



EUROPEAN COMMISSION  
Competition DG

## ***CASE AT.40324 – European Government Bonds***

(Only the English and German texts are authentic)

### **CARTEL PROCEDURE Council Regulation (EC) No 1/2003**

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Article 7 Regulation (EC) 1/2003

Date: 20/05/2021

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Brussels, 20.5.2021  
C(2021) 3489 final

**COMMISSION DECISION**

**of 20.5.2021**

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

**(AT.40324 – European Government Bonds)**

(Text with EEA relevance)

(Only the English and German texts are authentic)

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# COMMISSION DECISION

of 20.5.2021

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

**(AT.40324 – European Government Bonds)**

(Text with EEA relevance)

(Only the English and German texts are authentic)

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

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

Having regard to the Commission Decision of 31 January 2019 to initiate proceedings in this case<sup>2</sup>,

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 EC Treaty<sup>3</sup>,

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:

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<sup>1</sup> OJ L 1, 4.1.2003, p.1.

With effect from 1 December 2009, Articles 81 and 82 of the Treaty ('EC Treaty') have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union). 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 of the EC Treaty for the period prior to 1 December 2009.

<sup>2</sup> 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.

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

## 1. INTRODUCTION

- (1) The addressees of this Decision have infringed Article 101(1) of the Treaty on the Functioning of the European Union ('the Treaty') and Article 53(1) of the Agreement on the European Economic Area ('the EEA Agreement'). This infringement took place in the period between 2007 and 2011 and covered at least the whole of the European Economic Area ('EEA'<sup>4</sup>) and consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the sector of European Government Bonds.
- (2) The undertakings subject to the investigation are collectively referred to as 'the banks' or 'the parties'. The legal entities to which this Decision is addressed are collectively referred to as 'the addressees'.

## 2. INDUSTRY SUBJECT TO THE PROCEEDINGS

### 2.1. The product

- (3) The product concerned by the collusive behaviour described in this Decision is European Government Bonds ('EGB'). For the purposes of this Decision, EGB are defined as the sovereign bonds issued in Euro by the central governments of the Eurozone Member States.<sup>5</sup>
- (4) EGB are a type of debt security which allows European governments to raise cash to fund expenditures or investments or to refinance existing debt. EGB allow the government issuing the bond (the issuer) to borrow money (the principal amount) from investors for a fixed term (the maturity date). In return, the government pays a fixed or floating rate of interest (the coupon) to the investor that holds the bond and repays the principal amount to the investor that holds the bond at the maturity date.

### 2.2. The business

- (5) EGB are issued on the *primary market* and subsequently traded on the *secondary market*. Typically, large investment banks trade all EGB within their EGB desk, irrespective of the date of issuance, principal amount or maturity date of the EGB.<sup>6</sup>

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<sup>4</sup> 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. Accordingly, any references made to the EEA in this Decision also include the United Kingdom (UK).

<sup>5</sup> Original Eurozone Member States on 1 January 1999: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain. Member States that joined the Eurozone at a later stage: Greece (2001), Slovenia (2007), Cyprus (2008), Malta (2008), Slovakia (2009), Estonia (2011), Latvia (2014) and Lithuania (2015).

<sup>6</sup> Investment banks operate different bond trading desks based on the combination of the type of the issuers and the currency used. Other desks include the Treasury desk for bonds issued in US dollars by the United States Treasury Department, the Gilts desk for bonds issued in UK pound by HM Treasury, the Emerging Market desk for bonds issued by governments and/or corporations from countries outside OECD, the SSA desk for supra-sovereign, sovereign and agency bonds, a Corporate desk for corporate bonds.

