paragraphs 33-34; Judgment of the General Court of 8 September 2016, *H. Lundbeck A/S and Lundbeck Ltd v Commission*, T-472/13, EU:T:2016:449, paragraph 341.

the contrary, it was apparent from this provision that concerted practices may have an anticompetitive object if they ‘directly or indirectly fix purchase or selling prices or any other trading conditions’.³⁷⁶

6.2.2.2. Application in this case

- (425) Having regard to their content, objectives and the economic and legal context of which they formed part, the Commission considers that the collusive contacts engaged in by the parties and described in Section 5.2 reveal, by their very nature, a sufficient degree of harm to the proper functioning of competition and can thus be regarded as having the object of restricting and/or distorting competition within the meaning of Article 101(1) of the Treaty, without the examination of their effects being necessary.
- (426) In this regard, the parties exchanged commercially sensitive information in relation to their trading activities and strategies in the Euro-denominated SSA and Government Guaranteed bonds’ markets and coordinated their trading and pricing strategies in relation to specific counterparties as well as to the market more generally. The different collusive contacts were interrelated, for instance as the exchange of commercially sensitive information enabled the parties to coordinate their pricing and other trading conditions and strategies in the Euro-denominated SSA and Government Guaranteed bonds’ markets, as well as overlapping. The conduct had the object of restricting and/or distorting competition in pursuit of a common plan to benefit the parties’ ability to make profit from trading Euro-denominated SSA and Government Guaranteed bonds on the secondary market. The overall goal of this collaboration, to the detriment of their customers and competitors, was to maximise the parties’ profit margins.

(a) Bilateral exchange of commercially sensitive information

- (427) As noted in recital (399), the parties exchanged 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.
- (428) As explained in Section 2.3.2, the relevant traders used the AllQ platform to display their bid and ask prices, and to execute trades with clients by responding to requests for quotes. The bid and ask prices shown by traders are indicative prices, meaning that the traders are not obliged to trade at the price (or volume) indicated on the AllQ screen.³⁷⁷ Only the prices at which the transactions between the traders and the counterparties are concluded are firm and final. Once the deal is concluded, the identity of the counterparty is revealed only to the trader that has received an RFQ or executed the transaction. The trader receiving the RFQ may receive the number, but not the identity, of other traders that received the same RFQ.³⁷⁸ As such, there is a certain lack of transparency inherent in the use of the AllQ platform from the perspective of market-making traders. The evidence outlined and discussed in Section 5.2 shows that the parties developed a continuous practice between themselves to reduce this lack of transparency by disclosing and exchanging commercially sensitive information with each other.

³⁷⁶ Judgment of the Court of 4 June 2009, *T-Mobile Netherlands a.o.*, C-8/08, EU:C:2009:343, paragraphs 36-37.

³⁷⁷ [...]

³⁷⁸ See recital (49).

- (429) Whereas it is normal that market-makers trade with each other, and thus have to exchange information which is needed for the purpose of concluding such trade,³⁷⁹ the exchange of commercially sensitive information in this case went beyond what was necessary in view of liquidity sourcing for the purpose of risk mitigation in the context of market-making.³⁸⁰
- (430) First, the parties exchanged internal market intelligence generated by recent or ongoing trading enquiries, including the bonds, size and price at which the counterparties were willing to trade or the fact that they had just been asked to bid or offer at a certain price for a certain volume. The anticompetitive trader communications enabled the parties to better estimate customer demand in the market for certain bonds in comparison with their competitors and adjust their pricing and trading strategies accordingly. These exchanges were often accompanied by information on counterparties' identities. At times, the counterparty discussed by the parties was a recurring client or a client known to both of them.³⁸¹ By revealing the identity of the counterparty coupled with other exchange of market intelligence, including prices, the parties were able to estimate the counterparty's trading intentions and trading patterns, thereby considerably reducing market uncertainty.³⁸² The relevant traders were able to use that information to adjust their future behaviour towards that counterparty in the eventuality that one of them was approached by the counterparty looking to execute a trade.³⁸³
- (431) An exchange of commercially sensitive information before the execution of the transaction with a particular counterparty can influence the parties' trading behaviour with respect to that counterparty and the market in general. Knowing the prices at which the counterparties were willing to buy or sell bonds, as well as the volumes for those bonds, may also influence the parties' decision with respect to their positioning in terms of price level for those specific bonds at a certain period of time. Such communications provided a competitive advantage to both parties, to the detriment of their clients and competitors as they reduced significantly the uncertainty inherent to the bond trading market in which risk and uncertainty management are key parameters of competition.
- (432) The parties also engaged in the exchange of commercially sensitive information by sharing internal views about the market resulting from recent or ongoing trades or trading enquiries (such as an RFQ) to warn each other about the pricing level quoted on AllQ screens and adjust that price level accordingly.³⁸⁴ This type of exchange enabled the parties to understand how competitive their own pricing was and to anticipate demands in terms of prices and volumes. While traders may approach each other for inter-dealer trade to cover their position after the execution of a trade with a client (although this may normally be done through a broker), they may also legitimately approach each other before the execution of the transaction with the client as long as they do not exchange commercially sensitive information, such as

³⁷⁹ See also recitals (33) and (55).

³⁸⁰ See also recitals (436) and (442).

³⁸¹ See among other recitals (125), (128), (130), (132), (135) and (138).

³⁸² See examples at recital (433).

³⁸³ See for instance recitals (125), (130), (132), (135), (139), (148)-(150), (173), (179), (183), (199), (203), (205), (211), (216), (217), (223), (237)-(239), (242), (252)-(253), (259), (266)-(267), (274)-(275), (293)-(294), (297), (325), (361) and (369).

³⁸⁴ See recitals (125), (134), (137), (143), (147), (155), (157), (170), (172), (175), (184)-(186), (197)-(199), (203), (212), (214), (215)-(216), (222)-(223), (226)-(227), (231), (237)-(239), (247)-(248), (249)-(254), (257)-(258), (272)-(273), (284)-(285), (293)-(294), (295), (305), (306), (312) and (315)-(316).

the client's identity, volumes requested or offered by the client, as well as its bid and ask prices. The identity of the client requesting an RFQ is normally revealed only to the traders that received the same RFQ and traders are only aware of the number of competitors that received the same RFQ, but not their identities and the prices offered.³⁸⁵ Therefore, by revealing that a client approached one or both parties for an RFQ, sharing the client's identity and the details of the clients' RFQ such as bonds, prices and volumes, the parties were able to better understand the degree of competition for that respective RFQ. The parties thereby pursued a practice which is different from the situation in which a trader would independently assess the degree of competition for specific bonds and unilaterally adjust his or her price and conduct on the market. In fact, the relevant traders made a joint evaluation of the market conditions and adjusted their conduct based on the commercially sensitive information obtained and exchanged between themselves. By combining their knowledge, the parties had access to more information than they otherwise would have had. At times, the parties shared their positions and volumes for certain bonds,³⁸⁶ or confirmed to each other that they were actually trading at the indicative prices shown on the AllQ screen,³⁸⁷ all of which increased the transparency between them and enabled them to adjust their prices and trading strategies accordingly.

- (433) Examples of exchanges of commercially sensitive information in relation to recent trades, trading enquiries and counterparties' identities are evidenced and explained in the corresponding anticompetitive trader communications: *'just been hit by them in this issue once again & notice our bid is above your offer'*, *'we were just hit in 1.5M by a semi pro from Lux but with Belgian roots'*, *'did you by any chance get lifted in KFW 5 08 by a Spanish a/c? [...]correct 1mio [million] they bought 103.45'*, *'Israeli a/c..103.39 1mio..I was hit at 103.41'*, *'just got hit in case you need some'*, *'we have been asked to bid for 25mio'*, *'I showed 60.44 – they offered at 48'*, *'was just asked by an austrian bk to offer 10m at my screen price, 106.48'*, *'got lifted at 94.00, 94.01, 94.00 each in 2mio'*, *'we are offering 2.4M at .66'*, *'been asked to bid by a spiv'*, *'..am much lower and got hit at +23 and +25'*, *'trying to achieve a pick up to the new one'*, *'were asked to bid on blocs .. on the back of the new 5YR UBS which is coming very cheaply at swaps +70'*, *'working on a switch into rabo 17... to sell 40m cades 4.125 17'*, *'were hit but only in 300m'*, *'seller around I am bidding lower'*, *'well, big European cb has asked for a bid in 100mio'*, *'italian... they were bidding us 50 for our 5.688... 106.50 that is...we bid .49 and they passed'*, *'fyi we are asked a quote by a large Dutch a/c in the KFW 21... I often speak to [Deutsche Bank employee] about this a/c as they always ask you as well'*, *'we were just lifted in the BNG 12 at .44 by [...] [...] are bidding .443 for 3 m, [...] are bidding .443 for 10 m'*, *'they bt all we had; paid above your offer'*, *'just got hit at .88 in 50mio'*, *'havn't been lifted but it was me who traded at [...]'*, *'...we were lifted yesterday in 5m'*, *'I did pay .43 (I know) for 6m this morning'*, *'I did bid 99.97 for 64mio'*, *'we were just asked to bid 25m eib 2.75 21. client would have sold at 68'*, *'showed them a bid at .67'*, *'got hit market here at .88...We have 65m we would offer at +6.5bp'*, *'08 bid for 10m here, lifted me at .02 just now'*.³⁸⁸

³⁸⁵ See recital (49).

³⁸⁶ See recitals (436) and (437).

³⁸⁷ See recitals (434) and (435).

³⁸⁸ See recitals (125), (128), (130), (132), (134), (135), (138), (141), (142), (144), (145)-(146), (147), (148)-(150), (152)-(153), (154), (157), (158), (161), (164), (170), (171), (236), (245), (285), (300), (306), (319), (354)-(355) and (372)-(373).

- (434) Second, the parties also communicated to each other the actual prices they were ready to offer to other counterparties. For instance, they would indicate to each other whether they would actually trade a specific bond at the price shown on screen (which is an indicative price only)³⁸⁹ or whether they would offer a different price than the one shown on screen in response to a trading enquiry. This information exchange allowed the parties to reduce or remove the degree of uncertainty as to the operation of the market in question, and thus facilitated collusion between the parties.³⁹⁰
- (435) Examples of exchanges of commercially sensitive information in relation to the level of prices, including spreads, are evidenced and explained in the corresponding anticompetitive trader communications: *'I will leave my screen as it is and offer on my bid', 'marked it down', 'you are low on LBANK 16', 'I would lower my price in EIB 10/8...a tap is coming', 'BNG 16 you are a good offer...thanks [Rabobank employee] ... price was wrong', 'I am tradable as shown on ALLQ', 'you seem a touch high in Asfing 09', 'someone is bidding 8.1 par/par', 'our offer is below your bid', 'we have shown a 31 bid', '..we are bidding -20.. our favourite dutch a/c is the holder of the Toyota so you may get asked ... I am even short..', 'Seems very high on your screen', 'Watch out, Findan 2013 trading at .53 in the brokers', 'you seem low compared to us', 'I think you are very high', 'you are a very good offer in the eib 2.625 16, we are paying your screen; there is a better bid', 'are you really paying that high?', 'watch out on rbs 2011, 15 mio came out at 103.25, I missed have been paying .21 only', 'think you are high on Lloyds 11, got a seller of a block here, target 103.52', 'I think you might be the offer with [...] ...yes, I am. I have got 22 mio to go, screens works if you want to follow it', 'just wanted to make sure that they weren't your bonds!', 'I showed 60.44 – they offered at 48', 'Your bid looked to be the lowest', 'watch out on ibrd 018... seller around I am bidding lower', 'really paying that high on BACR 11 GG?', 'they are +50 bid at [...] fyi. I was offering at 48 (3m)', 'bng 2.875 15 you look a little high', 'be aware I am not paying my screen', 'watch out on 2037', 'watch out on eurof 21... your bid is high'.*³⁹¹
- (436) Third, the parties exchanged commercially sensitive information in relation to positions (whether they were long or short for specific bonds at a given time) and/or volumes in their inventory or in relation to which the relevant traders had just (or recently) concluded transactions. The exchanges went beyond what was necessary in view of liquidity sourcing for the purpose of risk mitigation.³⁹² Since volumes are an important pricing element, the information exchange provided the parties with opportunities to collude and allowed them to adjust and align their trading and pricing strategies.
- (437) Examples of exchanges of commercially sensitive information in relation to positions and volumes are evidenced and explained in the corresponding anticompetitive trader communications: *'i will send you/[Deutsche Bank employee] our updated positions', 'almost flat vs btms', 'I am short 550k', 'i just sent you our positions', '...only long 115k!', 'we are now flat', 'we are still short 10m', 'just got hit in BNG 4 12 at 99.25...we are long..', 'I am short on those ones, still got my EIB 5 10, cross .41 offered at 101.66', 'we are flat, I can see [...] paying 10cts better than us', 'we are*

³⁸⁹ See recitals (48) and (50).

³⁹⁰ See recital (417).

³⁹¹ See recitals (133)-(134), (141), (143), (144), (147), (151), (152), (163), (166), (168)-(169), (171), (217), (222), (224), (266)-(267), (272)-(273), (312) and (348)-(349).

³⁹² See also recitals (33) and (55).

long 7.3m', 'maybe I am long but nobody asked me for an offer', 'am long 8mio and continue to get hit', 'got to say we are completely sold out in 2012 paper and I am even short but I never would have thought that Toyota trades that tight', 'fyi I own just 2.253', 'we have 14.8m FLEMSH..'.³⁹³

- (438) In conclusion, the disclosure of such commercially sensitive information distorted competition insofar as the collusive behaviour resulted in an informational asymmetry between the two parties on the one hand and all other market participants on the other. As a result of the exchange of this information, the relevant traders cannot be deemed to have been determining their conduct on the market independently. The sensitive character of the information exchanged, including recent or ongoing trades or trading enquiries, counterparties' identities and their trading strategies, provided the relevant traders with a competitive advantage in the trading of Euro-denominated SSA and Government Guaranteed bonds.
- (b) Coordination of trading and pricing strategies in relation to specific counterparties and to the market more generally
- (439) As noted in recital (399) in the context of their coordination of trading and pricing strategies in relation to specific counterparties and in relation to the market more generally, the parties adjusted their prices shown on screen or in response to trading enquiries or combined their positions for onward sale to counterparties at pre-agreed prices. The parties also coordinated their pricing and trading strategies to specific counterparties by identifying them and their trading enquiries and removing their access rights to the parties' trading system. At times, the parties also agreed that one would adjust its price so that the other one would obtain the trade, refrain from bidding or offering or would remove a bid or offer from the market when they might come into competition or otherwise interfere with one another.
- (440) The evidence outlined in Section 5.2 shows that the relevant traders coordinated their pricing and trading strategies in various ways.
- (441) First, the parties adjusted their price levels and trading strategy based on the exchange of commercially sensitive information, such as market intelligence generated by recent or ongoing trades or trading enquiries. The exchange of commercially sensitive information thus influenced the trading strategy and pricing level of the information recipient. For instance, one party would adjust its price level on the basis of the information (such as prices and volumes for specific bonds) provided by the other trader about an ongoing transaction the latter was negotiating or based on the price level at which one of the parties was recently hit or lifted. Alternatively, the parties would adjust their price level on the basis of one party's market intelligence about general demand for specific bonds. In other instances, the matching of the counterparty's identity with other pricing elements or the counterparty's trading enquiries allowed the parties to align their pricing and trading strategies, including by removing access rights of specific counterparties to the parties' trading systems. As such, the parties would not act independently, but rather adopt a coordinated approach resulting in a mutually beneficial position for each of them (*'protects me too'*).³⁹⁴ The coordination shows that the parties had a long relationship where they would help each other out and protect each other's trading interests.

³⁹³ See recitals (135), (141), (145), (152), (163), (167), (168), (228), (322), (340), (341), (342), (343), (346), (352)-(353) and (354)-(355).

³⁹⁴ See recital (348).

- (442) As explained in recital (429), an exchange of information between traders in view of liquidity sourcing for the purpose of risk mitigation is in principle legitimate where it does not involve discussion or agreement on the price being shown to the client.³⁹⁵ The usual practice would be that a trader, after having executed a trade with a client, will cover the resulting position by approaching another trader or a broker.³⁹⁶ In such case, the discussion between the two traders (or the trader and the broker) can no longer have any influence on the price paid by the specific client. It is legitimate for the trader to attempt to cover the position before the client trade is executed, provided he or she does not discuss with another trader the price at which the first trader will make the trade with the client nor the identity of the client.³⁹⁷ Consequently, any discussion between the parties in relation to the prices to be offered to a client goes beyond what is necessary for the sourcing of liquidity for the purposes of risk mitigation and is therefore not legitimate. The coordination aimed not only at price fixing,³⁹⁸ but also, through coordination of the prices to be offered to clients by the two parties, at customer allocation and market sharing between them.³⁹⁹
- (443) Examples of exchanges involving coordination of pricing and trading strategies based on recent or ongoing trades or trading enquiries and the counterparties' identities are evidenced and explained in the corresponding anticompetitive trader communications: *'Does it suit you to offer 10m kfw on spread please. we showed 13 ...12 offered to you in 10mio in spread', 'Better adjust your price in EEC 2016...thanks - ok if I quote 48–63 (don't want to undercut you)', 'I have just been asked to offer by a dutch intermediary fyi in case you are asked to bid on 4,081', 'I have an order until London close, 40mio, min clip 10mio, target 100.00 with 5cent to play...that is great. Can I show 40 at 100.12 or wherever you care', 'is the fhlmc 3.5 8 yours please?... yes, it's me, tks for making me aware, wrong pricing feed', 'lets see, maybe you have the same request... If you like I can move them back a little', 'I can show 23m to [...] at say 104.67 if you care at that level but...', 'my seller is just opening up target .36, but I think I can squeeze a couple of cent', 'do I mark down the rest of my position... I marked them down', 'show [...] the figure...doubt that anybody has some...nobody back with me...thanks, we are not budging', '...don't know if you where my comp but maybe you want to drop your price', '[...] asking us to offer ... we showed 88.29 our screen', 'we could do it in 5mio for pick 1bp [basis points] for us...99.36 and 116.14 would be the terms, if agreed in 5mio', 'I have shown 865 bid', 'you can have them at .88, 9.531', 'do you mind showing me where you would be happy to offer?', 'if you can use them and we can both make money, more than welcome...would you sell me 15 or 20m at .65?... sure, 20mio done if you want', 'ok, done, 20 m done at .65... mind moving your screen up?', '[...] was looking for more', 'can mark them a touch higher again', 'If there is anything else you care to show we can try, the EIB 10 for example', 'I am showing mine at 98.23 (4.9m) if I can would you like to sell yours there', 'I would happily suggest your eib 0 26 if you cared to', 'got 15+ at 89.82 if you want to show', 'If you let me know where you need them then I am sure we will get there', 'thanks to you, I moved the price down 20 cents from where I was hit this morning, I thought [...] was genuine but now [...] has another 5m but that is [...] total, so [...] says', 'our offer is below your bid. I*

³⁹⁵ See Commission Decision of 28 April 2021 in Case AT.40346 – SSA Bonds, recital (649).

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid.*

³⁹⁸ See recitals (441) and (443).