Table 1: Overview of EGB most commonly referred to in this Decision

Member State	EGB
Austria	RAG or RAGB (Republic of Austria Government Bond)
Belgium	OLO (Obligations Linéaires/Lineaire obligaties) BGB (Belgian Government Bond)
Finland	Finland (sarjaobligaatit, valtion velkasitoumukset)
France	OAT (Obligations Assimilables du Trésor) or FRTR TAN (Bons du Trésor à Intérêts Annuels)
Germany	DBR (Deutsche Bundesrepublik) Bunds (Bundesanleihen) Bobl (Bundesobligationen) Schatz or Schätze
Greece	GGB (Greek Government Bonds)
Ireland	Ireland (Irish Government Bonds and Treasury Bills)
Italy	BTP (Buoni del Tesoro Poliannuali)
Netherlands	DSL (Dutch State Loan) NETHER
Portugal	OT (Obrigações do Tesouro)
Spain	BONOS (Bonos del Estado) SPGB (Spanish Government Bonds)

### 2.2.1. Primary market

- (6) The primary market is the market where bonds are issued (other terms: sold or placed) to market participants. Governments delegate the issuing of bonds to their Treasury Department and more specifically to the Debt Management Office ('DMO'). Each DMO determines the procedure that will be followed for placing its bonds on the market. DMOs can offer and place EGB in the market through auctions<sup>7</sup>, which is a tendering process, or through syndication<sup>8</sup>, which is a private placement process. On the primary market, the bonds are obtained through the auctions or syndication by certain financial institutions, the so-called primary dealers. These primary dealers may then keep or place (sell) the bonds to their customers, which are other financial institutions and investors such as pension funds, insurance companies, investment banks, hedge funds and asset managers.
- (7) DMOs decide independently on the type, maturity or size of EGB to be issued at their auctions, but they can ask for advice from their primary dealers, even collectively. The primary dealers typically give advice to the DMO before an upcoming auction on the type, maturity or size of EGB to be issued.

Table 2: DMO issuing EGB in the period covered by this Decision

Member State	DMO
Austria	OeBFA (Oesterreichische Bundesfinanzierungsagentur)
Belgium	BDA (Belgian Debt Agency/Agence Fédérale de la Dette/Federaal Agentschap van de Schuld)
Finland	Valtiokonttori
France	AFT (Agence France Trésor)
Germany	Deutsche Finanzagentur

<sup>7</sup> See Section 2.2.1.1.

<sup>8</sup> See Section 2.2.1.2.

Greece	PDMA (Public Debt Management Agency)
Ireland	NTMA (National Treasury Management Agency)
Italy	Dipartimento del Tesoro
Netherlands	DSTA (Dutch State Treasury/Agentschap van de Generale Thesaurie)
Portugal	IGCP, E.P.E. (Agência de Gestão da Tesouraria e da Dívida Pública)
Spain	Tesoro Público

#### 2.2.1.1. Auctions

- (8) In an auction, primary dealers compete with each other for acquiring EGB issued by the DMO and establish a secondary market by promoting and placing (selling) the bonds acquired at the auction to other financial institutions and investors.
- (9) Only primary dealers may bid in EGB auctions. Other financial institutions/investors are obliged to buy newly issued EGB from primary dealers in the secondary market.
- (10) Only certain financial institutions selected and appointed by DMOs will be allowed to act as primary dealers in the auctions.<sup>9</sup> Primary dealers are ranked and selected by the issuer every year and are required to comply with certain conditions for obtaining and preserving their primary status.
- (11) Primary dealers must take part in the auctions and acquire and place a significant volume of the bonds during a given reference period. Primary dealers are generally expected or obliged to assume a role of ‘market maker’ on the secondary market by quoting two-way prices (bid and ask prices) and deal at these prices.<sup>10</sup> They buy or sell bonds at prices generally shown to the market, rather than in respect of each particular transaction.
- (12) The DMOs rank their primary dealers and the primary dealers can maintain or improve their ranking by purchasing large volumes of EGB. Failing to bid at auctions impacts adversely on the primary dealer’s ranking. The DMOs incentivise their primary dealers to maintain or improve their ranking by making them eligible for and giving them improved access to syndications, associated derivatives orders and non-competitive bids.<sup>11</sup>
- (13) A DMO will typically release an auction calendar for the year ahead, announcing when and for what notional amount it intends to issue EGB. It includes monthly auctions for different maturity ‘buckets’, such as 2, 5, 10 or 30 years.<sup>12</sup> The auction calendar allows the primary dealers to prepare for the auctions and to better manage the supply of bonds.

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<sup>9</sup> Details about the primary dealers in most Eurozone Member States can be found in the European Primary Dealers Handbook, issued on a yearly basis by the Association for Financial Markets in Europe (AFME).