³⁹⁹ See recitals (444) and (445).

am going to move it up to stop the Spivs', 'my bid is the same as your offer...if you pay around 102.43 I will move my price up... no arbitrage this time', 'you mind telling me please if you were just lifted in 1 M KFW 5 08 by an israeli a/c.. I am very keen to remove this [...]... I have been indeed, 103.39 1mio', 'we are offering 2.4m at .66 ...you appear to be bid at .69. I was just checked by an Israeli 'asset manager' but I have my doubts', 'last week [...] backdoored between us & you ...our bid is above your offer. We also warned them that it could not happen again', 'probably adjust your price for our arbitrage friends', 'watch out on eurof 21 your bid is high... if some spiv comes around..', 'if you cancel yours we will hold them to ours', 'there are a lot of spivs trying it on', 'if it happens again [...] will be banned', 'my price on ITL EIB 0 11 works, just want to avoid arbitrage...I think we will move it down, thank you for the info', '[...] lifiting me...not sure to whom [...] is selling the paper...wanted to make sure not to you', 'they are on a final warning with us', 'we took [...] off the system', 'been asked to bid by a spiv... you look a little low...we are too high', 'let me send [...] a nice little few words', 'I am very keen to remove this [...]... ok, I will drop [...] the same msg than to our other friends', '[...] asking me to bid; we were above your offer...probably they check to make sure they can arbitrage', 'I just have send [...] two lines, tks', 'we caught backdooring between us & your financial trader... where have you been bid at the time as [...] boss wouldn't mind that we take [...] off', 'watch out on rbs 2011', 'slowly taking these guys off... we have taken them off, we have caught out', 'reject [...]just lifted me...too late [...] hit us at 70.25, we moved it down but not enough', 'we do not give you access to our system to allow you to arbitrage', 'What shall we do? Take [...] off?...I talk to my sales and give [...] a warning', 'all those guys are now happily arbitraging anything...we have never tiered 'clients' before but on Monday we start', 'ok then we leave it but they should get those guys off the system', 'we are at last losing patience; taking them off'.⁴⁰⁰

- (444) Second, the coordination of the trading strategy extended to agreements and/or concerted practices to refrain from trading or to alter or withdraw prices from the market with a view to facilitating the other party to secure the trade or adjust the price to a level that would induce the customer to finalise the transaction with one of the parties. Although not being a direct agreement or concerted practice on prices, agreeing or concerting that one party should refrain from bidding at all or at a competitive level amounts to market sharing and customer allocation rather than normal market conduct where the parties would be competing against each other. This conduct took place in the context of and alongside the exchange of commercially sensitive information between the relevant traders that went beyond what was necessary for the conduct of legitimate trade between them.
- (445) Examples of exchanges amounting to market sharing and customer allocation are evidenced and explained in the corresponding anticompetitive trader communications: *'don't bid to [...] on nedwbk 23, it's me on the offer', 'I will move it down a couple of cents or if you prefer i can leave it there?...am .57 offered at [...], told them not to approach you', 'I hear you but pulled my bids... and i never want to stuff you with my longs', 'I will tell them I can only pay 67; see if they move their bid*

⁴⁰⁰ See recitals (125), (129)-(130), (132), (148)-(150), (155), (157), (158), (162), (163), (167), (170), (173), (175)-(176), (177), (179), (180)-(181), (182), (189)-(190), (193)-(194), (197)-(199), (210), (212), (214), (215)-(216), (222), (235), (238), (242), (253), (257)-(258), (263), (266), (274), (283), (290)-(291), (292), (295), (300), (306), (309), (311), (312), (315)-(316), (322), (331), (350)-(351), (360), (361) and (374).

to you', 'If I am checked I will let you know and not undercut you of course', 'have any of these? Being asked to bid...60.22 BID...I was paying better - but just wanted to make sure that they weren't your bonds!'; 'hi eec 3.25 are you being asked to offer 5m by [...] you are the best offer, below our bid, which I am now moving down', 'ok if I quote 48-63 (don't want to undercut you)', 'I have moved it down but will not beat your offer', 'you are a very good offer in the eib 2.625.16, we are paying your screen there is a better bid', 'thanks I [have] 116.11. I would like to show that if you are ok'.⁴⁰¹

- (446) Third, the adjustment of pricing and trading strategies would extend to agreements and/or concerted practices to either combine the parties' positions or to offer the position of the other party for specific bonds to respond to a client enquiry at a pre-agreed price. This situation would arise when one of the parties would receive an enquiry which would exceed his/her position or interest and would approach the other trader to either combine their position together or to offer to the client the position of the other party who had an interest in those specific bonds at a pre-agreed price.
- (447) Examples of communications to combine the parties' positions are evidenced and explained in the corresponding anticompetitive trader communications: *'do you mind showing me where you would be happy to offer...if -3 equals 69.40 with you I could add up to 47bn', 'I think it might make sense to tell them I was putting our positions together, or they will ask me', 'I am showing mine at 98.23 (4.9m) if I can would you like to sell yours there... sure you can add them', 'showing other people's positions unless it is somebody like you who I know & [amp] trust..', '...I would happily suggest your eib 0 26 if you cared to', 'can offer 18mio as screen if you want to add mine, 97.18', 'If there is anything else you care to show we can try, the EIB 10 for example', 'feel free to show them', 'If you do get them I would be very happy to show them...can I show 40 at 100.12 or wherever you care', 'we could do it in 5mio for pick 1bp [basis points] for us...99.36 and 116.14 would be the terms, if agreed in 5mio', 'want me to show some too for you?...please, we have 20m'.⁴⁰²*
- (448) The coordination of pricing and trading strategies took place in the context of and alongside the exchange of commercially sensitive information between the parties that went beyond what was necessary for the conduct of legitimate trade between them.

(c) Conclusion

- (449) The evidence outlined in Section 5.2 shows that the collusive conduct of the parties, which amounted to the exchange of commercially sensitive information and the coordination of pricing and trading strategies (with regard to the market more generally and in relation to specific counterparties) had the object of restricting competition in the market for Euro-denominated SSA and Government Guaranteed bonds.
- (450) This anticompetitive conduct enabled the parties to reduce some of the normal market uncertainties and risks inherent to bond trading and to pursue their aim of maximising their profit margins. The various forms of collusive contacts between the

⁴⁰¹ See recitals (141), (209), (212), (249), (255), (256), (264), (276), (282), (300), (358) and (366).

⁴⁰² See recitals (167), (173), (259)-(260), (261), (284), (297), (300), (303), (330), (338) and (360).

parties were interrelated and overlapping⁴⁰³ and altogether supported by that common aim of maximising their profit margins.

- (451) Therefore, on the basis of all the above considerations, it is considered that the agreements and/or concerted practices set out in Section 6.2.1 which amounted to the exchange of commercially sensitive information and coordination of pricing and trading strategies, have as their object the restriction and/or distortion of competition in the market for Euro-denominated SSA and Government Guaranteed bonds.

6.2.2.3. Assessment of Rabobank's arguments

6.2.2.3.1. General

- (452) Rabobank submits that the Commission has not proven the requirements of a 'by object' infringement since (i) it has not shown that the exchange of commercially sensitive information is related to an agreement which restricts competition by object (such as a price-fixing or market allocation agreement) or reduces strategic uncertainty in such a way that an impact on a relevant parameter of competition in the market can be inferred,⁴⁰⁴ and (ii) the analysis of the legal and economic context should have been more thorough since the conduct at issue has features that render the agreement or concerted practice atypical or complex.⁴⁰⁵
- (453) First, it must be recalled that the infringement relates not only to the exchange of commercially sensitive information, but also to the coordination of pricing and trading strategies, with the two elements of conduct being interlinked and overlapping. As already evidenced, the collusive conduct amounted to price fixing, exchange of commercially sensitive information between competitors, market sharing and customer allocation.⁴⁰⁶ These types of conduct reveal in themselves a sufficient degree of harm to competition such that there is no need to examine their effects in order for the prohibition of Article 101(1) of the Treaty to apply. Such agreements and/or concerted practices which have in themselves an object restrictive of competition cannot be justified by an analysis of the economic context of the anticompetitive conduct concerned.⁴⁰⁷ In respect of such agreements and/or concerted practices, the analysis of the economic and legal context of which the practice forms part may thus be limited to what is strictly necessary in order to establish the existence of a restriction of competition by object.⁴⁰⁸ In this case, the economic and legal context of the OTC financial market was taken into account, as the Commission has explicitly indicated that it does not take issue with the legitimate exchanges of information between market-makers exclusively intended to negotiate and execute bilateral trades and net off risks in the inter-dealer market.⁴⁰⁹
- (454) Second, in the *Budapest Bank* case, the Court, referring to the first step of the two-stage by-object analysis proposed in the Advocate General's Opinion, held that '*in order to justify an agreement being classified as a restriction of competition 'by object', without an analysis of its effects being required, there must be sufficiently*

⁴⁰³ See recitals (120)-(121).

⁴⁰⁴ [...]

⁴⁰⁵ [...]

⁴⁰⁶ See recitals (427), (441), (442), (444) and (445).

⁴⁰⁷ Judgment of the Court of 20 January 2016, *Toshiba Corporation v Commission*, C-373/14P, EU:C:2016:26, paragraph 28.

⁴⁰⁸ Judgment of the Court of 20 January 2016, *Toshiba Corporation v Commission*, C-373/14P, EU:C:2016:26, paragraphs 27 and 29.

⁴⁰⁹ See recital (64). See similarly Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, EU:T:2019:675, paragraph 152.

reliable and robust experience for the view to be taken that that agreement is, by its very nature, harmful to the proper functioning of competition'.⁴¹⁰ The case-law has identified a number of practices, including price fixing, market sharing or exchange of commercially sensitive information between competitors⁴¹¹ which, in the light of reliable and solid experience, are inherently anticompetitive. Furthermore, specifically in relation to the exchange of commercially sensitive information between competitors, according to settled case-law, it must be presumed that the undertakings taking part in a concerted action and remaining active on the market take account of the information exchanged with their competitors in determining their conduct on that market. There is thus no need to prove, in order to establish a breach of Article 101(1) of the Treaty, that such an exchange of commercially sensitive information has actually affected competition in the market.⁴¹²

- (455) Third, the Advocate General in the *HSBC* case opined that a competition authority, faced with a form of conduct that is inherently anticompetitive, '*merely has to exclude the possibility that the agreement in question ... is nonetheless, because of some specific circumstances, outright incapable of producing any deleterious effect in the marketplace, or is even pro-competitive*'. In other words, the competition authority '*is simply required to check, in the specific case, whether there are any legal or factual circumstances that preclude the agreement or practice in question from restricting competition*'.⁴¹³ In this case, the alleged legitimate and/or pro-competitive effects of the market-making obligations of the relevant traders and their ethical objections regarding arbitrage traders are not capable of putting into question the by-object nature of their agreements and/or concerted practices.⁴¹⁴
- (456) Fourth, in line with the judgment in the *HSBC* case,⁴¹⁵ it is explained throughout this Decision, in particular in Section 6.2.2.2, how the parties' collusive conduct reduced uncertainty with the object of restricting and/or distorting competition between undertakings. For instance, by knowing the prices at which the counterparties were willing to buy or sell bonds, as well as the volumes for those bonds, the parties were able to estimate these counterparties' trading intentions and trading patterns providing them with a competitive advantage as they reduced significantly the market uncertainty.⁴¹⁶ In a similar context, the Court held that '*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*

⁴¹⁰ Judgment of the Court of 2 April 2020, *Gazdasági Versenyhivatal v Budapest Bank*, C-228/18, EU:C:2020:265, paragraph 76.

⁴¹¹ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 138; Judgment of the General Court of 7 November 2019, *Campine NV and Campine Recycling NV v Commission*, T-240/17, EU:T:2019:778, paragraph 295.

⁴¹² See recital (390) and the case-law cited; see also Judgment of the Court of 19 March 2019, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/19 P, C:2015:184, paragraph 127 and the case-law cited; see also Opinion of Advocate General Emiliou of 12 May 2022, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2022:384, paragraph 86.

⁴¹³ Opinion of Advocate General Emiliou of 12 May 2022, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2022:384, paragraph 84.

⁴¹⁴ See Section 6.2.2.3.3.

⁴¹⁵ Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraphs 115-116.

⁴¹⁶ See recitals (430) and (434).

an anticompetitive object regardless of the direct effects in the prices paid by end users'.⁴¹⁷

- (457) Finally, it is settled case-law that, in markets concerning OTC financial products (such as that in this case), exchanges of information relevant for pricing that go beyond information in the public domain and having the objective of increasing transparency between the parties and, therefore, reducing normal market uncertainties to the benefit of the parties and to the detriment of other market participants (i.e. creating situations of informational asymmetry), constitute by object restrictions of competition.⁴¹⁸

6.2.2.3.2. Market power

- (458) Rabobank submits that (i) the absence of sufficient combined market power would render a 'by object' infringement less likely,⁴¹⁹ (ii) as opposed to highly concentrated oligopolistic markets, if supply is fragmented, the dissemination and exchange of information between competitors may be neutral, or even positive, for the competitive nature of the market,⁴²⁰ and that (iii) the parties, for many of their trades (and associated communications) would not have considered themselves to be competitors because they belong to different tiers (that is, Deutsche Bank is according to Rabobank a Tier 1 market-maker while Rabobank according to itself is a Tier 2 market-maker).⁴²¹
- (459) First, it must be recalled that the agreements and/or concerted practices at issue in this case concern not only the exchange of commercially sensitive information between competitors, but also the coordination of the parties' trading and pricing strategies, amounting to price fixing, market sharing and customer allocation. The inherently restrictive object of such practices, once established, cannot be called into question by the allegedly small combined market share or limited market power of their participants.⁴²²
- (460) Second, while undertakings are more likely to achieve a collusive outcome in highly concentrated and oligopolistic markets, this is not a pre-requisite for finding a by-object restriction of competition. For instance, the findings made by the General Court in the *HSBC* case⁴²³ and upheld by the Court⁴²⁴ with regard to the Commission's Decision in the *EIRD* case⁴²⁵ are also relevant to this case. In the *HSBC* judgments, the bilateral information exchanges on mid-prices took place between only two competitors in the EIRD market and were found to constitute by object infringements of Article 101 of the Treaty. Similarly, the Commission's

⁴¹⁷ Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraph 203.

⁴¹⁸ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, EU:T:2019:675, paragraphs 126, 132-134 and 139; Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraphs 203-204.

⁴¹⁹ [...]

⁴²⁰ [...]

⁴²¹ [...]

⁴²² See also Judgment of the Court of 13 December 2012, *Expedia Inc. v Autorité de la concurrence u. a.*, C-226/11, EU:C:2012:795, paragraphs 35-38.

⁴²³ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, EU:T:2019:675, paragraphs 126, 132-134 and 139.

⁴²⁴ Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraph 206.

⁴²⁵ Commission Decision of 7 December 2016 in Case AT.39914 — Euro Interest Rate Derivatives, C(2016) 8530 final.

Decision in the *EIRD* case⁴²⁶ found the EIRD market to be highly fragmented. Such high fragmentation and limited market shares did not prevent the General Court⁴²⁷ and the Court⁴²⁸ from confirming the by object anticompetitive nature of the exchanges.

- (461) Third, the factual circumstances and the economic context surrounding the agreements and/or concerted practices at issue confirm, if anything, their intrinsically harmful nature, such as the fact that: (i) the continued exchange of commercially sensitive information between the same two main traders (and a very limited number of other traders from the same two banks)⁴²⁹ for more than ten years must have influenced the relevant traders' behaviour on the market; (ii) it is particularly fundamental in markets concerning OTC financial products that prices are determined independently;⁴³⁰ and (iii) the parties have as market-makers an important role in the OTC financial market, as they are generally and continuously active and therefore enter into a larger number of transactions.⁴³¹
- (462) Fourth, Rabobank's argument according to which 'Deutsche Bank (as a Tier 1 market maker) would not have considered Rabobank (as a Tier 2 market maker, with differences in terms of geographic and product focus) to be a 'competitor' (and vice versa)',⁴³² cannot be sustained in view of the facts of this case. Indeed, the fact that Rabobank and Deutsche Bank, for more than ten years exchanged commercially sensitive information beyond what was necessary in view of liquidity sourcing for the purpose of risk mitigation in the context of market-making and coordinated their trading and pricing strategies, can only be explained by the fact that they regarded themselves as competitors. In addition, the fact that Rabobank and Deutsche Bank are de facto competitors has been recognised by Rabobank since it argues in its [...] that Rabobank and Deutsche Bank were in direct competition at least around [...] times during the infringement period.⁴³³ It is also noteworthy that, in view of the overlapping clients database of the two parties,⁴³⁴ Rabobank and Deutsche Bank bought and sold the same type of bonds from and to the same clients.

6.2.2.3.3. Pro-competitive effects and legitimate objectives

- (463) Rabobank submits that (i) when assessed in light of the relevant economic and legal context, the conduct pursues legitimate and/or pro-competitive objectives, specifically the fulfilment of market-making roles and/or the identification and avoidance of perceived abuses and unethical behaviour of arbitrageurs and therefore

⁴²⁶ Commission Decision of 7 December 2016 in Case AT.39914 — Euro Interest Rate Derivatives, C(2016) 8530 final, footnote 18.

⁴²⁷ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, EU:T:2019:675.

⁴²⁸ Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11.

⁴²⁹ See recital (110).

⁴³⁰ In the context of OTC financial markets: Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v Commission*, T-105/17, EU:T:2019:675, paragraph 144; see also Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraphs 195-206.

⁴³¹ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v Commission*, T-105/17, EU:T:2019:675, paragraph 145; see also Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraphs 195-206.

⁴³² [...]

⁴³³ [...]

⁴³⁴ See recital (90).

cannot give rise to a restriction of competition by object,⁴³⁵ and (ii) as per settled case-law, pro-competitive effects rebut the characterisation of agreements and/or concerted practices as ‘restrictions by object’ on the basis of reasonable doubts as to whether they caused a sufficient degree of harm to competition.⁴³⁶

- (464) First, the likelihood of pro-competitive effects alone does not automatically justify reasonable doubts about the sufficient degree of harm. Rather, such pro-competitive effects must be demonstrated (not only claimed), relevant, specifically related to the agreement and/or concerted practice concerned, and sufficiently significant so as to justify a reasonable doubt as to the ‘by object’ nature of the conduct.⁴³⁷ Rabobank has not put forward evidence that the agreements and/or concerted practices at issue had any pro-competitive effects, let alone demonstrated that those alleged pro-competitive effects would be sufficiently significant.
- (465) Second, the fact that a measure might pursue a legitimate objective does not preclude it from being regarded as having an object restrictive of competition.⁴³⁸ Such restrictive object, which must be established based on the conduct at issue, should not be confused with undertakings’ subjective intentions of whether or not to restrict competition or with any legitimate objectives pursued by the undertakings in question. Therefore, it is well established that an agreement and/or concerted practice may be regarded as having a restrictive object even if it pursues other legitimate objectives.⁴³⁹
- (466) Third, it must be borne in mind that an undertaking cannot rely on the conduct of other undertakings, even if it is unlawful or unfair, to justify an infringement of the competition rules or to call into question the classification of that restriction as a restriction of competition ‘by object’. It is for public authorities and not private undertakings or associations of undertakings to ensure compliance with statutory requirements. Undertakings are not entitled to take the law into their own hands by substituting themselves for those authorities to penalise any infringements of statutory requirements and by preventing, through measures adopted on their own initiative, competition within the internal market. That is particularly the case where there are legal means by which they may assert their rights before those authorities.⁴⁴⁰
- (a) Market-making
- (467) First, Rabobank does not provide evidence nor demonstrate that the conduct at issue had pro-competitive effects. Instead, it just contends that through their

⁴³⁵ [...]

⁴³⁶ [...]

⁴³⁷ Judgment of the Court of 30 January 2020, *Generics (UK) Ltd and Others v Competition and Markets Authority*, C-307/18, EU:C:2020:52, paragraphs 103-107; Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraphs 139-140, 196-197.

⁴³⁸ Judgment of the Court of 2 April 2020, *Gazdasági Versenyhivatal v Budapest Bank Nyrt. a.o.*, C-228/18, EU:C:2020:265, paragraph 52.

⁴³⁹ Opinion of Advocate General Wahl of 27 March 2014, *Groupement des cartes bancaires v Commission*, C-67/13 P, EU:C:2014:1958, paragraph 117. See also Judgment of the Court of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 70.

⁴⁴⁰ Judgment of the General Court of 30 March 2022, *Singapore Airlines Ltd and Singapore Airlines Cargo Pte Ltd v Commission*, T-350/17, EU:T:2022:186, paragraphs 428-429 and the case-law cited.

communications the relevant traders pursued legitimate and/or pro-competitive intentions and aims, specifically the fulfilment of market-making roles.⁴⁴¹

- (468) In the first place, the fact that, in fulfilling their market-making role, the relevant traders exchanged information does not prove the existence of pro-competitive effects, let alone demonstrates that those pro-competitive effects were significant. At best, it would be an indication of a legitimate purpose to the extent that such exchange of information did not go beyond what was necessary to achieve the purpose of liquidity sourcing for risk mitigation in the context of market-making.⁴⁴²
- (469) In the second place, the relevant traders fulfilled the market-making role on a voluntary basis,⁴⁴³ and were not under any obligation to quote two-way prices on a continuous basis. Strictly speaking, the lack of formal obligations for the non-designated market-makers implies that the relevant traders had the discretion to engage in market-making activities when it was financially advantageous and to withdraw from these activities when it was not. Their non-designated market-making status underscores that their objectives extended beyond solely sourcing liquidity for market-making purposes or covering positions.
- (470) Second, to the extent that Rabobank's arguments may be understood in the sense that the exchanges of information between the parties were necessary for the fulfilment of their market-making role and therefore for the functioning of the OTC financial market, a restriction contained in the exchanges of information could be considered ancillary if it could be established that such a restriction was objectively necessary for the implementation of the main operation or activity on the OTC financial market. Rabobank, however, has not provided evidence showing that the OTC financial market cannot function without exchanges of information between traders acting as market-makers. It should be recalled that the fact that a main operation or activity is simply more difficult to implement or even less profitable without the restriction concerned cannot be deemed to give that restriction the 'objective necessity' required in order for it to be classified as ancillary.⁴⁴⁴ Thus, the condition of ancillary restriction is not satisfied.
- (471) Third, it is settled case-law that when a financial service provider is acting as a market-maker, the exchanges of information with other market-makers on factors relevant for pricing that are not publicly available are all the more sensitive in terms of competition because market-makers enter into a larger number of transactions than other market participants.⁴⁴⁵
- (472) Fourth, as explained in this Decision,⁴⁴⁶ the Commission does not take issue with legitimate exchanges of information between potential counterparties exclusively intended to negotiate and execute bilateral trades and net off risks in the inter-dealer

⁴⁴¹ [...]. [...] '(...) the fulfilment of market-making roles, including exploring transactions for the purposes of sourcing liquidity to service client demands, managing long positions, and covering actual or potential short positions (...)'.

⁴⁴² See recitals (442), (444) and (446).

⁴⁴³ See recitals (81) and (88).

⁴⁴⁴ Judgment of the General Court of 29 June 2012, *E.ON Ruhrgas AG a.o. v. Commission*, T-360/09, EU:T:2012:332, paragraphs 62-80; Judgment of the General Court of 12 December 2018, *Unichem Laboratories Ltd v. Commission*, T-705/14, EU:T:2018:915, paragraphs 384-385.

⁴⁴⁵ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, EU:T:2019:675, paragraph 145; confirmed by Judgment of the Court of 12 January 2023, *HSBC Holdings a.o. v Commission*, C-883/19 P, EU:C:2023:11, paragraphs 195.

⁴⁴⁶ See recital (64).

market. The Commission however does not view the exchanges of commercially sensitive information between market-makers about clients' prices, and the coordination of prices shown to the clients, to be necessary to provide liquidity, and therefore legitimate or pro-competitive.

- (473) For instance, in relation to the anticompetitive trader communication on **14 June 2006**,⁴⁴⁷ the information exchange ('*we are bidding +26*', '*we showed 13*', '*13 1/4 offered to you in 10mio in spread*') in the context of a client enquiry on certain bonds ('*favourite Ducth client...is buying them on a switch out of the RABO 21*') is capable of influencing the price offered to that client if the exchange takes place before the execution of the transaction with the client ('*we are bidding +26 for the Rabo over the same bmark*')['*we showed 13 but as ever [...] wants better*'). While Rabobank contends that clients prefer to deal with just one trader, rather than splitting a ticket,⁴⁴⁸ there is no evidence that the client was aware of the agreements put in place by the relevant traders to respond to his/her enquiry. On the contrary, the exchange confirms that the transaction was not serving the client's interest but only the relevant traders'.
- (474) Other similar examples where the relevant traders discuss the price and volumes of specific bonds before the execution of the transaction with a client are those of **30 May 2006**,⁴⁴⁹ **3 August 2006**,⁴⁵⁰ **25 January 2007**,⁴⁵¹ **16 July 2007**,⁴⁵² **12 June 2008**,⁴⁵³ **23 June 2008**,⁴⁵⁴ **15 July 2008**,⁴⁵⁵ **4 September 2008**,⁴⁵⁶ **24 February 2009**,⁴⁵⁷ **10 July 2009**,⁴⁵⁸ **8 January 2010**,⁴⁵⁹ **2 February 2010**,⁴⁶⁰ **25 February 2010**,⁴⁶¹ **20 May 2010**,⁴⁶² **14 June 2010**,⁴⁶³ **24 June 2010**,⁴⁶⁴ **20 July 2010**,⁴⁶⁵ **1 December 2010**,⁴⁶⁶ **9 June 2011**,⁴⁶⁷ **10 June 2011**,⁴⁶⁸ **5 July 2011**,⁴⁶⁹ **28 November 2011**,⁴⁷⁰ **29 November 2011**,⁴⁷¹ **21 February 2012**,⁴⁷² **22 February 2012**,⁴⁷³ **31 October 2012**,⁴⁷⁴ **6 December 2012**,⁴⁷⁵ **10 December 2012**,⁴⁷⁶ **10 January 2013**,⁴⁷⁷

447 See recital (139).
 448 [...]
 449 See recital (138).
 450 See recital (142).
 451 See recitals (145)-(146).
 452 See recitals (152)-(153).
 453 See recital (166).
 454 See recital (167).
 455 See recitals (168)-(169).
 456 See recital (173).
 457 See recitals (184)-(186).
 458 See recitals (204)-(205).
 459 See recitals (218)-(219).
 460 See recitals (222)-(223).
 461 See recitals (224)-(225).
 462 See recital (232).
 463 See recitals (233)-(234).
 464 See recital (242).
 465 See recitals (243)-(244).
 466 See recitals (249)-(254).
 467 See recitals (259)-(260).
 468 See recitals (261)-(263).
 469 See recitals (264)-(265).
 470 See recitals (276)-(277).
 471 See recitals (278)-(279).
 472 See recital (283).
 473 See recitals (284)-(285).
 474 See recitals (293)-(294).

15 February 2013,⁴⁷⁸ 22 May 2013,⁴⁷⁹ 25 June 2013,⁴⁸⁰ 6 November 2013,⁴⁸¹ 15 November 2013,⁴⁸² 24 March 2014,⁴⁸³ 28 March 2014,⁴⁸⁴ 12 June 2014,⁴⁸⁵ 20 August 2014,⁴⁸⁶ 10 September 2014,⁴⁸⁷ 17 September 2014,⁴⁸⁸ 6 October 2014,⁴⁸⁹ 9 January 2015,⁴⁹⁰ 22 October 2015,⁴⁹¹ 4 November 2015,⁴⁹² 6 November 2015,⁴⁹³ 3 December 2015,⁴⁹⁴ 15 December 2015,⁴⁹⁵ 24 February 2016.⁴⁹⁶

(b) Arbitrage traders

- (475) First, in the context of the parties' market behaviour towards arbitrage traders, Rabobank merely states that, through their communications, the relevant traders pursued legitimate and/or pro-competitive intentions and aims, specifically to identify and avoid the perceived abuses and unethical behaviour of arbitrageurs.⁴⁹⁷ However, Rabobank has neither provided evidence nor demonstrated that their conduct had pro-competitive effects.
- (476) Second, the Commission is not taking a position on whether all or some forms of arbitrage trading are ethical or unethical, beneficial or detrimental respectively (or 'toxic') for the economy, or on whether the individual arbitrageurs identified and targeted by the relevant traders in their communications acted indeed unethically or to the detriment of the economy. The Commission rather relies on the fact that the legislator does not forbid arbitrage and that arbitrage trading is a common practice in the trading market. In any event, the ethical principles invoked by Rabobank cannot justify any element of the relevant traders' conduct addressed by this Decision, such as the traders coordinating their prices, alerting each other on whether the price was too low or too high, or disclosing the identity of those counterparties for the purpose of adjusting their pricing and trading strategies towards them. Such conduct falls within the category of agreements prohibited by Article 101(1) of the Treaty and are therefore anticompetitive.
- (477) Third, even assuming that the fairness or legality of arbitrage trading were successfully challenged by Rabobank, this would not justify the anticompetitive measures taken by the parties towards arbitrageurs, all the more since other legitimate means, such as reporting the behaviour of these counterparties to

⁴⁷⁵ See recitals (295)-(296).

⁴⁷⁶ See recital (297).

⁴⁷⁷ See recitals (300)-(301).

⁴⁷⁸ See recitals (302)-(303).

⁴⁷⁹ See recital (306).

⁴⁸⁰ See recitals (307)-(308).

⁴⁸¹ See recitals (321)-(322).

⁴⁸² See recitals (323)-(324).

⁴⁸³ See recitals (330)-(331).

⁴⁸⁴ See recitals (334)-(335).

⁴⁸⁵ See recitals (338)-(339).

⁴⁸⁶ See recitals (340)-(341).

⁴⁸⁷ See recitals (342)-(343).

⁴⁸⁸ See recitals (344)-(345).

⁴⁸⁹ See recitals (346)-(347).

⁴⁹⁰ See recitals (350)-(351).

⁴⁹¹ See recitals (356)-(357).

⁴⁹² See recitals (358)-(359).

⁴⁹³ See recitals (360)-(361).

⁴⁹⁴ See recitals (364)-(365).

⁴⁹⁵ See recitals (366)-(369).

⁴⁹⁶ See recitals (374)-(375).

⁴⁹⁷ [...]

regulatory and supervisory authorities would have been available to them.⁴⁹⁸ Moreover, the fact that such legitimate alternatives would, from the parties' point of view, have appeared less effective or more costly, does not justify the relevant traders taking matters into their own hands by agreeing on prices shown to these counterparties and coordinating their pricing and trading strategies towards them.

- (478) Fourth, Rabobank's argument that the Commission's interpretation and definition of arbitrage traders is incorrect and misleading⁴⁹⁹ is irrelevant since the fact remains that the parties coordinated their pricing and trading strategies towards these counterparties. In any event, Rabobank incorrectly portrays the Commission's definition of arbitrage trading: the Commission clearly makes a distinction between traders that hold a portfolio of bonds and are ready to buy from or sell to end-investors⁵⁰⁰ and those that make a profit from price differentials by making simultaneous trades.⁵⁰¹
- (479) Fifth, the purpose served by Rabobank's arguments that there is no underlying investor (end-client) in arbitrage trading and that arbitrageurs only seek to exploit the price differential between market-makers⁵⁰² is unclear. If it is to show that arbitrage trading is not efficient because it is self-serving, it would be at odds with Rabobank's arguments that an efficient arbitrage trading arises due to liquidity requirements. Following this logic, the underlying reason why arbitrage trading is efficient is the arbitrageur's ability to contribute to liquidity in the market, rather than the obligation to serve an underlying investor.
- (480) Sixth, the conduct in this case relates not only to communications that have as their objective the coordination of pricing and trading strategies towards those identified by the relevant traders as 'arbitrage traders' or 'spivs' (in colloquial language), but also towards other counterparties. However, Rabobank has assumed that all the anticompetitive exchanges with respect to specific counterparties, apart from those claimed to be made in the context of market-making, concern arbitrage traders. For instance, discussions regarding (i) an Israeli Asset Manager ('we are offering 2.4m AT .66 & you appear to be bid at .69. I was just checked by an Israeli 'asset manager' but I have my doubts'⁵⁰³) or (ii) an account which has been removed from AllQ, but still considered 'genuine business' ('we have removed them from ALLQ but have a chat as they do 'genuine business' sometimes'⁵⁰⁴) or (iii) on the level of the relevant traders' prices exposing them to a risk of arbitrage (although no counterparty approached them for a transaction, but just 'in case you are asked to offer'⁵⁰⁵) are assumed by Rabobank to strictly relate to arbitrage trading. In contrast, in its SO and in this Decision, the Commission makes reference to potential arbitrage traders only where the relevant traders in their communications identified those

⁴⁹⁸ See for instance Judgment of the Court of 7 February 2013, *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, C-68/12, EU:C:2013:71, paragraph 20, where the Court held that it is for the public authorities and not private undertakings or associations of undertakings to ensure compliance with statutory requirements in respect of an undertaking operating illegally on the Slovak market. See also recital (466).

⁴⁹⁹ [...]

⁵⁰⁰ See recital (26).

⁵⁰¹ See recital (29).

⁵⁰² [...]

⁵⁰³ Recitals (154)-(155).

⁵⁰⁴ Recitals (313)-(316).

⁵⁰⁵ Recitals (162)-(163).

counterparties as ‘spivs’, traders trying to ‘backdoor’ between them, or as ‘arbitrage traders’.

- (481) Seventh, even if, as Rabobank argues,⁵⁰⁶ the agreements and/or concerted practices between the relevant traders regarding arbitrageurs did not lead immediately to profit maximisation or even led to a decline in profits, it is not unusual in cartel cases that cartelists may experience a decline in their profits in the short run which is however outweighed by an increase in profit in the long run. The objective of the relevant traders to increase their profit margins was also confirmed [...].⁵⁰⁷

6.2.2.3.4. Trader Communications

(a) The relevant traders had legitimate access to the information exchanged

- (482) Rabobank disputes the anticompetitive nature of the trader communications arguing that the relevant traders had legitimate access to each other’s screen prices or that the information was widely available if it was shown via an IDB.⁵⁰⁸
- (483) First, this argument is of relevance only if the information exchanged in the anticompetitive trader communications relates exclusively to indicative prices, or other information widely available on AllQ screen or via an IDB. Other information available via IDB relates to the name, coupon and maturity date of the bond, the notional amount of the bid or offer for that bond.⁵⁰⁹ However, as it follows from the evidence set out in Section 5.2 and the instances given hereafter, the relevant traders did not limit themselves to discussions about the indicative prices which would have been available on AllQ screen or via an IDB, but included for instance discussions on the positions they held (long or short) with regard to specific bonds, the level of price at which a trader was hit/lifted or the fact that the level of bid or ask price is above or below the competitors’ price. With respect to the latter, even if competitors had (legitimate) access to each other’s indicative prices on screen, a competitor’s own judgment of the level of the price of another competitor can be considered strategic for the competitor receiving such information.
- (484) Second, the relevant traders knew that some of the information should not be exchanged between them (*‘i do not like showing other people’s positions unless it is somebody like you who i know & trust, the upside is usually small whilst the risks are larger’*⁵¹⁰, *‘don’t need a name compliance wise just would love to know the city/rotterdam, of german parentage’*⁵¹¹, *‘i did not really want them to know we were communicating. not wrong but might not look good’*⁵¹²) and that the information on the screen, even if widely available, was not always reliable (*‘screens are not very reliable at the moment’*, *‘it is very difficult to know if screens are reliable’*⁵¹³).
- (485) For the year **2006**, instances of anticompetitive trader communications where the exchange of information goes beyond the indicative prices or other widely available information shown on AllQ screen or via an IDB are **4 January 2006** (*‘they hit us at 111.19’/‘our bid is above your offer’*), **3 April 2006** (*‘just got lifted in 2m Renten 3% 10? You seem low compared to us’/‘think you are very high’/‘I am tradable as shown*

⁵⁰⁶ [...]

⁵⁰⁷ [...]

⁵⁰⁸ [...]

⁵⁰⁹ See also recital (57).

⁵¹⁰ Recital (303).

⁵¹¹ Recital (329).

⁵¹² Recital (365).

⁵¹³ Recitals (153) and (158).

on AllQ'), **28 April 2006**, **9 May 2006**, **14 June 2006**, ('we are bidding +26', 'we showed 13 but as ever [...] wants better'), **20 June 2006** ('we are long the ASFINAG 13'S (12M)'), **13 July 2006** ('showed 60.44 they offered at 48'), and **1 December 2006** ('BNG 16 you are a good offer').⁵¹⁴

- (486) For the year **2007**, such instances can be found in the anticompetitive trader communications of **30 March 2007** ('just been hit twice in 2m', 'got lifted at 94.00,94.01, 94.00 each in 2MIO'), **2 July 2007** ('are you bidding on the bl[o]ck of BNG [4 12]? 'not us, we have not been asked'), **16 July 2007** ('just lifted in the BNG 12 at .44 by [...]. [...] are bidding .443 for 3 m, [...] are bidding .443 for 10 m'), **1 October 2007** ('we are offering 2.4M at .66 & you appear to be bid at .69. I was just checked by an Israeli 'asset manager)'), **5 November 2007** ('you look a little low...just asked to bid by a spiv.we are too high'), and **27 November 2007** ('I am much lower and got hit at €+23 and +25 yesterday').⁵¹⁵
- (487) For the year **2008**, such instances can be found in the anticompetitive trader communications of **16 January 2008** ('do you trade the sek 4.5 10 please? In case you do I am long...our offer is below your bid. I am going to move it up to stop the spivs'), **12 June 2008** ('to let you know we have shown a 31 bid, the 31½ is not ours. This is for our far east buyer'), **1 September 2008** ('watch out on IBRD 0 18...I am bidding lower'/ 'just got hit at .35'), and **2 October 2008** ('don't know if you are short but just got hit at 102.37 in KFW 5 ¾ 7/10, probably adjust your price for our arbitrage friends').⁵¹⁶
- (488) For the year **2009**, such instances can be found in the anticompetitive trader communications of **26 January 2009** ('are you being asked to bid 5M KFW 3.375 12?...swiss a/c bt 2m from us & have come back to ask for the offer in 5m & I see you are much higher than us/ [...] hit me in 2mio'), **3 February 2009** ('are you being asked to offer 2m Renten 12...[...] asking me to bid/i only have 1mio'), **10 February 2009** ('did [...] just ask for your bid on 650 renten 4.375 17/yes indeed [...] did and i rejected it as i am flat'), **24 February 2009** ('your price looks low on the eec 3.25 11, there are bids higher & we have been lifted above your offer'), **11 May 2009** ('[...] just sold us 1 m of the eib 2.5 12 at 101.34...[...] just asked our offer in 4.6m eib'), **1 June 2009** ('we were just asked by [...] to bid on 500 eec 3.125 4/14 & i noticed you were offering below our bid'), **24 June 2009** ('[...] trying to hit us in 2m'), **6 July 2009** ('[...] trying to hit us in 1.5 much higher/[...] hit us at 70.25'), **9 July 2009** ('you are a little high on Flemsh 2013'), **10 July 2009** ('I am guessing the offer is coming from you & fyi we are the 35 bid'), **14 August 2009** ('Our bid for 25mn would be closer to 100.65'), **18 August 2009** ('eec 3.25 11 are you being asked to offer 5m by [...]... below our bid, whchi i am now moving down'), **20 August 2009** ('I bid 100.48 (screen was showing 100.55 bid)'/ 'I showed .51 and had .46 on screen'), **30 October 2009** ('I have been hit twice in the FBNETH 3 12 by the same Spanish a/c'), and **9 November 2009** ('I was offering at 48 (3M) but just pulled it').⁵¹⁷
- (489) For the year **2010**, such instances can be found in the anticompetitive trader communications of **27 January 2010** ('flemsh 3.875 16...ther[e] is a bid at 104.699'), **2 February 2010** ('got hit at .44 in the remaining 13mio'), **22 March**

⁵¹⁴ See recitals (125), (133), (135), (136), (139), (140), (141) and (144).