[[www.afme.eu/portals/0/globalassets/downloads/publications/afme-primary-dealers-handbook](http://www.afme.eu/portals/0/globalassets/downloads/publications/afme-primary-dealers-handbook).]

Some DMOs, such as Germany, do not formally appoint primary dealers, but use a similar certification process to authorise financial institutions to participate in their auctions.

<sup>10</sup> See also recital (40).

<sup>11</sup> For syndication, see Section 2.2.1.2.

A non-competitive bid is one that provides the primary dealer with the opportunity to buy a certain number of additional bonds within a particular period after an auction has closed, but at the same price as that primary dealer paid at auction. [...].

<sup>12</sup> For instance, a 30 year bond issued in 2009 will mature in 2039 and could be referred to as ‘30Ys’, ‘39s’ or ‘2039 OAT’ (where OAT stands for the name of the EGB, in this case a French EGB).

- (14) Ahead of the auction, the DMO may consult the primary dealers on the market conditions and market preferences (such as volume, type of demand, price). Information from the primary dealers helps the DMO to understand the market needs for their EGB. Primary dealers are usually consulted bilaterally, but in some countries the DMO may consult its primary dealers on a multilateral basis.<sup>13</sup> It is in the interest of both the primary dealers and the DMO that the auction is successful. The primary dealers are looking to meet the customer demand on the secondary market by ensuring the issuance of the right bond, while the DMOs are interested in selling their volumes at the right price.
- (15) Closer to the auction date, and based on the consultation of the primary dealers, the DMO publically announces the date of the auction, the maturities on offer, the coupon rate for each maturity, possible minimum bid volumes and so forth.
- (16) At the auction, primary dealers can submit their bids electronically through an on-line portal for the different maturities during a bidding window. The price at which primary dealers decide to bid at auctions depends on the price at which similar bonds are priced on the secondary market (benchmark price). If the auction is a tap of an existing bond (that is, a new supply of EGB, which have previously been issued, with the same original maturity date, face value and coupon rate, but sold at current prices), the price information is readily available since the bonds are already quoted in the secondary market.
- (17) Bonds are commonly priced as a percentage of their notional amount (the notional amount being the amount actually borrowed by the issuer and paid back to investors at maturity date). The percentage used for pricing (on both the primary and secondary market) is usually only the two decimal points representing the cents.
- (18) By way of example, an investor might buy a notional amount of EUR 1 000 000 of a 10 years bond (or ‘10s’) on the primary market at 112.25%. This means that the investor must pay 112.25% of EUR 1 000 000 or EUR 1 122 500 and that the final owner of the bond at the maturity date in 10 years’ time will receive EUR 1 000 000. When trading the bond on the secondary market, the price used between traders<sup>14</sup> will commonly not refer to the notional amount, but to the percentage applied and, more particularly, the last two decimal points or cents, that is ‘25’, because the other bigger number (‘112’) is normally well-known in the market.
- (19) Bids on these bonds are often expressed as a spread over the prevailing market price of the bond, also known as ‘mid-price’, ‘mid-curve price’, ‘mid-points’ or ‘mid’ (hereinafter mid-price). In other words, the mid-price is the reference price above which primary dealers will submit their bids during an auction. It represents the average between the prevailing bid and offer prices and is expressed in cents (that is to two decimal points).<sup>15</sup>

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<sup>13</sup> [...] Primary Dealership - Auctions and Syndications’[...], referring to France and Spain. Nomura claims [...] that multilateral consultations also took place in Belgium and Italy [...].

<sup>14</sup> The terms ‘dealers’ and ‘traders’ are used inter-changeably in common practice. In this Decision, the term ‘dealer’ commonly 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.

<sup>15</sup> The prevailing bid and offer prices are the prices at which a trader is ready to respectively buy and sell the bond in the secondary market at the time of the auction. It should not be confused with the bids the primary dealers are submitting during the auction of that same bond in the primary market.

(20) EGB are typically issued in tranches. In case of new issuance, the bond price is determined taking into account the current market conditions, notably the price or yields of bonds with similar characteristics (benchmark bonds). After being issued at an initial auction (or syndication)<sup>16</sup>, more of the existing EGB may be issued in further auctions called ‘taps’.<sup>17</sup> During the bidding window bids can be revised and/or split into tranches with different prices for different volumes.<sup>18</sup>

(21) In the example set out in recital (18), assuming that a DMO is auctioning a new tranche of EUR 1 billion of this 10 year bond, which immediately prior to the auction had, in the secondary market, a prevailing bid price of 113.00 (or ‘00’)<sup>19</sup> and a prevailing offer price of 113.10 (or ‘10’), therefore has a prevailing mid-price of 113.05 (or ‘05’). If the primary dealer is obliged, because of his status or ranking, to purchase a share of 10% of the issued bonds (that is EUR 100 million in this example), there are several scenarios to do so:

*Scenario 1: Single bid*

(22) The primary dealer could put in a single bid for 100 million at +7 (also known as the premium) above the mid-price (that is 113.12 (or ‘12’) in this example). The primary dealer would therefore be ready to acquire 100 million of 10 year government bonds for which it would pay 113.12% of 100 million or EUR 113 120 000, representing a premium of EUR 70 000 above the secondary market mid-price prevailing just before the auction.

*Scenario 2: Multiple bids*

(23) The primary dealer can split its bid into smaller bids for different volumes at different premium levels to make up the 10% allocation - for example:

- (a) EUR 50 million at +10, or 0.10% above the mid-price, so 113.15;
- (b) EUR 50 million at +5, or 0.05% above the mid-price, so 113.10.<sup>20</sup>

(24) In an auction, bids should be based on the individual assessments of the primary dealers' interest in acquiring the relevant EGB. Elements that may influence the level of bids, in particular the bid prices, are the expectations for the success of the bond to be issued, the number of client orders to be filled, the appetite of the primary dealer for improving or maintaining its ranking for the respective DMO and the requirement to purchase a certain percentage of the bonds issued in order to preserve primary dealer status for that sovereignty.

(25) On the basis of their individual assessment, primary dealers may decide to bid higher than the prevailing market price of the bond on the secondary market. This is known as ‘overbidding’. The primary dealer may also submit lower bids which are closer to the prevailing market price. This is known as bidding ‘flat’. As a result of overbidding, primary dealers may technically realise a loss on auction transactions,

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<sup>16</sup> See Section 2.2.1.2.

<sup>17</sup> See recitals (16) and (46). In tap auctions, the EGBs are issued at their original face value, maturity and coupon rate, but sold at the current market price.

<sup>18</sup> Depending on the portal used by the DMO, bids may be expressed in three ways: (i) absolute price and volume; (ii) as a percentage to par value with volume; or as (iii) a spread/yield to a reference bond.

<sup>19</sup> 113.00 is 113.00% of the notional amount.

<sup>20</sup> [...]

but this is expected to be compensated by the benefits generated from being a primary dealer and trading the EGB on the secondary market.<sup>21</sup>

- (26) Once the bidding window is closed, the DMO electronically publishes the auction results and allocates the bonds to the successful bidders. Higher bids are allocated first and often in full, whereas lower bids may not be allocated in full, or at all.
- (27) The exact allocation differs from country to country according to the auction process. The prevailing auction process for EGB is the ‘standard’ or ‘competitive’ auction. In this type of auction, the DMO allocates the bids working down from the highest price received to the lowest accepted price until the entire amount of the auctioned bonds have been allocated. All successful bidders pay the amount that they bid. The alternative auction mechanism is called ‘Dutch’ or ‘single price’<sup>22</sup> auction process, in which the DMO will allocate all bonds at the lowest accepted bid that is considered sufficient to raise the desired auction proceeds and all successful bidders will pay the lowest accepted price.<sup>23</sup>
- (28) The primary dealer either keeps its allocated bonds in its own book and resells them at a later stage in the secondary market or fulfils immediate customer orders. The customers are institutional investors such as pension funds, insurance companies, central banks, investments banks, hedge funds and asset managers. The primary dealer will fill customer orders based on the success of its own bid and the type of the customer bid. Some customers leave it up to the primary dealer to decide on the level of the bid on the primary market, others may take a position based on the primary dealer's bid or they instruct the primary dealer to bid at a fixed price determined independently by them. For a fixed customer bid, the primary dealer can only fill the customer’s order if this bid was successful. For the other bids, the orders are filled based on the success of the primary dealer’s bids.<sup>24</sup>
- (29) If the primary dealer's bid is not entirely successful, it is unable to fill all customer orders on the primary market. The order can only be filled thereafter, as a secondary market transaction.
- (30) DMOs often allow primary dealers to submit additional non-competitive bids after the auction. In a standard auction, these non-competitive bids<sup>25</sup> are traditionally at an