⁵¹⁵ See recitals (148), (151), (152), (154), (156) and (158).

⁵¹⁶ See recitals (162), (166), (171) and (175).

⁵¹⁷ See recitals (178), (180), (182), (187), (189), (195), (197), (200), (202), (206), (210), (215) and (217).

2010 (*'Bng 2.875 15 you look little high...been asked to offer a couple of times'*), **21 April 2010** (*'are you a buyer of sweda 3 % 14? I didn't get hit yet but have them way lower'*), **4 May 2010** (*'we offer 5cts lower/[...] just lifted us in 1 m'*), **23 June 2010** (*'just been check for a two way in 50x50...[...] then left a buyin care at 103 .25/i would replace the rbs at 30'*), **24 June 2010** (*'Have them 103.32 Agree?/my seller is just opening up target .36, but I think I can squeeze a couple of cents'*), and **16 November 2010** (*'Being offered below your bid'*).⁵¹⁸

- (490) For the year **2011**, such instances can be found in the anticompetitive trader communications of **3 February 2011** (*'am almost flat in it, will tighten'*), **8 June 2011** (*'[just] [g]ot hit in bng 2.875 15 at 100.83...maybe you want to drop your price'*), **18 July 2011** (*'watch out, Findan 2013 trading at .53 in brokers. Got checked by two clients earlier, got hit by one'*), **4 August 2011** (*'just got hit at 115.88 coverage 115.50 and the [...] is coming in again and selling more'*), **14 September 2011** (*'eu 2.75 6/16 [...] offered below your bid/sfebr 3.125 6/14 i am offered below your bid have got 15mio to go'*), **9 November 2011** (*'we just keep moving it down & sadly we are not short'*), **18 November 2011** (*'eu 2.375 18 are you being asked to offer that one, isreali a/c'*), and **30 November 2011** (*'got hit in 3.3mio lpty and 8mio sweda 3.375 14/ our screen bids work'*).⁵¹⁹
- (491) For the year **2012**, such instances can be found in the anticompetitive trader communications of **16 January 2012** (*'don't bid to [...] on nedwbk 23, it's me on teh offer'*), **26 March 2012** (*'they hit me/we were just lifted in 595 by [...]. we are long'*), and **14 December 2012** (*'can i ask if you were just asked to offer 1 m renten 14 please? 'client' told me they dealt at .96!'*).⁵²⁰
- (492) For the year **2013**, such instances can be found in the anticompetitive trader communications of **19 August 2013** (*'your bid is high/thy traded away from me at .12 in large size for that issuer'*), and **26 September 2013** (*'you are too high on eu 6/21...got hit at .13'*).⁵²¹
- (493) For the year **2014**, such instances can be found in the anticompetitive trader communications of **30 April 2014** (*'we were just aske to offer 1m of teh 21s and i noticed db had a slightly higher bid'*), **17 September 2014** (*'you are high on eib 2.75 9/21...got hit at.15'*), and **26 November 2014** (*'we weer asked ot bid on 7m by an italian 'family' office/we bid 35cent back from screen, covere was another 60cent lower than where we got hit'*).⁵²²
- (494) For the years **2015** and **2016**, such instances can be found in the anticompetitive trader communications of **18 February 2015** (*'just been asked...we are long 22m/we have been losing our db O 26 in DEM (german exchange has bought about 8m in 4 or 5 trades)'*), **8 July 2015** (*'only long 115k/got hit market here at .88 and would have sold on'*), **30 November 2015** (*'I widened bid/offer tremendously/only showing 76.25 bid/the 21 are not traded by me'*), and of **5 January 2016** (*'bng 0.25 5/25 you are a bit high in my view/am offered close to your bid'*).⁵²³

(b) None of the information exchanged in the communications was 'commercially sensitive' or strategic and capable of influencing a party's 'trading strategy'

⁵¹⁸ See recitals (220), (222), (226), (228), (230), (240), (242) and (247).

⁵¹⁹ See recitals (255), (257), (266), (268), (270), (272), (274) and (280).

⁵²⁰ See recitals (282), (286) and (298).

⁵²¹ See recitals (312) and (317).

⁵²² See recitals (336), (344) and (348).

⁵²³ See recitals (352), (354), (362) and (370).

- (495) Rabobank disputes the anticompetitive nature of the trader communications by arguing that none of the information exchanged was commercially sensitive and capable of influencing a party's trading strategy.⁵²⁴ It is however not clear on what basis Rabobank submits that such information is not commercially sensitive. Apart from the argument that the relevant traders had access to each other's indicative prices shown on AllQ screens or via an IDB (and which is discussed in recitals (482) to (494)), Rabobank in few instances argues that the information exchanged was historic, without defining the term 'historic'.⁵²⁵
- (496) However, this argument is not capable of calling into question the commercially sensitive nature of the information exchanged or the anticompetitive nature of the conduct at issue in this case. This is because: (i) as explained throughout this Decision, the information exchanged between the parties was capable of increasing transparency and/or reducing uncertainties with respect to the market in operation, this being particularly serious in markets concerning OTC financial products (such as in this case) or when the competitors act as market-makers (as also in this case);⁵²⁶ (ii) the anticompetitive nature of the exchanges in this case is not determined by 'historic' information but by a combination of information related to past, current and future transactions; (iii) where the information exchanged in this case related to transactions which were technically past transactions, that information was often exchanged very shortly after the transaction took place and was thus liable to inform the parties' pricing and trading strategy vis-à-vis that particular bond and/or counterparty.
- (497) In some instances, Rabobank contests the anticompetitive nature of communications by referring to the 'historic' nature of the information exchanged whereas this exchange is not the aspect of the communication that the Commission actually takes issue with. For instance, as regards the communication of **9 July 2009**,⁵²⁷ it is clear from recital (200) that the Commission objects to the exchange of information which prompted one of the relevant traders to adjust [...] price and not to the information Rabobank refers to as being 'historic'. Similar instances where the 'historic' information contested by Rabobank is not related to either the anticompetitive nature of the discussions or the commercially sensitive nature of the information, are the communications of **3 April 2006**⁵²⁸ and **10 September 2014**.⁵²⁹
- (498) In other instances, the 'historic' information contested by Rabobank is only part of the information exchanged by the relevant traders or in combination with information about recent or future trades, such as in the communication of **1 September 2008** (*'played db against Rabo'* is shared along with, for instance, *'just got hit at .35'*, *'we are long kfw...'*, *'long myself on both'*). Moreover, while the use of the past tense (*'played'*) implies a past trade, it cannot be considered historic as its recent occurrence means it still holds strategic significance. Likewise, the exchange of information about recent transactions, going back a day or a half day before (*'were lifted yesterday in 5m. I did pay.53 (I know) for 6m this morning'*)⁵³⁰ reduces uncertainty and increases transparency in the market, thus informing the parties'

⁵²⁴ [...]

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⁵²⁶ See recitals (395), (461) and (471).

⁵²⁷ [...]

⁵²⁸ Recitals (133)-(134).

⁵²⁹ Recitals (342)-(343).

⁵³⁰ Recitals (235)-(239).

pricing and trading strategy for a particular bond and/or counterparty. In any event, information about recent trades may still be useful for foreseeing price movements, understanding how competitive the relevant traders' price is and how to position themselves in the future with respect to that bond, as well as assessing market trends and future trading opportunities.

- (499) Similar instances as the ones discussed in recital (498), are the communications of **27 January 2010** (where *'sold 6.3m 2 weeks ago'* is shared along with, for instance, *'I'm long but haven't seen any buyer at all .. but will move it up a bid'*),⁵³¹ **28 October 2010** (where the use of past tense *'I did bid 99.97'* is considered by Rabobank 'historic'),⁵³² **8 June 2011** (*'don't know if you where my comp'* is exchanged along with *'jsut ot hit in bng 2.875 15 at 100.83/maybe you want to dop your price'*),⁵³³ **26 March 2012** (where the use of past tense *'got lifted in 10/2017'* is considered by Rabobank 'historic'),⁵³⁴ **17 September 2014** (where *'missed a few small tickets'* is shared along, for instance, *'you are high on eib 2.75 9/21...got hit at .15'*),⁵³⁵ and **8 July 2015** (where the use of past tense *'got hit market here at .88'* is considered by Rabobank 'historic').⁵³⁶

(c) The relevant traders did not act upon the information received

- (500) Rabobank disputes the anticompetitive nature of the trader communications arguing that in some instances the relevant traders did not act upon the information received or that they acted independently of any information exchanged.⁵³⁷ In this regard, it is however, first, not necessary to prove that the relevant traders acted upon the information received, but suffices to show that the object of the relevant traders' behaviour was to coordinate their pricing and trading behaviour and to reduce market uncertainties based on the information exchanged.⁵³⁸ Second, the fact that there are instances where the relevant traders do not explicitly act upon the information received neither changes the anticompetitive nature of the conduct, nor is it capable of indicating that the relevant traders acted independently or that they distanced themselves from the anticompetitive conduct.⁵³⁹ Third, the exchanges in this case entailed commercially sensitive information which was capable of reducing uncertainties with respect to the market in operation. Such exchanges of information between competitors may allow them to adjust their current or future trading behaviour with respect to specific counterparties or to the market more generally. Finally, in the context of arbitrage traders, considering Rabobank's own claim that the relevant traders, and their communications in that regard, were motivated by a common opposition against arbitrage, it is all the more implausible that they did not act on the information exchanged upon realising they may be or may have been subject to arbitrage trading.

(d) The Commission used incomplete excerpts from the trader communications

- (501) Rabobank claims that, in the SO, the Commission omitted certain parts of the anticompetitive trader communications which would provide relevant information in

⁵³¹ Recital (220).

⁵³² Recital (245).

⁵³³ Recital (257).

⁵³⁴ Recital (286).

⁵³⁵ Recital (344).

⁵³⁶ Recital (354).

⁵³⁷ [...]

⁵³⁸ See also recital (407).

⁵³⁹ See recitals (390) and (391).

order to correctly interpret the communications and suggest a different interpretation of the exchanges.

- (502) For example, concerning the exchange of **8 January 2010**, Rabobank notes that the opening message of this communication (*'Rabobank ([Rabobank employee]): "hi do you have any ibrd 19 please, we are short 3.65m, if you care we would pay your screen offer"'*)⁵⁴⁰ does not appear in the part of the communication which is cited in the SO. Rabobank also argues that *'the context of the parties exploring possible transactions (as counterparties rather than competitors), and sourcing liquidity, [is] consistent with the role of market makers' while '[o]ther aspects of the communication are unclear'*.⁵⁴¹ The Commission observes that the omitted part of the communication is not relevant for its assessment under competition law. While Rabobank's claim that the omitted part concerned an exploration of a possible bilateral trade between Rabobank and Deutsche Bank is plausible, this is inconsequential as the Commission does not object to the transaction concerning the IBRD 19 bonds, but to the disclosure of the pricing on another bond (BNG 20), which is mentioned in Section 5.2.6, paragraphs 224-225, of the SO and in Section 5.2.5. of this Decision.⁵⁴²
- (503) Another example is the communication of **28 March 2014**, where the following opening message is not cited in the SO: *'Rabobank ([Rabobank employee]): "good morning, might you have more interest in the Sweden 5/13 please"'*.⁵⁴³ In this regard, the Commission observes that introducing the opening message would not change the interpretation of this communication in competition law terms. Moreover, Rabobank also claims that *'the Commission's assumption at paragraph 342 of the SO that the parties were "seemingly continuing a conversation on a counterparty" is incorrect'*.⁵⁴⁴ The Commission observes that this claim is contradicted by the explanation provided by Rabobank itself in the [...], mentioning that *'[Rabobank employee] was looking for a seller of a particular Sovereign bond ("Sweden 5/13") and was aware that [Deutsche Bank employee] previously had a client who was a buyer of those bonds'*.⁵⁴⁵
- (504) Similarly, Rabobank notes that the opening messages of other trader communications do not appear in the SO without however arguing that introducing the opening message would change the interpretation of these communications. This is the case for the communications of **5 July 2011** (*'Deutsche Bank ([Deutsche Bank employee]): "hi, have you got buying cares in gg dexgrp?got [hit] this am and if i go to [...] now they will show me your bid, which I think is aggressive"'*),⁵⁴⁶ **10 January 2013** (*'[Deutsche Bank employee]: "is it you bidding eu 11/14 at [...]"'*),⁵⁴⁷ **25 June 2013** (*'Rabobank ([Rabobank employee]): "we have 8.7m flemsh 18s. [...] said they bit a scrap at 106.00 & they were after 1m for their Private bank"'*),⁵⁴⁸ **9 January 2015** (*'Rabobank ([Rabobank employee]): "do you look at the db 0 26 in DEM please? sorry and hello."'*),⁵⁴⁹ **4 November 2015**

540 [...]
541 [...]
542 See recital (219).
543 [...]
544 [...]
545 [...]
546 [...]
547 [...]
548 [...]
549 [...]

(‘Rabobank ([Rabobank employee]): “hi you mentioned {BNG 3 21 Corp <Go>} to me a couple of days ago. We are a buyer now if you still care to offer.”’),⁵⁵⁰ **3 December 2015** (‘Rabobank ([Rabobank employee]): “I imagine you are being asked to offer 20m eib 0 26”’).⁵⁵¹

- (505) The Commission observes and concludes that, in all those cases, the omitted parts of the trader communications do not change the anticompetitive character of the exchanges. This is because the omitted parts either (i) pertain to different bonds, distinct from the ones in which the Commission has determined the discussion between the relevant traders to be anticompetitive, or (ii) do not change the anticompetitive nature of the specific discussion that the Commission finds problematic, or (iii) remain unexplained by Rabobank regarding their potential to undermine the anticompetitive nature of the discussions between the relevant traders.
- (e) The Commission extensively relied on [...]
- (506) Rabobank contends that the Commission appears to have placed an overly heavy and uncritical reliance on [...], without having carefully examined the extent [...], including in light of any exculpatory evidence in the Commission’s file.⁵⁵²
- (507) In this case, the Commission has undertaken an independent review of [...], requested and obtained further trader communications and related information and then made its own assessment regarding the character of those communications. [...]assisted each other in two ways, namely (i) coordinating the trading of illiquid bonds to increase margins, and (ii) protecting each other from potential arbitrage.⁵⁵³
- (508) The trader communications contain industry jargon and shorthand speech which at times require clarifications and further explanations. In this context, the Commission is entitled to rely on [...] explanations to clarify certain details of those communications, in particular the use of such jargon and shorthand, without the probative value of these communications being undermined as a result.⁵⁵⁴
- (509) Moreover, the reference to ‘*exculpatory material in its file*’ is unspecific and not further explained by Rabobank. The fact that there may be additional, and in competition law terms non-problematic, pieces of evidence in the Commission’s case file is not enough to consider them as ‘exculpatory’ with regard to the Commission’s assessment of the anticompetitive conduct.
- (510) Finally, Rabobank’s argument that [...] cover only 47 out of 136 trader communications identified by the Commission at the stage of the SO would in Rabobank’s logic concede that at least with regard to the remaining 89 trader communications the Commission made an independent assessment.

6.2.3. *Single and continuous infringement*

6.2.3.1. Principles

- (511) An infringement of Article 101 of the Treaty may result not only from an isolated act but also from a series of acts or from continuous conduct.⁵⁵⁵ When these acts or

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⁵⁵⁴ See Judgment of the General Court of 16 June 2011, *Solvay SA v Commission*, T-186/06, EU:T:2011:276, paragraphs 407 and 408.

⁵⁵⁵ Judgment of the Court of 7 January 2004, *Aalborg Portland et al. v Commission*, Joined Cases C-204/00, C-205/00, C-211/00, C-213/00, C-217/00 and C-219/00 P, EU:C:2004:6, paragraph 258. See

continuous conduct form a complex of practices adopted by various parties in pursuit of a single anticompetitive economic aim, they may properly be viewed as a single and continuous infringement for the time frame in which they existed.⁵⁵⁶

- (512) In fact, the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by two or more undertakings, who are co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged.⁵⁵⁷
- (513) The validity of this assessment is not affected by the possibility that one or more elements of a series of acts or of a continuous course of conduct could individually and in themselves constitute a violation of Article 101 of the Treaty.⁵⁵⁸ It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.⁵⁵⁹ When different actions form part of an ‘overall plan’, because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.⁵⁶⁰

also Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92 P, T-758/14, EU:T:2016:737, paragraph 215.

⁵⁵⁶ Judgment of the Court of 24 June 2015, *Commission v. Fresh Del Monte Produce*, Joined cases C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 591; Judgment of the Court of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 41; Judgment of the Court of 26 January 2017, *Villeroy and Boch v Commission*, C-644/13 P, EU:C:2017:59, paragraph 56-58; Judgment of the General Court of 15 March 2000, *Cimenteries CBR a.o. v Commission*, Joined cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, paragraph 3699; Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 197; and Judgment of the Court of 7 January 2004, *Aalborg Portland et al. v Commission*, Joined Cases C-204/00, C-205/00, C-211/00, C-213/00, C-217/00 and C-219/00 P, EU:C:2004:6, paragraph 258-260.

⁵⁵⁷ Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92 P, EU:C:1999:356, paragraph 82-85; Judgment of the Court of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 41-45.

⁵⁵⁸ Judgment of the Court of 7 January 2004, *Aalborg Portland et al. v Commission*, Joined Cases C-204/00, C-205/00, C-211/00, C-213/00, C-217/00 and C-219/00 P, EU:C:2004:6, paragraph 258. See also Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92 P, EU:C:1999:356, paragraphs 78-81, 83-85 and 203; Judgment of the General Court of 12 July 2019, *Toshiba Samsung Storage Technology Corp. and Toshiba Samsung Storage Technology Korea Corp. v. Commission*, T-8/16, EU:T:2019:522, paragraph 55.

⁵⁵⁹ Judgment of the Court of 6 December 2012, *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 43. See also Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92 P, EU:C:1999:356, paragraph 88.

⁵⁶⁰ Judgment of the Court of 7 January 2004, *Aalborg Portland et al. v Commission*, Joined Cases C-204/00, C-205/00, C-211/00, C-213/00, C-217/00 and C-219/00 P, EU:C:2004:6, paragraph 258. See also Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92 P, EU:C:1999:356, paragraphs 78-81, 83-85 and 203; Judgment of the General Court of 16 September 2013, *Masco and Others v Commission*, T-378/10, EU:T:2013:469, paragraph 25; Judgment of the General Court of 12 July 2019, *Toshiba Samsung Storage Technology Corp. and Toshiba Samsung Storage Technology Korea Corp. v. Commission*, T-8/16, EU:T:2019:522, paragraph 248.