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<sup>21</sup> Recital (12).

<sup>22</sup> [...]

<sup>23</sup> Standard auctions carry an additional risk, and therefore an even greater incentive to coordinate, as the bidders pay the actual price they bid, even if this is well above the lowest acceptable price, and thus a primary dealer who pays more than necessary for a full allocation stands to incur avoidable losses on the secondary market. In the single price or Dutch auction, all bidders pay the lowest acceptable price.

<sup>24</sup> By way of example, an existing 10 year bond is auctioned via a standard auction by the German DMO for an additional EUR 1 billion in principal amount. The current price of the bond on the secondary market is 98.70. A primary dealer has received orders from two customers. The first customer left an order for 30 million, with no specification on price. The second customer left an order for 20 million at a price of 98.75. The primary dealer bids in tranches in the auction: 50 million at 98.70, 20 million at 98.75 (this is the order of the second customer that is simply passed through) and 20 million at 98.80. The lowest accepted bid is 98.74. The first customer only gets 20 million from the 30 million he ordered, at 98.80. The second customer gets his full 20 million at 98.75.

<sup>25</sup> These non-competitive bids are different from the ones explained in footnote 11 above. A non-competitive bid in this context is one where the primary dealer agrees to pay the average price of the relevant bond as determined by the competitive bids submitted during the initial auction.

average clearing price as determined by the competitive bids during the auction and represent a predetermined percentage of the auction size (usually small).<sup>26</sup>

#### 2.2.1.2. Syndication

- (31) Syndication is a process whereby the DMO assigns a group of selected primary dealers ('the lead managers') to assist in placing a new EGB on the market or tap an existing EGB.
- (32) The lead managers commit to purchase the bulk of the EGB issued on the primary market and sell them to investors in the secondary market. The lead managers are compensated for their commitment by means of underwriting fees.<sup>27</sup> In addition, there are reputational benefits associated with being involved in syndications.<sup>28</sup>
- (33) The lead managers assist the DMO in pricing the EGB by reference to a benchmark bond on the secondary market. For this purpose, they may receive information from their EGB trading desks, but conversely have to maintain strict confidentiality towards the EGB trading desk. Any premature information given to the traders on the price of the bond to be issued via syndication amounts to an undue competitive advantage, because information on the exact timing of the pricing of syndication is not made public until it is announced to the wider market by the lead managers. Knowing that the syndication has priced, or any details of the terms, might allow a trader to raise or lower the price of the benchmark bond on the secondary market and thereby affect the success or failure of the relevant syndicated bond issue, or alternatively be aware of the timing of possible significant increased volatility and price movements in the market caused by the syndication pricing, and adjust their trading accordingly.<sup>29</sup> Within each financial institution with primary dealer status, syndications are in principle the responsibility of a separate, ring-fenced team with a distinct role.<sup>30</sup>
- (34) A syndicate is less common than an auction, but is generally larger in size and longer in duration. Syndication is therefore often used by sovereigns to introduce large volumes of new EGB.
- (35) Primary dealers are eligible and selected to become lead managers in a syndication based, among other things, on their ranking which is based on their results at auctions in which they participated. The prospect of being eligible for syndication is one of the elements that drive the competitive bids of the primary dealers at the auctions.

#### 2.2.2. *Secondary market*

- (36) EGB are generally regarded as relatively safe and high credit-worthy investments (compared to the more volatile nature of, for instance, equities). They can either be held until maturity or traded. The value of an EGB varies constantly reflecting changes in a variety of underlying factors, such as the evolution of market interest rates, the issuer's creditworthiness and inflation expectations.