6.2.3.2. Application in this case

(514) The evidence presented and discussed in this Decision shows that, during the infringement period, the parties, through the relevant traders, engaged in a series of bilateral contacts/communications that pursued a single anticompetitive aim of exchanging commercially sensitive information and coordinating their pricing and trading strategies (with regard to specific counterparties and to the market more generally) in the secondary market for Euro-denominated SSA and Government Guaranteed bonds. All the contacts together as described in Section 5 of this Decision constitute one single and continuous infringement for the following reasons:

(i) Existence of an overall plan pursuing a common objective

(515) The anticompetitive trader communications show that the parties, through the exchange of commercially sensitive information and coordination of pricing and trading activities, shared a common plan to maximise their profits, while reducing uncertainties and mitigating risks inherent to bond trading.

(516) Indeed, through their conduct, the parties showed their joint intention to collude and reduce uncertainties that would have otherwise prevailed in the secondary market for Euro-denominated SSA and Government Guaranteed bonds through the various practices outlined in detail in recital (120), points (a) and (b).

(517) The relevant traders employed a combination of various collusive practices, in particular:

(a) the 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) the coordination of their trading and pricing strategy in relation to specific counterparties and in relation to the market more generally, through the adjustment of prices shown on screen or in response to trading enquiries, or through combining their positions for onward sale to counterparties at pre-agreed prices or through removing the access rights of specific counterparties to the parties' trading systems. The parties sometimes agreed and/or concerted that one would adjust its price so that the other would obtain the trade, refrained from bidding or offering, or removed a bid or offer from the market when the parties might come into competition or otherwise interfere with one another.

(518) The conduct followed a consistent pattern and formed part of a common plan to restrict or distort competition on the secondary market for Euro-denominated SSA and Government Guaranteed bonds. The common plan was implemented in pursuit of a single anticompetitive aim of exchanging commercially sensitive information and of coordinating the parties' trading and pricing strategies with a view to maximising their profits, while reducing uncertainties and mitigating risks inherent to bond trading.

(519) There are other objective elements in place in this case that further confirm that the collusive contacts were linked and complementary in nature and that, by interacting, they contributed to an overall common plan with a single objective.

- (520) Firstly, the *products* that formed the subject of the collusive practices (Euro-denominated SSA and Government Guaranteed bonds) were homogenous for several reasons.
- (521) In the first place, despite the wide variety of issuers of those bonds, they were traded together by both parties on the relevant trading desk. As noted at recitals (83) and (87), for Deutsche Bank, this was the EUR SSA desk in Frankfurt am Main, for Rabobank, this was the IGB desk in London. Both parties have confirmed that, whilst the focus of both the EUR SSA and the IGB desks was on the trade of Euro-denominated SSA bonds, throughout the infringement period both desks also dealt with certain Euro-denominated Government Guaranteed bonds.⁵⁶¹
- (522) With regard to Euro-denominated Government Guaranteed bonds, since they were issued for a limited period of time, they are not part of the SSA nomenclature. However, in view of the shared similarities with SSA bonds, such as high rating and government support backing, they were treated and included by Deutsche Bank and Rabobank in the desks trading Euro-denominated SSA bonds.
- (523) In the second place, the bonds that formed the subject of the collusive practices were all denominated in the same currency, the euro. The relevant desks for both parties focused only on the trade of Euro-denominated SSA and Government Guaranteed bonds. Those bonds are all priced by comparison to the yield on the reference bond for the currency (EUR interest rate swaps or the relevant German Sovereign bonds),⁵⁶² taking account of the maturity of the issue and other features such as quality, risk, liquidity and so forth.
- (524) Secondly, the *mechanism* for the conduct was consistently the same. The evidence shows that throughout the infringement period the relevant traders communicated bilaterally with each other by using Bloomberg emails or chats. These allowed for real-time communications and provided for a high degree of transparency.
- (525) Thirdly, the relevant traders usually followed the same *pattern of behaviour*. Over the course of the infringement, the relevant traders regularly used Bloomberg emails and chats to exchange commercially sensitive information⁵⁶³ and to openly discuss and coordinate current and future pricing, trading activity and strategic behaviour, in relation to specific counterparties and with regard to the market more generally.⁵⁶⁴ Throughout the whole duration of the cartel, the conduct was carried out by the same two main traders, [Rabobank employee] of Rabobank and [Deutsche Bank employee] of Deutsche Bank, with sporadic appearances by a few other traders from the same banks.⁵⁶⁵
- (526) In the first place, the relevant traders repeatedly used the same language to warn each other about their price levels and to provide internal views about the market that would allow them to adjust their pricing and trading strategies or to protect each other's trading interests ('*we are too high*', '*you look a little low*', '*you seem a touch high*', '*adjust your price*', '*watch out*', '*just got hit at*', '*be aware I am not paying my screen*', '*I moved the price down*').⁵⁶⁶ As regards their coordinating behaviour in respect of specific counterparties, including arbitrage traders, through aligning prices

⁵⁶¹ [...]

⁵⁶² See also recital (70). [...]

⁵⁶³ See the examples in recitals (433) and (437).

⁵⁶⁴ See the examples in recitals (443), (445) and (447).

⁵⁶⁵ See recital (110).

⁵⁶⁶ See examples provided in recital (443).

or removing access rights, the language is consistent throughout the whole infringement period (*'probably adjust your price for our arbitrage friends', 'backdoored between us', 'spivs', etc.*).⁵⁶⁷

- (527) In the second place, the relevant traders used access to each other's prices on screen to match information in relation to an RFQ, a recent trade or a counterparty identity. To that end, the parties pooled together information in relation to prices, trades, trading enquiries and the counterparties' identities with a view to coordinating or exploring room for alignment of their pricing and trading strategies.⁵⁶⁸
- (528) In the third place, the relevant traders continuously showed a preference for not trading with counterparties suspected of arbitrage. To that end, they coordinated their behaviour to either deter the arbitrage traders to engage in a transaction with them or to remove their access rights to the parties' trading system; exchanged commercially sensitive information such as counterparties' identities, prices, volumes and trading enquiries of these counterparties; and adjusted their price levels.⁵⁶⁹
- (529) In view of the above, it is considered that the conduct identified in Section 5.2⁵⁷⁰ formed part of a common plan by the parties pursuing a single anticompetitive aim of exchanging commercially sensitive information and of coordinating the parties' trading and pricing strategies on the secondary market for Euro-denominated SSA and Government Guaranteed bonds, with a view to maximising their profits, while reducing uncertainties and mitigating risks inherent to bond trading.

(ii) Intentional contribution to an overall plan

- (530) The evidence outlined and discussed in Section 5 demonstrates that the relevant traders' regular and active collaboration based on Bloomberg chats and emails was such that both parties contributed to the overall plan to restrict and/or distort competition on the secondary market for trading Euro-denominated SSA and Government Guaranteed bonds. The plan was implemented in pursuit of a single anticompetitive aim of exchanging commercially sensitive information and of coordinating the parties' trading and pricing strategies with a view to maximising their profits, while reducing uncertainties and mitigating risks inherent to bond trading.
- (531) The nature of the commercially sensitive information exchanged between the relevant traders, including, for example, prices, spreads, positions, volumes, the identification of clients, the disclosure of their trading requirements⁵⁷¹ and the prices that they intended to show, either to specific counterparties or to the market, is taken as evidence of an intention to coordinate pricing, trading activities and strategies. The exchange of such information is not necessary when entering into normal commercial relations. Rather, the disclosure of such information, particularly with regard to pricing, could be used to gain an advantage over other competitors.⁵⁷² As between the relevant traders, those information exchanges enabled them to gain an advantage by pooling their information, both as regards the general market and in

⁵⁶⁷ See examples provided in recital (443).

⁵⁶⁸ [...]

⁵⁶⁹ See, among others, recitals (130), (132), (175), (179) and (183).

⁵⁷⁰ See recital (120) where each of the two arms of the conduct is described in detail.

⁵⁷¹ As described in recital (120), this extended to the parties' own current and/or future trade flows in the secondary market. The exchange of information also extended to recent prices or pricing strategies for specific bonds and maturities in terms of, *inter alia*, spreads or prices.

⁵⁷² [...]

relation to specific counterparties and thereby enabled them to coordinate their activities.

- (532) It is therefore concluded that both parties intended to contribute to the common objective set out in recitals (515) to (529).

(iii) Awareness

- (533) The Commission takes the view that both Deutsche Bank and Rabobank participated in all constituent parts of the cartel through the involvement of their traders: [Deutsche Bank employee], [Deutsche Bank employee] and [Deutsche Bank employee] for Deutsche Bank and [Rabobank employee] and [Rabobank employee] for Rabobank.

- (534) Given the bilateral nature of the behaviour, both Deutsche Bank, through its traders [Deutsche Bank employee], [Deutsche Bank employee] and [Deutsche Bank employee], and Rabobank, through its traders [Rabobank employee] and [Rabobank employee], were engaged in and therefore clearly aware of the involvement of the other party.

(iv) Conclusion

- (535) On this basis and with regard to the various forms of coordination of pricing and trading strategies, the exchange of commercially sensitive information and the common objective of the collusive arrangements as described above, the Commission considers that the whole complex of collusive contacts between the parties constitutes one single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement for which each of the parties is held liable.

- (536) The Commission therefore holds both parties liable for the entire single and continuous infringement.

6.2.3.3. Assessment of Rabobank's arguments

- (537) First, Rabobank contends that '*the Trader Communications are of a different character from one another [that is, the fulfilment of market-making roles on the one hand and avoiding the perceived abuses and unethical behaviour of arbitrageurs on the other hand] and serve different (legitimate) purposes. As such, it is not appropriate for the Commission to treat these different species of communications as part of a single, common plan, with a single objective*'.⁵⁷³

- (538) As mentioned in Section 6.2.2.2, the anticompetitive conduct of Rabobank and Deutsche Bank concerns the bilateral exchange of commercially sensitive information and the coordination of pricing and trading strategies in relation to specific counterparties and to the market more generally. The communications between the relevant traders were often interlinked and presented many cross references in relation to a certain trade or bond or to certain clients, thereby contributing to the finding that the anticompetitive trader communications had the same objective. Under those circumstances, a distinction between the characters of the communications as explained by Rabobank may provide some context for the anticompetitive conduct (for example, coordination in the context of trading with counterparties, including arbitrageurs), but this does not change the fact that all those anticompetitive trader communications had the common objective of maximising

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[...]

Rabobank's and Deutsche Bank's profits, while reducing uncertainties and mitigating risks inherent to bond trading.

- (539) Second, Rabobank argues that, even if the communications identified by the Commission as problematic constituted evidence of misconduct, they would not be sufficient to demonstrate an overall plan to restrict competition because *'the Commission has sought to rely on 136 isolated communications from a period of over 10 years (i.e., around 13 communications per year, or a frequency of just over one per month)'*,⁵⁷⁴ with the longest gap between two successive communications being almost 5 months (between 18 February 2015 and 8 July 2015).⁵⁷⁵
- (540) It is settled case-law that there is no threshold for the frequency of the unlawful contacts to establish a single and continuous infringement. Instead, the Court and the General Court have ruled that the frequency of the unlawful contacts has to be assessed in the context of the functioning of the cartel⁵⁷⁶ and that *'the fact that a cartel reveals itself at different periods, which may be separated by longer or shorter periods, has no effect on the existence of the agreement, provided that the various actions pursue a single aim and come within the framework of a single and continuous infringement'*.⁵⁷⁷ Indeed, it is settled case-law that *'in the context of an overall agreement extending over several years, a gap of several months between the manifestations of the agreement is immaterial. The fact that the various actions form part of an 'overall plan' owing to their identical object, on the other hand, is decisive'*.⁵⁷⁸
- (541) As a result, the frequency of the anticompetitive trader communications in this case and the fact that there was a five month gap between two successive unlawful communications cannot change the finding that the same two main traders⁵⁷⁹ (and a very limited number of other traders from the same two banks),⁵⁸⁰ who for more than 10 years engaged in the same conduct with regard to the relevant bonds traded at their desks, followed a common plan pursuing a single anticompetitive objective, as further detailed in recitals (515) to (529) of this Decision.
- (542) Third, Rabobank argues that the conduct cannot amount to a single and continuous infringement in view of the regularity with which the relevant bonds were repriced. Since the relevant bonds were re-priced almost continuously on an automatic basis, and at least once per week manually, the communications in relation to these bonds

⁵⁷⁴ [...]

⁵⁷⁵ [...]

⁵⁷⁶ Judgment of the General Court of 16 June 2015, *FSL and Others v Commission*, T-655/11, EU:T:2015:383, paragraph 483; Judgment of 10 November 2017, *Icap and Other v Commission*, T-180/15, EU:T:2017:795; paragraph 220.

⁵⁷⁷ Judgment of the Court of 16 June 2022, *Sony Corporation and Sony Electronics v Commission*, C-697/19 P, EU:C:2022:478, paragraph 123. In the same judgment, twelve communications out of a period of two years with the biggest interruption between two communications being of eight months were considered enough to constitute a single and continuous infringement (paragraphs 34, 117, 119, 122, 124). This is in average of one communication every two months. By comparison, the present case presents an average of 13 communications per year, with the longest gap between two communications being of five months.

⁵⁷⁸ Judgment of the Court of 7 January 2004, *Aalborg Portland and Others v Commission*, C-204/00 P, EU:C:2004:6, paragraph 260.

⁵⁷⁹ It is established case-law that whether the natural persons involved on behalf of the undertakings are identical is a factor that may be taken into consideration for the purpose of establishing the existence of a single infringement: see, in that regard, Judgment of the General Court of 17 May 2013, *Trelleborg Industrie SAS and Trellebor AB v Commission*, T-147/09 and T-148/09, EU:T:2013:259, paragraph 60.

⁵⁸⁰ See recital (110).

would also have had to have taken place with equal frequency in order for the effect of those communications to be continuing (and thus to amount to a single and continuous infringement).⁵⁸¹ According to Rabobank, the regularity of the re-pricing of the relevant bonds (at least once per week) stands in stark contrast to the average frequency of the trader communications (just over one per month).⁵⁸²

- (543) In the first place, in contrast to the case-law mentioned by Rabobank to support its argument, namely the *Icap*, *Bananas* and *Car Battery* cases⁵⁸³ and as already evidenced in this Decision, this case concerns one complex multifaceted infringement with interlinked and overlapping elements amounting not only to anticompetitive practices of price fixing, but also concerns the exchange of commercially sensitive information, market sharing and customer allocation.⁵⁸⁴ As a result, the fact that the relevant bonds may have been re-priced at least once per week does not imply that the communications must have taken place with a similar frequency or ‘*at relatively close intervals*’⁵⁸⁵ in order to enable the Commission to find that the complex multifaceted infringement constitutes a single and continuous infringement.
- (544) In the second place, the impact of the anticompetitive conduct in this case is not limited in time and does not require constant manifestation in daily transactions for the effects of the information exchange to be continuing. In the context of market-making, liquidity sourcing to off-load risk results in a further trade that is consequential upon the initial transaction and is inevitably affected by its terms. The adjustment of prices by the relevant traders had potential ongoing effects on any transactions which might have been made, whether for hedging or other purposes.
- (545) In the third place, the existence of occasional time gaps between the trader communications do not reveal any change in the fundamental characteristics of the cartel, nor any interruptions in the infringement, as the nature, objectives, mechanisms, and awareness remained consistent throughout the infringement period.
- (546) In the fourth place, Rabobank has not addressed how the pricing cycles justify the anticompetitive conduct of the relevant traders exchanging information capable of influencing the price offered to clients requesting a quote. The fact that bonds are automatically repriced on a weekly basis does not negate the influence of the information exchange on the quoted prices to clients. The quoted price to a client does not need to have continuous effects or appear on a daily or weekly basis. Instead, the quoted prices take effect when a client requests a quote from market-makers and are not based on the automatic repricing of relevant bonds on a continuous weekly basis.
- (547) In the fifth place, it is important to note that this case and the cases cited by Rabobank to support its argument differ significantly in terms of the nature of the products, facts and conduct concerned.

⁵⁸¹ [...]

⁵⁸² [...]

⁵⁸³ [...] Judgment of the General Court of 10 November 2017, *Icap plc and Others v Commission*, T-180/15, EU:T:2017:795; Judgment of the General Court of 16 June 2015, *FSL and Others v Commission*, T-655/11, EU:T:2015:383; Judgment of the General Court of 7 September 2019, *Campine and Campine Recycling v Commission*, T-240/17, EU:T:2019:778.

⁵⁸⁴ See recitals (441), (444) and (446).

⁵⁸⁵ Judgment of the General Court of 7 September 2019, *Campine NV and Campine Recycling NV v Commission*, T-240/17, EU:T:2019:778, paragraph 278.

- (548) In the *Icap* case,⁵⁸⁶ the conduct involved the manipulation of JPY LIBOR rates, which are daily rates set for different tenors based on submissions from banks which were JPY LIBOR members.⁵⁸⁷ ICAP facilitated this anticompetitive conduct by different banks involved in manipulation of the rates. The General Court held that the manipulation had to occur, if not on a daily basis, at least sufficiently limited in time for its effects to be continuous.⁵⁸⁸ Since ICAP acted as a facilitator, not as a direct participant, it was not involved in the majority of the communications between the banks. In this case, the relevant traders neither acted as facilitators nor coordinated their submissions to manipulate a financial benchmark such as JPY LIBOR.
- (549) Moreover, the indicative prices shown by traders on the screens do not function as a financial benchmark like the JPY LIBOR. Financial benchmarks like JPY LIBOR represent average interest rates derived from interbank lending activities and are used as a basis for pricing a range of financial instruments, such as loans, bonds or derivatives. On the other hand, the prices shown on the AllQ Bloomberg screen reflect the bank's indicative average price for specific financial instruments and not an average price of all the participating banks.
- (550) In the *Bananas* case,⁵⁸⁹ the colluding undertakings communicated to each other the prices they intended to quote to banana purchasers in the EU. The undertakings concerned set their quotation prices for their brand each week, in practice each Thursday morning. The final prices were the result either of negotiations taking place on a weekly basis or of the implementation of supply contracts with pre-established pricing formula mentioning a fixed price or linking the price to the Aldi benchmark price.⁵⁹⁰ Rabobank submits that in light of paragraph 497 of the Judgment of the General Court in that case, the 'pricing cycles' of the relevant products are determinative for the assumptions of continuity the Commission is reasonably allowed to make.⁵⁹¹ According to Rabobank, this is because the General Court held that the absence of evidence of contacts between two undertakings for approximately 20 negotiation cycles must be regarded as an interruption of the infringement, all the more so since price negotiations in the banana business occur every week.
- (551) To begin with, the collusion in the *Bananas* case concerned the quoted prices which were set on Thursday each week, not the actual price agreed subsequently by negotiation with the customers.⁵⁹² Those quoted prices had to be set by a specific date, namely Thursday morning. In contrast, on AllQ, the traders (i) do not have an obligation to set a reference price by a specific deadline, and (ii) are free to modify or retain those indicative prices as they see fit without being bound by a specific deadline.

⁵⁸⁶ Judgment of the General Court of 10 November 2017, *Icap plc and Others v Commission*, T-180/15, EU:T:2017:795.

⁵⁸⁷ Commission Decision of 4 December 2013 in Case AT.39861 -Yen Interest Rate Derivatives, C(2013) 8602, recital (7).

⁵⁸⁸ Judgment of the General Court of 10 November 2017, *Icap plc and Others v Commission*, T-180/15, EU:T:2017:795, paragraphs 222 and 224.

⁵⁸⁹ Judgment of the General Court of 16 June 2015, *FSL and Others v Commission*, T-655/11, EU:T:2015:383.

⁵⁹⁰ Commission Decision of 12 October 2011 in Case AT.39482 – Exotic Fruit (Bananas) C(2011) 7273 final, recitals (40)-(41).

⁵⁹¹ [...]

⁵⁹² Judgment of the General Court of 16 June 2015, *FSL and Others v Commission*, T-655/11, EU:T:2015:383, paras 328 and 456.

- (552) Moreover, in the OTC financial market, quoted prices are determined through a mechanism where market participants display two-way prices (bid and ask prices) which reflect their individual perceived value of the bonds (how much the traders are willing to pay to buy the bonds and for how much they are willing to sell the bonds). Rabobank fails to explain, why, for instance, the Aldi benchmark price or the use of supply contracts with predetermined pricing formulas would function in the same way as either the indicative prices on the AllQ platform or the prices quoted to clients for specific bonds and for specific volumes in the context of an RFQ.
- (553) In addition, paragraph 497 of the Judgment of the General Court in the *Bananas* case⁵⁹³ refers to an interruption of the infringement based on a lack of evidence to show contacts between the relevant undertakings for five months out of a total infringement duration of eight months. In this case, the relevant traders continued the same pattern of anticompetitive discussions, used the same mechanism and covered the same products for almost ten years, thereby subscribing to the overall plan for the entire duration of the infringement.
- (554) In the *Car Battery* case,⁵⁹⁴ the price-setting mechanisms relevant in that case also differ significantly from how the prices are determined in the OTC financial market. In particular, scrap battery prices generally follow the London Metal Exchange (LME) prices and may be expressed as a percentage of the LME prices. Accordingly, the frequency and intensity of the contacts were driven by the fluctuations in the LME lead prices.⁵⁹⁵ Thus, due to the specific characteristics of lead-acid batteries as a commodity, the price setting for those batteries is not directly comparable to the setting of prices quoted in OTC financial markets.
- (555) Fourth, Rabobank argues that the evidence available to the Commission to pursue this case was not ‘fragmented and sparse’ since the Commission had access to *all* written communications passing between the relevant traders throughout the infringement period and only identified, at the stage of the SO, 136 communications of concern.⁵⁹⁶ Therefore, according to Rabobank, there was no basis for the Commission to “‘reconstitute certain details by deduction”, or to infer an infringement of the competition rules “from a number of coincidences and indicia”’,⁵⁹⁷ as allowed by the case-law in case of fragmented and sparse evidence.
- (556) In the first place, it is true that the Commission indeed requested Rabobank to provide all documentation in relation to any electronic communications relating to the relevant bonds between the relevant traders in the period from 2005 up to the year of the sending of the RFI (that is, 2019). While Rabobank submitted a substantial amount of correspondence in two subsequent submissions,⁵⁹⁸ it also explained that it was ‘not intending to restore back-up tapes for the potential marginal set of e-mails which are not available in more accessible data storage

⁵⁹³ Judgment of the General Court of 16 June 2015, *FSL and Others v Commission*, T-655/11, EU:T:2015:383, para. 497.

⁵⁹⁴ Judgment of the General Court of 7 September 2019, *Campine and Campine Recycling v Commission*, T-240/17, EU:T:2019:778.

⁵⁹⁵ Commission Decision of 8 February 2017 in Case AT.40018 – Car battery recycling, C(2017) 900 final, recitals (24) and (54).

⁵⁹⁶ [...]

⁵⁹⁷ [...]

⁵⁹⁸ [...]. On 7 June 2019, Rabobank submitted a first tranche of responsive communications consisting of 203 Bloomberg communications. The first tranche was complemented by a second one on 28 June 2019, consisting of 878 communications.

systems'.⁵⁹⁹ The Commission is therefore not in a position to confirm that it indeed had access to *all* the communications relating to the relevant bonds and passing between the relevant traders in the infringement period.

- (557) In the second place, it must be noted that, even if the Commission had access to *all* the written trader communications, that does not mean that it had access to *all the evidence*. Indeed, further evidence may have occurred from other means of communication between the relevant traders, such as through personal phones, face to face meetings or other oral communications. However, considering that there were 136 communications indicative of anticompetitive conduct at the stage of the SO, and that the majority of them were corroborated [...],⁶⁰⁰ it would have been disproportionate for the Commission to ask for, and practically unfeasible for Rabobank and Deutsche Bank to provide, all the communications between the relevant traders that may have occurred through other means.
- (558) Finally, Rabobank contends that the fact that the Commission only identified 136 problematic communications at the stage of the SO while *'there were at least around [...] instances of competitive interactions between the parties [the estimated volume of RFQs, according to Rabobank, involving the parties competing against one another during the infringement period] which were untouched by any anticompetitive conduct'*⁶⁰¹ is *'conclusive evidence'* that there was no element of continuity and therefore no anticompetitive conduct.⁶⁰² If any, according to Rabobank, these anticompetitive communications were occasional and *ad hoc* incidents (allegedly 6.31% of the total communications held between the parties during the relevant period) rather than evidence of an overarching plan to restrict competition.⁶⁰³ In the oral hearing, Rabobank concluded that *'the 136 Trader Communications [...] are de minimis in this context'*.⁶⁰⁴
- (559) In the first place, the fact that, besides the anticompetitive trader communications, there are also communications between the relevant traders which are non-problematic in competition law terms cannot relieve the banks from their involvement in the cartel. Indeed, the existence of legitimate communications between the relevant traders cannot detract from the anticompetitive nature of the communications listed in Section 5.2 of this Decision, nor from the continuity of those communications, bearing in mind that the same two main traders (and a very limited number of other traders from the same two banks)⁶⁰⁵ engaged in those anticompetitive discussions about the bonds traded at their desks in pursuit of the same overall plan, on average on a monthly basis and over the course of more than ten years.
- (560) In the second place, Rabobank's quantitative argument according to which the Commission found only 136 communications of concern at the stage of the SO while there were at least [...] instances of competitive interactions between the relevant traders is both misleading and irrelevant. First, it is misleading: those two figures (that is, pertaining to the anticompetitive trader communications on the one hand, and to the total number of competitive interactions between the parties on the other

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⁶⁰⁵ See recital (110).

hand) relate to behaviours which are of a different nature (anticompetitive and competitive) and do not change their nature if one tries to compare them. Second, it is irrelevant: by drawing this comparison, Rabobank is seeking to minimise the gravity of the infringement, whereas there is no *de minimis* threshold that applies in the context of by object restrictions to competition, nor is there, as already mentioned,⁶⁰⁶ an absolute requirement of a minimum amount of anticompetitive communications or of a minimum frequency.

6.2.4. *Effect upon trade between Member States and between the Contracting Parties to the EEA Agreement*

- (561) Article 101(1) of the Treaty is aimed at agreements and concerted practices that might harm the attainment of a single market between Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements and concerted practices that undermine the achievement of a homogeneous EEA.
- (562) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the participants' sales that actually involves the transfer of goods from one state to another. Nor is it necessary, in order for those provisions to apply, to show that the individual conduct of each participant, as opposed to the infringement as a whole, affected trade between Member States⁶⁰⁷ and between the Contracting Parties to the EEA Agreement.
- (563) The Courts of the European Union 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 TFEU 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'.⁶⁰⁸
- (564) The Euro-denominated SSA and Government Guaranteed bond markets are characterised by a significant volume of trade between Member States and between the Contracting Parties to the EEA Agreement. The parties involved in this case are both international financial institutions that regularly traded, during the period of the infringement, substantial amounts of Euro-denominated SSA and Government Guaranteed bonds through their offices in Frankfurt am Main and London,⁶⁰⁹ major

⁶⁰⁶ See recital (540).

⁶⁰⁷ Judgment of the General Court of 10 March 1992, *Imperial Chemical Industries plc v. Commission*, T-13/89, EU:T:1992:35, paragraph 304.

⁶⁰⁸ Judgment of the Court of 30 June 1966, *Société Technique Minière v Maschinenbau Ulm GmbH*, C-56/65, EU:C:1966:38, paragraph 7; Judgment of the Court of 11 July 1985, *Remia BV a.o. v Commission*, 42/84, EU:C:1985:327, paragraph 22; Judgment of the General Court of 15 March 2000, *Cimenteries CBR a.o. v Commission*, Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, EU:T:2000:77; Judgment of the Court of 28 April 1998, *Javico International and Javico AG v Yves Saint Laurent Parfums SA (YSLP)*, C-306/96, EU:C:1998:173, paragraph 16.

⁶⁰⁹ As noted, both Deutsche Bank and Rabobank are legal entities based within the EU, whilst the London branch (also known as 'Rabobank London') that employed the relevant traders does not have separate

financial centres within the Union and the EEA at the time. In addition, irrespective of the location of their trading desks, the relevant traders carried out transactions across the EEA throughout the day.

(565) The two parties traded Euro-denominated SSA and Government Guaranteed bonds issued by numerous authorities and institutions within the Union and the EEA (see recitals (7) to (13) and (20) to (22)). Many of the parties' customers⁶¹⁰ and competitors were also based within the Union and the EEA. There was furthermore a significant volume of trade in those financial products between Member States and between the Contracting Parties to the EEA Agreement.

(566) As noted in Section 2.3.4, the market value of the relevant products within the EEA is very significant, with the value of outstanding Euro-denominated SSA and Government Guaranteed bonds within the EEA in the trillion or billion euro range (the value of SSA bonds as of May 2020 was at an estimated EUR 9.1 trillion,⁶¹¹ and Government Guaranteed bonds in the same period at approximately EUR 37.5 billion).⁶¹² As such, given the amounts traded at any one time⁶¹³ even a very minor manipulation of prices could therefore amount to appreciable sums.⁶¹⁴

(567) The infringement was therefore capable of having an appreciable effect on trade between Member States and between the Contracting Parties to the EEA Agreement.

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

(568) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement, respectively, 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. Pursuant to Article 2 of Regulation (EC) No 1/2003, the undertaking bears the burden of proving that those conditions are fulfilled.

(569) There is no indication that the behaviour by the undertakings that participated in the infringement entailed any efficiency benefits or otherwise promoted technical or economic progress. Complex infringements such as that which is the subject of this Decision are, by definition, amongst the most detrimental restrictions of competition. In any event, the parties have not invoked the application of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement as a defence against the finding of an infringement in this case.

(570) It is thus considered that the conditions of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are not fulfilled in this case.

legal personality, but is integrated within the legal structure of Rabobank, which is a Dutch legal structure registered in the Netherlands. In any case, throughout the infringement period, the UK was still an EU Member State.

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⁶¹³ See for example, recitals (135), (139), (167), (178), (187), (202), (206), (217), (222), (224), (228), (259), (261), (304), (321) and (350).

⁶¹⁴ [...], where Deutsche Bank has provided representative figures taken from the main electronic trading systems for the trading of Euro-denominated bonds for the period 2019 to 2021 on an annualised basis.

7. ADDRESSEES OF THIS DECISION

7.1. Principles

- (571) Union competition law refers to activities of ‘undertakings’. The concept of ‘undertaking’ is not identical to the notion of corporate legal personality in national commercial or fiscal law. An undertaking is an economic concept that covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. An undertaking therefore can consist of various legal entities.⁶¹⁵
- (572) Furthermore, for the purposes of a finding of infringement of Union competition law ‘any anticompetitive conduct on the part of an employee is [thus] attributable to the undertaking to which he belongs and that undertaking is, as a matter of principle, held liable for that conduct’.⁶¹⁶
- (573) It thus falls, according to the principle of personal responsibility, to the undertaking to answer for an infringement of Article 101 of the Treaty, but the infringement must be imputed to one or several legal entities within that undertaking upon whom fines may be imposed.⁶¹⁷
- (574) According to the settled case-law, parent companies and their subsidiaries form a single economic unit and therefore a single undertaking for the purposes of Union competition law. The conduct of subsidiaries may be imputed to their parent company in particular where that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities. In such a situation, a Statement of Objections and a decision imposing fines can be addressed to the subsidiary and its parent company, without it being necessary to establish the personal involvement of the parent company in the infringement. Where the subsidiary that has infringed Article 101 of the Treaty is directly or indirectly wholly owned by its parent company, there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary. In those circumstances, it is sufficient for the Commission to prove that the subsidiary is 100% or near 100% owned by the parent company in order to presume that the parent company exercises a decisive influence over the commercial policy of the subsidiary. The parent company can be held jointly and severally liable for the payment of the fine imposed on its subsidiary unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acted independently on the market.⁶¹⁸

⁶¹⁵ Judgment of the Court of 10 September 2009, *Akzo Nobel NV a.o. v Commission*, C-97/08 P, EU:C:2009:536, paragraphs 54-55 and the case-law referred to in those paragraphs.

⁶¹⁶ Judgment of the Court of 21 July 2016, *VM Remonts v Konkurences Padome*, C-542/14, EU:C:2016:578, paragraph 24. See also Judgment of the General Court of 15 July 2005, *Voestalpine v Commission*, T-418/10, EU:T:2015:516, paragraph 394; Judgment of the General Court of 14 March 2013, *Dole Food Company v Commission*, T-588/08, EU:T:2013:130, paragraph 581 and the case-law cited.

⁶¹⁷ Judgment of the Court of 10 September 2009, *Akzo Nobel NV a.o. v Commission*, C-97/08 P, EU:C:2009:536, paragraphs 56-57 and the case-law referred to in those paragraphs.

⁶¹⁸ Judgment of the Court of 10 September 2009, *Akzo Nobel NV a.o. v Commission*, C-97/08 P, EU:C:2009:536, paragraph 58-61 and the case-law referred to in that paragraph. See also Judgment of the Court of First Instance of 30 September 2009, *Elf Aquitaine SA v Commission*, T-174/05, EU:T:2009:368, paragraphs 125 and 155-156 and the case-law referred to in those paragraphs, and

- (575) When an undertaking that has committed an infringement of Article 101 of the Treaty subsequently disposes of the assets which contributed to the infringement and withdraws from the market in question, it continues to be answerable for the infringement if it has not ceased to exist in law,⁶¹⁹ or economically.⁶²⁰ If the undertaking which has acquired the assets carries on the violation of Article 101 of the Treaty, liability for the infringement should be apportioned between the seller and the acquirer of the infringing assets, each undertaking being responsible for the period of the infringement in which it participated through those assets in the cartel. However, if the legal person initially answerable for the infringement ceases to exist and loses its legal personality, being purely and simply absorbed by another legal entity, that latter entity must be held answerable for the whole period of the infringement and thus liable for the activity of the entity that was absorbed.⁶²¹ The mere disappearance of the person responsible for the operation of the undertaking when the infringement was committed does not allow it to evade liability.⁶²² Liability for a fine may thus pass to a successor where the corporate entity which committed the violation has ceased to exist in law.

7.2. Application in this case

- (576) On the basis of the events described in Section 5.2 of this Decision, it has been established that, through their respective relevant traders (see recitals (82) and (87)), the parties participated in the activities of the cartel. None of the relevant traders distanced themselves from the communications in the emails or chats that they could follow and to which they contributed. Consequently, the Commission holds the following undertakings and legal entities liable for their role in the infringement.

7.2.1. Deutsche Bank

- (577) The relevant traders at Deutsche Bank (see recitals (82) and (83)) participated in the collusive conduct described in this Decision. At the time of their participation in the infringement they were employed by Deutsche Bank AG. The Commission therefore holds Deutsche Bank AG liable for its direct participation in the infringement of Article 101 of the Treaty and Article 53 of the Agreement of the EEA Agreement.

7.2.2. Rabobank

- (578) The Commission considers that the relevant traders at Rabobank (see recital (87)) participated in the collusive conduct described in this Decision.
- (579) The London branch, in which the relevant traders identified in recital (87) worked, was throughout the infringement period an integral part of and within the same legal

Judgment of the Court of First Instance of 30 September 2009, *Arkema SA v Commission*, T-168/05, EU:T:2009:367, paragraphs 69-70 and the case-law referred to therein, as well as paragraph 100.

⁶¹⁹ Judgment of the Court of First Instance of 30 September 2009, *Hoechst GmbH v Commission*, T-161/05, EU:T:2009:366, paragraphs 50-52; Judgment of the Court of First Instance of 17 December 1991, *Enichem Anic SpA v Commission*, T-6/89, EU:T:1991:74; and Judgment of the Court of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92 P, EU:C:1999:356, paragraphs 47-49.

⁶²⁰ Judgment of the Court of 11 December 2007, *Autorità Garante della Concorrenza e del Mercato v Ente tabacchi italiani – ETI SpA a.o. and Philip Morris Products SA a.o. v Autorità Garante della Concorrenza e del Mercato a.o.*, C-280/06, EU:C:2007:775, paragraph 40.

⁶²¹ See Judgment of the Court 16 November 2000, *Cascades SA v Commission*, C-279/98 P, EU:C:2000:626, paragraphs 78 and 79.

⁶²² Judgment of the Court of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. a.o. v Commission (PVC II)*, Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, EU:T:1999:80, paragraph 953.

structure as CCRB (renamed, as of 2016, CRUA). The relevant traders were employed by and traded on behalf of CCRB/CRUA.

- (580) The Commission therefore holds CRUA, which incorporates Rabobank London as a branch, liable for its direct participation in the infringement of Article 101 of the Treaty and Article 53 of the Agreement of the EEA Agreement.

8. DURATION OF THE INFRINGEMENT

- (581) For this Decision, the first evidence of anticompetitive conduct for which the Commission holds the parties liable occurred on 4 January 2006 (see recital (125)). The last evidence of anticompetitive conduct occurred on 24 February 2016 (see recitals (374) and (375)). Thus the overall duration of the infringement in which the parties participated was a period of over ten years.

9. REMEDIES

9.1. Article 7 of Regulation (EC) No 1/2003

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

- (583) The last evidence of an infringement in this Decision dates back to February 2016. Despite this element, it is not possible to declare with absolute certainty that the infringement has ceased. The undertakings to which this Decision is addressed should therefore be required to bring the infringement to an end (if they have not already done so) and to refrain from any future agreement or concerted practice which may have the same or a similar object or effect.

9.2. Setting of the fines

9.2.1. Principles

- (584) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings 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.

- (585) The principles used by the Commission to set fines are laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 ('Guidelines on fines').⁶²³

- (586) On the basis of its Guidelines on fines, the Commission determines a basic amount for each undertaking party to the infringement. The basic amount results from the addition of a variable amount and an additional amount. Both components of the basic amount are determined on the basis of an undertaking's value of sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area within the EEA. The Commission normally takes the sales made by an undertaking during the last full business year of their participation in the

⁶²³ OJ C 210, 1.9.2006, p. 2. According to point 37 of the Guidelines on fines the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in their point 21.

infringement.⁶²⁴ If the last year is not sufficiently representative, the Commission may choose another approach.

- (587) The Commission uses rounded figures in determining the basic amount of the fines.⁶²⁵ The basic amount can be increased or reduced if either aggravating or mitigating circumstances are found.⁶²⁶ The Commission sets the fines at a level sufficient to ensure deterrence.⁶²⁷
- (588) Finally, the Commission takes into account the legal maximum of the fine that may be imposed,⁶²⁸ the provisions of the Leniency Notice,⁶²⁹ and any claim for inability to pay.⁶³⁰

9.2.2. *Intent*

- (589) In relation to the question whether an infringement has been committed intentionally or negligently and is, therefore, liable to be punished by a fine in accordance with Article 23(2), first subparagraph, of Regulation (EC) No 1/2003, it follows from settled case-law that that condition is satisfied where the undertaking concerned cannot be unaware of the anticompetitive nature of its conduct, whether or not it is aware that it is infringing the competition rules of the Treaty. As such, the fact that the undertaking concerned has characterised wrongly in law its conduct upon which the finding of the infringement is based cannot have the effect of exempting it from imposition of a fine in so far as it could not be unaware of the anticompetitive nature of that conduct.⁶³¹
- (590) In this case, it is considered that, based on the facts described in this Decision and the assessment contained in recitals (530) to (534), the infringement has been committed intentionally.
- (591) The parties involved were aware of the commercial value and usefulness of the information disclosed which further reinforces the conclusion that the infringement was committed intentionally.
- (592) Moreover, the infringement described in this Decision consists, inter alia, of price fixing with respect to Euro-denominated SSA and Government Guaranteed bonds. With respect to this type of obvious infringement, parties cannot claim that they did not act deliberately.⁶³² In any event, even if it were found that the parties in this case did not act intentionally, for the reasons set out in this Section they would have acted at the very least negligently.