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<sup>26</sup> [...]

<sup>27</sup> The fees are quoted as a percentage of the notional amount issued and depend on the maturity of the bond (the longer the maturity, the higher the fees).

[...]

<sup>28</sup> Traders involved in high profile syndications improve their standing as market makers with potential customers and this may generate further secondary trading.

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

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

- (37) In order to make EGB a tradeable product, the primary dealers create a secondary market for the EGB issued so that it can be used for investing and hedging purposes or as a benchmark for pricing other types of assets (for example futures<sup>31</sup>, options, swaps). On the secondary market, the EGB are traded interdealer ‘D2D’ (dealer to dealer) with primary and non-primary dealer banks or ‘D2C’ (dealer to client) with other non-primary investors. Trades take place over the counter both electronically and via brokers. In other words, the secondary market is where primary dealers trade their bonds bought at auctions (or obtained via syndication) in the primary market either with each other or with other investors.
- (38) The value of the EGB on the secondary market is determined by its ‘yield’. The yield on a bond (or yield to maturity) is a measure of its return expressed as an annual percentage. The yield depends on the fixed coupon and the gains or losses from trading the bond.
- (39) The price at which the bond is traded is determined by circumstances like the evolution of the economic environment and the financial health of the issuer. A bond’s price reflects the yield required by investors for holding that bond. There is an inverse relationship between yield and price: a lower yield is translated in a price increase and a higher yield in a price decrease.<sup>32</sup> A yield curve is an indication of relationships between yields and bond prices and is associated with a flattening or steepening of the yield curve. When the spread between long and short term interest rates widens, the curve steepens and the price goes down. When the spread between long and short term interest rates narrows, the curve flattens and the price goes up. Driving the market price down is called ‘steepening the curve’ and driving it up is called ‘flattening the curve’
- (40) On the secondary market, dealers may quote two-way bid-ask prices. They quote the price at which level they want to buy the bond (bid) and the price at which they want to sell the bond (offer or ask).<sup>33</sup> Traders seek to generate revenue by capturing the difference between the bid and offer prices (or ask prices). The difference between the bid and offer or ask prices is known as the spread, bid-ask spread or bid-ask price, and is the dealer's profit (on a combined buy and sell transaction). On D2C

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<sup>31</sup> Bond futures are contractual obligations for the contract holder to purchase or sell a bond on a specified date at a predetermined price. The traders make reference to these bond futures either by saying ‘29/30’ (the bond future is trading at 29 bid/30 offer’) or by saying ‘40 bid x 46’, whereas ‘x’ indicates a crossing with a futures contract and ‘46’ refers to the prevailing futures price. In this example, the term ‘crossing’ means a simultaneous opposite trade with the futures contract to hedge the bond trade: the trader is here ready to buy a bond at a bid price of 40 while at the same time selling the futures contract at its current price of 46 ([...]). The traders sometimes price the bonds based on price differentials between the underlying bond and a bond futures contract. In the communications, the traders generally bid by reference to bond futures with 5, 10 or 30 year maturity.

<sup>32</sup> Example: A bond is issued at a price of 100 with a yearly interest (coupon) of 3%. At issuance, the yield required by investors was 3%. If the financial health of the issuer deteriorates after issuance, investors will require a higher yield to compensate for the increase in perceived risk. Investors may for example now require a yield of 5%. The price equivalent to that yield must be lower than 100 in order for investors to earn part of the required yield in the form of a capital gain (on top of the yearly coupons). So, the price might decrease to 95 to enable the investors to earn 5% on their investment. In contrast, if investors perceive the issuer as financially stronger than when the bond was issued, they might now require a lower yield given the lower perceived risk. The price equivalent to a yield of, say, 2% will be higher than 100. In this case, investors are ready to book a capital loss that partly offsets of the coupon earned. A price increase will reflect a lower required yield and a price decrease will reflect an increase in the required yield.