Assessment of Rabobank's arguments concerning intent or negligence

⁶²⁴ Point 13 of the Guidelines on fines.

⁶²⁵ Point 26 of the Guidelines on fines.

⁶²⁶ Points 28 and 29 of the Guidelines on fines.

⁶²⁷ Point 30 of the Guidelines on fines.

⁶²⁸ Points 32 and 33 of the Guidelines on fines.

⁶²⁹ Point 34 of the Guidelines on fines.

⁶³⁰ Point 35 of the Guidelines on fines.

⁶³¹ Judgment of the Court of 18 June 2013, *Bundeswettbewerbsbehörde and Bundeskartellanwalt v Schenker & Co. a.o.*, C-681/11, EU:C:2013:404, paragraphs 37-38.

⁶³² See, for example, Judgment of the General Court of 19 May 2010, *Wieland-Werke AG v Commission*, T-11/05, EU:T:2010:201, paragraph 140; Judgment of the Court of First Instance of 6 April 1995, *Ferriere Nord v Commission*, T-143/89, EU:T:1995:64, paragraph 42; Judgment of the Court of 7 January 2004, *Ferriere Nord v Commission*, C-219/95 P, EU:C:1997:375, paragraph 50.

- (593) Rabobank claims that the Commission has not established the legal basis for imposing a fine under Article 23(2) of Regulation (EC) No 1/2003⁶³³ since the relevant traders did not act intentionally or negligently because (i) the trader communications were *'legitimate and/or pro-competitive'*;⁶³⁴ (ii) it is irrelevant that *'part of these communications included information that went beyond what it considers to be strictly necessary to exchange in this market (which Rabobank does not accept)'*; and (iii) the small minority of the total number of communications between the relevant traders *'are clearly more likely to represent inadvertent incidents than a deliberate scheme to restrict competition'*.⁶³⁵
- (594) Rabobank's claims (i) to (iii) have already been addressed in Sections 6.2.2.3.3 and 6.2.2.3.4, as well as in recitals (402), (407), (430), (459), (472) and (558).
- (595) It is therefore considered that the parties infringed Article 101 of the Treaty and Article 53 of the EEA Agreement intentionally, or at the very least negligently, such that it is entitled to impose fines on the parties pursuant to Article 23(2) of Regulation (EC) No 1/2003.
- 9.2.3. *The value of sales*
- (596) In applying the Guidelines on fines, as mentioned in recital (586), the basic amount for each party results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement 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 sales. The resulting basic amount may then be increased or reduced for each undertaking if aggravating or mitigating circumstances are retained.
- (597) The basic amount of the fine to be imposed on the undertaking concerned is to be set by reference to the value of sales,⁶³⁶ that is, the annual value of the undertakings' sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area in the EEA. Normally, in order to determine the value of sales, the Commission takes the sales made by the undertaking during the last full business year of its participation in the infringement.⁶³⁷ There are circumstances in which another reference period might be considered to be more appropriate in view of the characteristics of the case or the available data, for example when the last year of the infringement is not representative.⁶³⁸ Moreover, according to the case-law of the Court and the General Court, the Commission is not required to apply a precise mathematical formula and has a margin of discretion when determining the amount of each fine.⁶³⁹
- (598) Financial products such as Euro-denominated SSA and Government Guaranteed bonds do not generate sales in the usual sense, as the same bonds are both bought and

⁶³³ [...]

⁶³⁴ [...]

⁶³⁵ [...]

⁶³⁶ Point 12 of the Guidelines on fines.

⁶³⁷ Point 13 of the Guidelines on fines.

⁶³⁸ Judgment of the General Court of 16 November 2011, *Plásticos Españoles (ASPLA) v Commission*, T-76/06, EU:T:2011:672, paragraphs 111-113.

⁶³⁹ Judgment of the General Court of 13 September 2010, *Trioplast Industrier AB v Commission*, T-40/06, EU:T:2010:388, paragraph 141; Judgment of the Court of 29 June 2006, *Showa Denko v Commission*, C-289/04P, EU:C:2006:431, paragraph 36.

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. It is therefore 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.

9.2.3.1. The notional amounts traded as basis for a proxy for the value of sales

- (599) It is the Commission's consistent practice in cartel cases in the financial sector not to determine the proxy for the value of sales by reference to the 'net trading income' or 'net profit from financial operations'.⁶⁴⁰ 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.⁶⁴¹ 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. In light of the nature of Euro-denominated SSA and Government Guaranteed bonds and the trading thereof, the same considerations apply in this case.
- (600) Instead, it is appropriate to use the notional amounts of the relevant bonds that the parties traded during their period of involvement in the infringement as the starting point for the specific proxy for the value of sales in this case. In line with the Commission's practice in cartel cases in the financial sector,⁶⁴² the notional amounts better reflect the economic importance of the infringement as well as the relative weight of each undertaking therein, similar to the use of turnover in other economic sectors, since the notional amounts give an indication of the share of each of the parties in the trade of the bonds concerned by the infringement and thus also give an indication of the scale of the infringement by each of the parties.
- (601) For the purposes of the calculation of fines in this Decision, the Commission therefore takes as a reference the notional amounts of the relevant bonds traded by each party's relevant desk in transactions entered into with counterparties located in the EEA during the party's period of involvement in the infringement.⁶⁴³

⁶⁴⁰ 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).

⁶⁴¹ Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, EU:T:2019:675, paragraph 322.

⁶⁴² See footnote 682, and in particular recital (892) of Commission Decision C(2021) 2871 of 28 April 2021 in Case AT.40346 – SSA Bonds and recital (815) of Commission Decision C(2021) 3489 final of 20 May 2021 in case AT.40324 – European Government Bonds.

⁶⁴³ As the geographic scope of the case is EEA-wide, the proxy for the value of sales is based on the notional amounts traded against EEA-located counterparties. The Commission defines an EEA counterparty as any counterparty (legal entity) located in the EEA. This definition includes all

- (602) Point 13 of the Guidelines on fines notes that the Commission will ‘normally’ take the sales made by the undertaking during the last full business year of its participation. 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, the Commission considers it more 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 are then annualised, as described further in recital (609).
- (603) The total notional amounts traded as well as the total number of transactions of the relevant bonds for each party’s relevant desk during the infringement period are summarised in Table 1:

*Table 1: Total of transactions and notional amounts traded*⁶⁴⁴

Under-taking	Total number of transactions	Bandwidth of total number of transactions	Total notional amounts traded over the infringement period (in EUR)	Bandwidth of the total notional amounts traded (in EUR)
Deutsche Bank	CONFIDENTIAL (see Annex)	[...] - [...]	CONFIDENTIAL (see Annex)	[...] - [...]
Rabobank	CONFIDENTIAL (see Annex)	[...] - [...]	CONFIDENTIAL (see Annex)	[...] - [...]

9.2.3.2. Adjusting the notional amounts traded to account for market particularities and the principle of proportionality

- (604) The notional amounts traded by each party’s relevant desk reflect the economic importance of the infringement and the relative weight of each undertaking in the infringement but they may lead to disproportionate fines if the particularities of the financial industry, and of the bonds market in particular, are not taken into account.
- (605) Transactions in the relevant bonds involve the purchase or the sale of the notional amount of the bonds at a given price, expressed in terms of a percentage.⁶⁴⁵ The revenues made by the dealers on those transactions are therefore proportional to the notional amounts exchanged. More specifically, the revenues on those transactions are reflected in the difference between the purchase price (the bid price) and the sale price (the ask price) of each bond acquired and then sold by the traders. This price difference is also known as the bid-ask spread.

subsidiaries located in the EEA of any parent companies, irrespective of whether their parent companies are located inside or outside the EEA. See also the RFI sent by the Commission on 21 October 2021, which defined an EEA counterparty under point VI of Section I concerning Definitions/Instructions. As already mentioned in footnote 3, any references made to the EEA in this Decision also include the UK.

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[...] and [...]. For Deutsche Bank, [...].
See recital (35).

- (606) Both factors – the notional amounts exchanged and the applied bid-ask spreads – are therefore the most adequate factors to calculate the proxy for the value of sales for the purposes of setting the fines in this Decision. More precisely, the notional amount of each relevant bond traded is adjusted by an adjustment factor that should reflect the revenues generated from the trading activity of each party’s relevant desk. Hence, this adjustment factor should reflect the bid-ask spread, that is the difference between the purchase price and the sales price of each relevant bond acquired and then sold by each party’s relevant desk.
- (607) In line with the Commission’s previous decisional practice,⁶⁴⁶ the adjustment factor of each relevant bond traded should reflect the revenues generated from that trade, which would conceptually correspond to 50% of the bid-ask spread of the relevant bond traded. This is because, when a bond trader finds two counterparties that are willing to take the opposite sides of the same transaction, specifying the same notional amount of the same bond, the trader can execute the transactions by 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 bond trader amount to the full bid-ask spread when considering the two transactions together.⁶⁴⁷ It follows that, when one considers each of the two transactions individually, the revenues from market making activities amount to the notional amount multiplied by half the bid-ask spread.
- (608) In order to determine an adjustment factor that reflects the bid-ask spread of the traded bond at the time of the transaction, the Commission intends to rely on price data from the data vendor Bloomberg,⁶⁴⁸ which provides, for each individual bond for each day, an end-of-day ask price and an end-of-day bid price. The Commission considers the price data from Bloomberg to be a good – and the best available – proxy for the spreads of the traded bonds, as the relevant trades took place on the Bloomberg platform. The difference between these two prices provides, for each bond, a daily end-of-day bond-specific bid-ask spread. This spread multiplied by the notional amount traded by the party’s relevant desk would adequately reflect the economic importance of the infringement and the relative weight of each undertaking in the infringement while not representing the individual trading profit (or loss) from financial operations of the undertaking, which is excluded for the reasons set out in recital (599). Moreover, the price data from Bloomberg represent a third-party database which applies neutrally to both parties in the case, so that the individual party’s specific weight in the infringement is only reflected in the notional amounts

⁶⁴⁶ See for example Commission Decision of 28 April 2021 in Case AT.40346 – SSA Bonds, C(2021) 2871, recital (899), and Commission Decision of 20 May 2021 in Case AT.40324 – European Government Bonds, C(2021) 3489 final, recital (824).

⁶⁴⁷ For example, if a bond trader simultaneously buys a nominal amount of EUR 1 000 000 from a counterparty at a bid price of 102.50% and sells the same amount to another counterparty at an ask price of 102.80%, that trader will pay EUR 1 025 000 for the first trade and receive EUR 1 028 000 for the second one. Hence, the trader’s revenue will be (EUR 1 028 000 – EUR 1 025 000) = EUR 3 000 for both transactions taken together, and the bid-ask spread is 0.30% (102.80%-102.50%). The total notional amounts traded in both transactions equal 2 x EUR 1 000 000 = EUR 2 000 000. The ratio between the trader’s revenues and the notional amounts traded is equal to (EUR 3 000 / EUR 2 000 000) = 0.15%. This ratio corresponds to 50% of the bid-ask spread: 0.15% = (50%) x (102.80% - 102.50%) = (50% x 0.30%).

⁶⁴⁸ Reference is made to the Bloomberg Generic Price (‘BGN’), which is a real-time composite price for corporate and Government bonds, based on executable and indicative quotes from multiple dealers. It is defined as a ‘*market consensus price (...) calculated by using prices contributed to Bloomberg*’. See: <https://www.bloomberg.com/professional/product/market-data/>, last accessed on 21.09.2023.

traded by the party's relevant desk. Conversely, the adjustment factor is defined for both parties on the basis of the same neutral third-party database of price data corresponding to the traded bonds at the time (on the day) of the transaction.

(609) Accordingly, the Commission determines the relevant value of sales by reference to a proxy resulting from multiplying the notional amounts by the bid-ask spreads, in the following way:

- (a) firstly, the notional amount of each trade executed by each party's relevant desk in the relevant bonds with EEA counterparties during the infringement period is taken into account.⁶⁴⁹ The notional amounts of each transaction were provided by the parties in their [...].⁶⁵⁰ In the case of transactions for which the parties have not provided the notional amount, the value of the notional amount was set to zero and the trade was not taken into account in the calculation of the proxy of the value of sales;⁶⁵¹
- (b) secondly, the notional amount of each individual transaction is adjusted by an adjustment factor equal to 50% of the bid-ask spread of the relevant bond traded.⁶⁵² The bid-ask spread is defined as the difference between the end-of-day Bloomberg Generic Price (BGN) ask price and the end-of-day Bloomberg BGN bid price. The end-of-day Bloomberg BGN bid-ask price data corresponding to each transaction were provided by the parties in their [...].⁶⁵³ In the case of trades for which a party has not provided the corresponding end-of-day Bloomberg BGN bid-ask prices, in order to determine the bid-ask spread for those transactions, the average⁶⁵⁴ of the bid-ask spreads of all the trades over the infringement period for which the relevant party provided the Bloomberg BGN bid-ask prices is applied;
- (c) thirdly, the total amount of all the adjusted notional amounts is calculated to compute the proxy for the value of sales over the entire infringement period. That total amount is then annualised by dividing it by the number of years of the infringement period.⁶⁵⁵

⁶⁴⁹ For Deutsche Bank, the notional amount of the trades executed by the EUR SSA desk in Frankfurt am Main and for Rabobank, those executed by the IGB desk in London. Only the transactions executed during the full calendar months of participation in the infringement are taken into account. In this case, as the infringement started on 4 January 2006 and ended on 24 February 2016, only the transactions from 1 February 2006 to 31 January 2016 are taken into account.

⁶⁵⁰ Deutsche Bank provided the notional amount of the relevant trades executed by the EUR SSA desk in [...]. Rabobank provided the notional amount of the relevant trades executed by the IGB desk in [...]. The Commission refers to the parties' submissions [...].

⁶⁵¹ The number of trades for which the parties have not provided the notional amount is marginal.

⁶⁵² As an illustration, assuming that: a party's trader entered into a transaction (purchase or sale) in an EIB bond for a notional amount of EUR 1 000 000 on 10 October 2008; the end-of-day Bloomberg BGN bid price of this bond is 101.50% and the end-of-day Bloomberg BGN ask price of this bond is 101.80%; then the contribution of this transaction to the total proxy of the value of sales would be: EUR 1 000 000 x [50% x (101.80% - 101.50%)], which is equal to EUR 1 000 000 x 0.15% = EUR 1 500.

⁶⁵³ Deutsche Bank provided the relevant Bloomberg BGN bid-ask price data in [...]. Rabobank provided the relevant Bloomberg BGN bid-ask price data in [...]. The Commission refers to the parties' submissions [...].

⁶⁵⁴ This average is rounded down to the third digit in percentage terms.

⁶⁵⁵ To get annualised figures, only full calendar months of participation in the infringement are taken into account in the proxy. In this case, only the relevant transactions from the month of February 2006 to the month of January 2016 are taken into account (120 months), and subsequently annualized by multiplying the result by 12/120.

- (610) Although additional percentage points or fractions thereof could in principle be added to the adjustment factor to account for other revenues related to the relevant trades,⁶⁵⁶ those elements are not included in the estimation of the value of sales.

9.2.3.3. Final figures used as a proxy for the value of sales

- (611) The precise figure of the proxy of the annual value of sales established by the Commission is provided in the individual confidential Annex to this Decision.

Table 2: Proxy for the annual value of sales

Undertaking	Proxy for the annual value of sales (in EUR)
Deutsche Bank	[...] (bandwidth)
Rabobank	[...] (bandwidth)

9.2.3.4. Assessment of Rabobank's arguments concerning the methodology to calculate Rabobank's proxy for the value of sales

- (612) In the [...], and at the oral hearing, Rabobank argued that '[t]he methodology in the SO contains biases that significantly overstate the revenue traders could have reasonably generated in this market'.⁶⁵⁷ More specifically, Rabobank claims that the Commission's figure of the proxy for Rabobank's value of sales 'significantly overstates the revenue that Rabobank could have generated, due to a number of fundamental errors in the Commission's methodology'.⁶⁵⁸
- (613) Rabobank asserts that, firstly, 'Bloomberg BGN data reflects estimated prices and overstates the actual bid-ask spreads generated in this market', secondly, 'Rabobank did not generate 50% of the spread on each executed trade', thirdly, '[t]rades between Rabobank and Deutsche Bank are fined twice', and finally 'Rabobank's actual trading data is a more precise and appropriate basis to establish its Value of Sales'.⁶⁵⁹ Therefore, Rabobank presented an alternative methodology developed by its economic advisor Compass Lexecon to 'determine the Value of Sales of the relevant parties, which is able to mitigate the shortcomings' of the Commission's methodology.⁶⁶⁰
- (614) The Commission rejects those claims and considers that its proposed methodology is consistent with the principles laid down in the Guidelines on fines, aiming at reflecting the economic importance of the infringement as well as the relative weight of each undertaking therein by using the notional amounts of the relevant bonds traded by the parties' relevant desks during the infringement period. As for the adjustment factor, the Commission considers that Bloomberg BGN price data⁶⁶¹ are the most appropriate data source for calculating the applicable bid-ask spreads and

⁶⁵⁶ Dealers also earn interest revenues generated by the coupon simply by holding bonds in their books. These revenues could in principle be added to the proxy of the value of sales.

⁶⁵⁷ [...]

⁶⁵⁸ [...]

⁶⁵⁹ [...]

⁶⁶⁰ [...]

⁶⁶¹ See recital (608).

maintaining an equal treatment between the parties when applying the adjustment factor.

- (615) The use of the end-of-day Bloomberg BGN price data allows for a transparent and easily verifiable calculation of an adjustment factor that reflects correctly the bid-ask spread of the traded bond at the time of the transaction and that can be consistently applied to all parties. More specifically, the Commission considers that the level of detail inherent to each element (notional amount of relevant bonds traded by the party's relevant desk multiplied by half of the bid-ask spread on the day of the transaction) is appropriate for the calculation of the proxy for the value of sale in the case at hand.
- (616) Concerning the claim that 'Rabobank did not generate 50% of the spread on each executed trade' and that 'in trades with other market-makers' Rabobank 'can be expected to have paid a spread reflecting the costs of the other market makers providing a market-making service',⁶⁶² the Commission considers this claim unfounded. Seeking liquidity, holding or offloading open positions in the market is part of the general inventory management risk at portfolio level. As such, it is at the core of the traders' business and, most importantly, is embedded in the bid prices and ask prices that traders will submit to their clients.⁶⁶³ Moreover, applying the adjustment factor of 50% to the bid-ask spread of each transaction aims at reflecting the different spreads at the time when the single transaction (that is the sale or the purchase of the bonds) takes place. Otherwise, applying the full bid-ask spread to sales only would not take into account the different market conditions on the day of the purchase of the same bonds, and thus ignore the possible higher or lower spread at that different moment in time. On this basis, it is considered that the application of an adjustment factor consisting of half the bid-ask spread to all notional amounts of the trades of the relevant bonds is an appropriate approach for the purposes of setting the fines. The Commission considers that a division into more and less gainful trades, as suggested by Rabobank in its [...],⁶⁶⁴ would 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.
- (617) Concerning the claim of double counting by taking into account also the trades between Rabobank and Deutsche Bank, the Commission notes that the proxy of the value of sales is determined by applying an adjustment factor based on half of the bid-ask spread at the time of the transaction. Such adjustment aims at taking into account the specificities of the financial industry, and of the bond industry in particular, as already represented in recital (604). As a result of that adjustment, in the case of transactions between the two colluding parties only half of the bid-ask spread is attributed to one party (the buyer, by way of illustration – Rabobank), and the other half to the other party (the seller, by way of illustration – Deutsche Bank). The same bonds are then sold by the buying party (in this case, Rabobank) to a third party, and for that transaction another half of the bid-ask spread is attributed to Rabobank. As traders always aim at earning a spread, even in transactions between cartelists, excluding from the proxy of the value of sales the sales to the other

⁶⁶² [...]