<sup>33</sup> See also recital (11).

platforms, the institutions offering the bid-ask prices choose whether they will either give everyone access to the bid-ask prices, exclude only particular actors (usually dealers and competitors), or allow only specified institutions to have access to it.<sup>34</sup>

- (41) The mid-price is the price in the middle between the bid and ask price. It is not a client price at which level the bond is sold or purchased, but serves as an important reference point in the secondary market.<sup>35</sup> On D2D platforms, information is anonymised and aggregated. Information on individual *mid-prices* for bonds traded over-the-counter ('OTC') is not public, unlike the equivalent information for derivatives traded on a regulated market.<sup>36</sup> An average market mid-price<sup>37</sup> (or '*mid*') is available on screen but not the actual individual mid-prices. These individual mid-prices are not shown on either D2D or D2C platforms. It is therefore not possible to determine the actual mid-price offered by a specific bank or financial institution. On D2C platforms, the prices streamed by the dealers are indicative. The final price of each transaction varies according to the client. Some D2C platforms may show an indicative or average price per dealer for a specific bond.<sup>38</sup> Those prices are indicative market mids and may not necessarily reflect the actual mid-prices (that is the actual average of the most recent bid and ask prices) of a specific dealer for a specific bond.<sup>39</sup> A significant part of a traders' job and an element on which they compete is to manage the pricing uncertainties in the OTC market.
- (42) As explained in Section 2.2.1, after the DMOs publish the issuance calendar with indicative volumes and auction dates, the primary dealers may choose to adjust their books to accommodate such supply. Traders sell bonds from their inventory in the secondary market to make space for the newly issued bonds and therefore rebalance their inventory.<sup>40</sup>
- (43) Traders can develop long or short trading positions. A trading position is the composition of a trader's investment portfolio (his 'book'), and the level and direction of his exposure on the EGB market. When traders have a long position or go long in a bond, they own or purchase bonds before selling them, thereby

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<sup>34</sup> By way of example, customer X has access to the pricing information of dealer A and dealer B on the interface of his own D2C platform. Each dealer has individually decided in the past to grant access to its quotes to customer X. Dealer A quotes a specific bond at 99.60 – 99.70 (or '60–70') bid price (that is how much the dealer is willing to pay to purchase the specific bond) and ask price (that is the price at which the dealer is willing to sell the specific bond) respectively. Dealer B quotes the same bond at 99.62 – 99.72 (or '62–72'). With that information, depending on his intended strategy, customer X knows that he can buy the bond from dealer A at 99.70 (or '70'), which is cheaper than the ask price of dealer B, or alternatively sell the bond to dealer B at 99.62 (or '62'), which is higher than the bid price of dealer A. Dealer C quotes the bond 99.58 – 99.68 (or '58–68'). However, customer X does not have access to the quotes of dealer C and will therefore not trade with him.

[...]

<sup>35</sup> On mid-prices, see recital (19).

[...]

<sup>36</sup> See also Judgment of the General Court of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, ECLI:EU:T:2019:675, paragraph 142.

<sup>37</sup> The average of the best bids and offers from the aggregated market prices.

<sup>38</sup> For example: OAT (*Obligations Assimilables du Trésor*) 2023 – dealer A 99.65, dealer B 99.66, dealer C 99.62 and so on.

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

<sup>40</sup> By way of example, a DMO plans the issuance of a new bond maturing in August 2020. A bond maturing in June 2020 already exists but it has been issued years ago and is therefore not frequently traded. Traders will therefore want to decrease their exposure in the June 2020 bond to subscribe to the new August 2020 issue.

speculating on foreseen gains when the value of the bond goes up (that is the trader is expecting the price of the bonds to go up (thereby decreasing the yield), which will increase the value of the bonds that the trader holds). When traders are or go short, they sell bonds that they do not have. They will have to buy them later and are speculating that the value of the bond will go down (that is the trader is expecting the price of the bonds to go down (thereby increasing the yield)) so that it can be bought for less than the price at which they have sold it.

- (44) If the trader is not carrying out speculative trading strategies and in order to eliminate trading risk (a process known as hedging), the trader can offset a net long position by selling bonds and a net short position by buying bonds. Failing that, the objective of the trader will be to try and offset the risk through a futures trade, an interest rate swap or through other bonds (different maturities and countries).