⁶⁶³ See also recital (929) of Commission Decision of 28 April 2021 in Case AT.40346 - SSA Bonds, C(2021)2871.

⁶⁶⁴ [...], where Rabobank suggests a separate (or no) spread to certain trades, or by applying an appropriate discount factor to the notional amounts as a whole.

cartelist would result in excluding at least half of this spread and thus underestimating the value of sales of one party.

- (618) Rabobank proposes an alternative methodology using alternative data for estimating the bid-ask spread based on its actual trading data, as prepared and presented by its economic advisor Compass Lexecon. Rabobank claims that its actual trading data is a more precise and appropriate basis to establish the value of sales. Rabobank provides estimations of the bid-ask spreads from its actual trades, and concludes that *'trading shows that these spreads are [...] lower than the estimated spread calculated in the SO'*.⁶⁶⁵
- (619) Rabobank's approach only takes account of 'fully-balanced trades' or, alternatively, also so-called 'all balanced trades'.⁶⁶⁶ 'Fully-balanced trades' are trades executed by Rabobank where the notional amount bought and sold matched exactly within the time period. 'All balanced trades' are trades where the notional amount bought and sold in the infringement period did not match exactly. The Commission considers that this approach is fundamentally flawed for various reasons. Firstly, unless the two legs (purchase and sale) of a trade occur exactly at the same time and for the same volume, there is no point in comparing the bid price and the ask price of a specific bond to compute the bid-ask spread. In view of the high volatility of the financial market,⁶⁶⁷ the bid price of a bond purchase cannot be compared with the ask price of the reverse trade executed at another point in time on the same day (and even less so during the same week or month). As a transaction price depends (among other factors) on the notional amount traded, there is also no point in comparing bid and ask prices of transactions where the notional amounts traded do not exactly match as it is the case for 'all balanced trades'. Secondly, even if 'fully-balanced trades' on a daily basis would be a reliable indicator of bid-ask spreads (*quod non*), only [...] of the notional amounts of the trades by Rabobank were fully balanced within the day.⁶⁶⁸ Thirdly, taking into account the party's actual trading data would result in a net profit based methodology, which would impose a fine that would not be proportionate to the party's importance with regard to the cartelised product, but rather relate to its financial performance and thus to its business success. This runs counter to the Guidelines on fines, according to which sales are the starting point for setting fines, not profits, and thus even sales not generating any profit (including loss generating sales) are to be included for the purpose of fine setting. Moreover, this would give rise to an unequal treatment between parties in the same cartel, imposing higher fines on parties earning higher profits on their trading activity. Finally, the Commission observes that Rabobank's actual trading data include negative spreads. Rabobank's economic advisor explains in its report that *'when trading with other dealers, the gained spread is often zero, and can even be negative'*.⁶⁶⁹ The use of negative data, possibly leading to a zero or even negative proxy of the value of sales despite the party being active on the market, would definitively not reflect the economic significance of the infringement and certainly not the size of the involvement of the undertaking concerned.

⁶⁶⁵ [...]

⁶⁶⁶ [...]

⁶⁶⁷ As explained for example in recital (923) of Commission Decision of 28 April 2021 in Case AT.40346 - SSA Bonds, C(2021)2871, referring to SSA bonds in the period 2009-2014.

⁶⁶⁸ As presented in the Compass Lexecon Report, [...].

⁶⁶⁹ As explained in point 2.15 of the Compass Lexecon Report, [...].

(620) In summary, therefore, the Commission considers that a methodology based on Rabobank's actual earnings as proposed by Rabobank and Compass Lexecon would be a methodology based on the net profit from financial operations, which is not appropriate as it would run counter to the logic for the methodology laid down in the Guidelines on fines.⁶⁷⁰ The Commission considers that the use of Rabobank's actual data (that is the use of part of the result of Rabobank's transactions, as proposed in the study prepared by Compass Lexecon on behalf of Rabobank) would not be proportionate and would give rise to an unequal treatment between the parties, eventually imposing higher fines on the party earning higher profits on its trading activity and lower or no fines on parties with less profits (or even incurring in losses), while disregarding their economic significance and involvement on the concerned market.

9.2.3.5. Conclusions on the value of sales

(621) In the light of the particular characteristics of the financial services sector and the bond industry, and having analysed the arguments and the proposed alternative methodology put forward by Rabobank, the Commission considers that the approach taken with regard to the calculation of the proxy for the value of sales is consistent with the logic underlying the use of value of sales for setting fines pursuant to Article 23(3) of Regulation (EC) No 1/2003 and is appropriate in this case. The Commission further considers that the alternative method, using the party's actual trading data, proposed by Rabobank does not constitute a more appropriate method for setting fines in this case.

9.2.4. *Determination of the basic amount*

(622) The value of sales (in this case the proxy identified in Table 2 at recital (611)) is used as a starting point to calculate the variable and additional components of the basic amount of the fine.

(623) In fixing the amount of any fine, pursuant to Article 23(3) of Regulation (EC) No 1/2003, regard shall be had both to the gravity and the duration of the infringement.

9.2.4.1. Gravity

(624) For gravity, the Guidelines on fines provide as a general rule that the proportion of the value of sales taken into account must be set at a level up to 30% of the value of sales for the variable amount and between 15% and 25% of the value of sales for the additional amount.⁶⁷¹ 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/or whether or not the infringement has been implemented.

(625) In its assessment of the gravity in this case, the Commission takes into account *inter alia* the facts as described and assessed in this Decision, and in particular the circumstances that:

- (a) the parties have been involved in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, involving the exchange of commercially sensitive information and the coordination of

⁶⁷⁰ As upheld by the General Court in its Judgment of 24 September 2019, *HSBC Holdings plc a.o. v. Commission*, T-105/17, EU:T:2019:675, paragraph 323.

⁶⁷¹ Points 21 and 25 of the Guidelines on fines.

trading and pricing strategies in relation to specific counterparties and in relation to the market more generally;⁶⁷²

- (b) the single and continuous infringement involving the elements set out in point (a) constitutes a cartel and is by its very nature among the most harmful restrictions of competition under Article 101 of the Treaty and Article 53 of the EEA Agreement, justifying a proportion at the higher end of the scale. The participants combined to set up a scheme designed to restrict competition in the sector;
- (c) the geographic scope of the cartel is EEA-wide as the cartel arrangements relate to transactions that covered the entire EEA.

(626) Accordingly, the Commission sets the proportion of the value of sales to be taken into account for calculating the basic amount of the fine in this case at 16%.

9.2.4.2. Assessment of Rabobank's arguments concerning gravity

- (627) Rabobank claims that '[t]he gravity factor should be assessed at the lower end of the scale' as '[t]he motivation for the Trader Communications was legitimate and pro-competitive', '[t]here was no overall plan to restrict competition', '[t]he combined market shares of the parties is low', '[i]t is highly unlikely that the Trader Communications would have negatively affected any market participants', and '[t]he number of allegedly anticompetitive incidents is limited and dispersed over a very long duration'.⁶⁷³
- (628) Those arguments have already been addressed elsewhere in this Decision. It has been established in Section 6.2.2 that the conduct in its various elements encompassed price fixing, the exchange of commercially sensitive information, market sharing and customer allocation. It also has been established in Section 6.2.3 that the various contacts served a common plan and that all relevant bonds could be directly or indirectly affected. The Commission does not have to quantify the impact of the conduct, but takes into account that the existence of collusion when the relevant bonds are traded establishes the possibility of such impact. The arguments raised are insufficient for qualifying the infringement as not very serious, or deviating from the normal qualification of the gravity for such cartel.
- (629) With regard to the allegedly limited market power and small combined market share of the parties, point 22 of the Guidelines on fines refers to the possible consideration of the parties' combined market share when assessing the applicable gravity percentage. However, the Court has recalled that there is no binding or exhaustive list of criteria to be taken into account when assessing the gravity of an infringement.⁶⁷⁴ In this case, the Commission does not further increase the gravity based on the combined market share of the undertakings involved. Conversely, the Commission notes that a gravity multiplier of 16% may be warranted in view of the very nature of the infringement at issue, since it is among the most harmful restrictions of competition for the purpose of point 23 of the Guidelines on fines and since that rate is one of the lowest rates on the scale of penalties prescribed for such infringements under those guidelines.⁶⁷⁵

⁶⁷² See the examples referred to in recitals (433), (435), (437), (443), (445) and (447).

⁶⁷³ [...]

⁶⁷⁴ Judgment of the Court of 26 September 2018, *Infineon Technologies AG v Commission*, C-99/17 P, EU:C:2018:773, paragraph 198.

⁶⁷⁵ *Ibid.*, paragraph 210.

9.2.4.3. Duration

- (630) The Commission also takes into consideration the duration of the infringement by multiplying the applicable proxy of the value of sales by the number of years of each party's participation in the infringement. The multipliers for duration are calculated on the basis of the number of days of participation in the infringement.⁶⁷⁶
- (631) Based on the criteria explained above and the duration for both parties as set out in recital (581), the applicable duration multiplier to be taken into account for the purposes of setting the fine to be imposed on the addressees is 10.14 years.

9.2.4.4. Additional amount

- (632) For the additional amount, the Commission includes in the basic amount a sum of between 15% and 25% of the value of sales to deter the undertaking from entering into such illegal practices on the basis of the criteria referred to in recitals (624) to (629) with respect to the variable amount.⁶⁷⁷
- (633) Taking into account the factors set out in recital (625) the percentage to be applied for the purposes of calculating the additional amount is 16% of the proxy for the value of sales.
- (634) Based on the criteria explained above, the basic amount for the fine to be imposed on the addressees is:

Table 3: Basic amount of the fine

Undertaking	Basic amount of the fine (in EUR)
Deutsche Bank	[...]
Rabobank	[...]

9.2.5. Adjustments to the basic amount

- (635) In relation to each undertaking, the Commission may reflect in the fine imposed any aggravating and/or mitigating circumstances, such as the ones listed, in a non-exhaustive way, in points 28 and 29 of the Guidelines on fines. In this specific case, the Commission does not take into account any mitigating circumstance.
- (636) On the other hand, according to the case-law of the Court and the General Court the analysis of the gravity must take account of any repeated infringement.⁶⁷⁸
- (637) More specifically, according to point 28 of the Guidelines on fines 'where an undertaking continues or repeats the same or a similar infringement after the Commission or a national competition authority has made a finding that the undertaking infringed Article 81 [Article 101] or 82 [Article 102] the basic amount will be increased by up to 100 % for each such infringement established'.

⁶⁷⁶ See Section 8.

⁶⁷⁷ Point 25 of the Guidelines on fines.

⁶⁷⁸ Judgment of the Court of 29 September 2021, *Nec Corp. v Commission*, T-341/18, EU:T:2021:634, paragraph 104. Judgment of the Court of 8 February 2007, *Groupe Danone v Commission*, C-3/06, EU:C:2007:88, paragraph 26. Also in a previous judgment, the Court of First Instance explicitly held that 'recidivism is a circumstance which justifies a significant increase in the basic amount of the fine. Recidivism constitutes proof that the sanction previously imposed was not sufficiently deterrent' (see Judgment of the Court of First Instance of 30 September 2003 in Case T-203/01 *Michelin v Commission*, EU:T:2003:250, paragraphs 282 to 293, and in particular paragraph 293).

(638) Deutsche Bank was found liable by two Commission Decisions of 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 (the ‘two Decisions of 2013’).⁶⁷⁹ Therefore, the Commission considers recidivism an aggravating circumstance for Deutsche Bank given its participation in these two previous cartel infringements, on the following grounds:

- (a) the two Decisions of 2013 were adopted by the Commission during the time when the infringement referred to in this Decision was taking place, and Deutsche Bank continued its participation in the present infringement for more than two years after the adoption of the two Decisions of 2013;
- (b) the fact that both the infringements found by the Commission in the two Decisions of 2013 and the infringement in this Decision relate to agreements and/or concerted practices of a horizontal nature and the application of Article 101 of the Treaty implies that the infringements are sufficiently similar and therefore constitute a ‘similar’ infringement within the meaning of point 28 of the Guidelines on fines.⁶⁸⁰ Notably, according to the case-law, ‘*it is sufficient that the Commission is dealing with infringements falling under the same provision of the [...] Treaty*’;⁶⁸¹
- (c) Deutsche Bank was a direct participant in the infringement as established in the two Decisions of 2013, and thus an addressee of both those Decisions.

(639) For those reasons, the Commission considers that the basic amount of the fine for Deutsche Bank should be increased by 60%.

9.2.6. *Specific increase for deterrence*

(640) In determining the amount of the fines, the Commission pays particular attention to the need to ensure that fines have a sufficient deterrent effect and has discretion to apply a deterrence multiplier provided that it does not discriminate among parties to the case.⁶⁸² In particular, 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.⁶⁸³

(641) The total worldwide turnover of Deutsche Bank for the business year 2022 was EUR [30-50] billion.⁶⁸⁴ The precise figure is included in the individual confidential Annex to this Decision. 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 factor to the fines to be imposed on that undertaking. On this basis, the Commission considers it appropriate to apply a multiplier of 1.1 to the fines to be imposed on Deutsche Bank.

⁶⁷⁹ 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.

⁶⁸⁰ Judgment of the General Court of 25 June 2010, *ICI v Commission*, T-66/01, EU:T:2010:255, paragraphs 378-381.

⁶⁸¹ Judgment of the General Court of 12 December 2007, *BASF v Commission*, Joined cases T-101/05 and 111/05, EU:T:2007:380, paragraph 64.

⁶⁸² Judgment of the General Court of 12 December 2012, *Novácke Chemické Závody v Commission*, T-352/09, EU:T:2012:673, paragraph 64.

⁶⁸³ Point 30 of the Guidelines on fines.

⁶⁸⁴ [...]

- (642) Rabobank claims that ‘[i]n the present case, there is no basis for the Commission to increase the level of the fine because the fine preliminarily calculated by the Commission goes far beyond what can reasonably be considered necessary to achieve a deterrent effect (both specifically to Rabobank and to undertakings (in this sector) in general)’.⁶⁸⁵ Moreover, Rabobank puts forward that it ‘did not intend to engage in any cartel arrangements, whether deliberately or negligently. Any infringement that the Commission may establish (and which Rabobank disputes) would have been an unfortunate consequence of behaviour, which, when considered in its broader, market context, was legitimate and/or pro-competitive’.⁶⁸⁶
- (643) According to settled case-law, when setting a multiplier for deterrence the Commission is not required to take account of factors other than the overall turnover and the relative size of the undertakings concerned.⁶⁸⁷ The deterrence multiplier is, according to point 30 of the Guidelines on fines, applied independently of the characteristics of an undertaking's behaviour in the cartel. As for Rabobank's argument that Rabobank's behaviour was legitimate and/or pro-competitive, this has already been rebutted in Section 6.2.2.3.3.
- (644) In any case, the Commission confirms Rabobank's understanding that ‘*Rabobank's financial figures do not warrant any separate increase in the fine*’ to ensure deterrence.⁶⁸⁸

9.2.7. *Legal maximum*

- (645) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking participating in the infringement cannot exceed 10% of its total turnover relating to the last available business year preceding the date of the Commission decision.
- (646) 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 this Decision.⁶⁸⁹

9.2.8. *Limitation period*

- (647) According to Article 25(1), point (b), and Article 25(2) of Regulation (EC) No 1/2003, a limitation period of five years applies to the Commission's power to impose fines pursuant to Article 23 of that Regulation. Time begins to run on the day on which the infringement ceases. The limitation period is interrupted following any action taken by the Commission for the purpose of the investigation (Article 25 of Regulation (EC) No 1/2003). The limitation period has not expired in this case.

9.2.9. *Application of the Leniency Notice*

- (648) On 30 May 2017, Deutsche Bank applied for immunity from fines under Section II of the Leniency Notice,⁶⁹⁰ and was the first to submit information and evidence that would enable the Commission to carry out a targeted inspection in connection with the infringements concerned by this Decision, as required by point 8(a) of the

⁶⁸⁵ [...]

⁶⁸⁶ [...]

⁶⁸⁷ Judgment of the Court of 13 June 2013, *Versalis v Commission*, C-511/11 P, EU:C:2013:386, paragraph 95.

⁶⁸⁸ [...]

⁶⁸⁹ 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). [...]

⁶⁹⁰ See recital (91).

Leniency Notice.⁶⁹¹ The Commission considers that Deutsche Bank also fulfilled the criteria set out in points 12 and 13 of the Leniency Notice. By decision of 18 March 2019, the Commission granted Deutsche Bank conditional immunity from fines pursuant to point 8(a) of the Leniency Notice. Deutsche Bank has cooperated with the Commission investigation genuinely, on a continuous basis and expeditiously throughout the administrative procedure. Deutsche Bank ended its involvement in the alleged cartel and the Commission is not aware of any evidence indicating that Deutsche Bank has destroyed, falsified or concealed evidence of the alleged cartel or disclosed the fact or any of the content of its contemplated application, except to other competition authorities and/or with the consent of the Commission. The Commission has also not found evidence that Deutsche Bank had coerced other undertakings to join the cartel or to remain in it.

- (649) Therefore 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.

10. FINAL AMOUNT OF THE INDIVIDUAL FINES TO BE IMPOSED IN THIS DECISION

- (650) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 4:

Table 4: Final amount of the individual fines

Undertaking	Amount of the fine (in EUR)
Deutsche Bank	0
Rabobank	26 647 000

HAS ADOPTED THIS DECISION:

Article 1

Deutsche Bank AG and Coöperatieve Rabobank U.A. have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement regarding (i) Euro-denominated Supra-Sovereign (Supra-national) bonds, Euro-denominated Foreign Sovereign bonds, Euro-denominated Sub-Sovereign/Agency bonds, and (ii) Euro-denominated Government Guaranteed bonds, which consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the sector of the bonds mentioned under (i) and (ii).

The duration of the infringement was from 4 January 2006 until 24 February 2016.

Article 2

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

- (a) Deutsche Bank AG: EUR 0

⁶⁹¹ The assessment is made exclusively on the basis of the type and the quality of the information submitted, irrespective whether or not an inspection has taken place, or whether the type of evidence was more suitable for follow up by means of an RFI.

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

The fines shall be credited, in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU LUXEMBOURG
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/AT.40512

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, 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 of the European Parliament and of the Council.⁶⁹²

Article 3

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

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

Article 4

This Decision is addressed to

Deutsche Bank AG
Taunusanlage 12
60325 Frankfurt am Main
Germany

Coöperatieve Rabobank U.A.
Croeselaan 18
3521 CB Utrecht
The Netherlands

⁶⁹² 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 European Union (OJ L 193, 30.7.2018, p. 80).

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

Done at Brussels, 22.11.2023

For the Commission

(Signed)

Didier REYNDEERS
Member of the Commission