### 2.2.3. *Relationship between the primary and the secondary market*

- (45) Trading on the primary market has an impact on the secondary market and vice versa. Auctions and syndicates on the primary market generate trading activity on the secondary market, and the importance in trading on the secondary market may be relevant for qualifying as a primary dealer.
- (46) Many EGB that are trading on the secondary market are further tapped/issued on the primary market. In this case, the price and demand for the bond on the secondary market will determine the success of the tap auction.
- (47) EGB with a maturity date, face value and coupon rate that have not already been issued by the government before are issued for the very first time on the primary market, at least for that specific maturity. In this case, traders will revert to reference bonds of the same maturity but another issuer, or the same issuer but a slightly different maturity for predicting the success of the auction/syndication and setting their prices.
- (48) Ahead of an auction/syndication in the primary market, the traders position themselves on the secondary market for that EGB or the reference bond in anticipation of the expected yield curve. Any privileged information on how competitors behave in the secondary market, ahead of and during an auction in the primary market, gives these traders an advantage when participating in that auction.
- (49) As explained in recital (44), traders offset their long position acquired at auctions by trading directly with clients, or with primary dealers or through inter-trading brokers in the secondary market. Trading and hedging the new supply of bonds in the secondary market allows the traders to balance their inventories.
- (50) Information on the primary market is also directly or indirectly relevant for secondary market trading. Primary dealers are particularly well placed to see order flows and estimate bond demand. They could thus disclose information that may decrease uncertainties regarding the demand and thus the price of the bonds in question in the secondary market. Even traders who are not active on the primary market might benefit from the disclosure of information regarding the primary market for their trading activities in the secondary market.

#### 2.2.4. *Market value*

(51) The market value of the primary and secondary market for EGB is enormous.<sup>41</sup> Every quarter, EGB are issued for several hundreds of billions of EUR.<sup>42</sup> The total outstanding notional value of the EGB in the primary market at the start of the infringement period for this Decision was EUR 4.4 trillion; increased to EUR 6.3 trillion at the end of the infringement period; and exceeded EUR 9 trillion in 2020.<sup>43</sup> Accordingly, the secondary market where these EGB are traded is also very large by its very nature, with notional values of billions of EUR for daily trading and trillions of EUR for trades executed per year.<sup>44</sup>

### 2.3. **Parties**

(52) The following seven undertakings are covered by this Decision

#### 2.3.1. *Bank of America*

(53) Bank of America is a provider of banking and financial services. *Bank of America Corporation*, Charlotte, North Carolina, USA, is the ultimate parent company of the undertaking that has offices and activities in various countries around the world.

(54) In the relevant period, Bank of America operated an EGB desk in London.<sup>45</sup> The Bank of America employee that is mentioned in this Decision worked at this desk and was employed by *Bank of America, National Association*, a wholly owned subsidiary of Bank of America Corporation.<sup>46</sup>

#### 2.3.2. *Natixis*

(55) Natixis is a provider of banking and financial services. *Natixis S.A.*, Paris, France, is the parent company of the undertaking that has offices and activities in various countries around the world.<sup>47</sup>

(56) In the relevant period, Natixis operated an EGB desk in Paris.<sup>48</sup> The Natixis employees mentioned in this Decision worked at this desk and were employed by *Natixis S.A.*<sup>49</sup>

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<sup>41</sup> In Europe circa 60% of bonds (by volume) are government issued ([...]). For a detailed description of the infrastructure of the primary and secondary government debt markets in 20 European jurisdictions, as well as the European Stability Mechanism, see *European Primary Dealers Handbook*, available for download at <https://www.afme.eu/reports/publications/detail/European-Primary-Dealers-Handbook-Updated-20192020> (last accessed on 5 October 2020).

<sup>42</sup> Data from AFME. Most recent data for Q2/2019 for EGBs and bills is EUR 590.8 billion. (<https://www.afme.eu/reports/data/details//Government-Bond-Data-Report-Q2-2019>)

<sup>43</sup> ECB Securities Statistics. ([https://www.ecb.europa.eu/stats/financial\\_markets\\_and\\_interest\\_rates/securities\\_issues/debt\\_securities/html/index.en.html](https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/securities_issues/debt_securities/html/index.en.html)).

<sup>44</sup> Nomura for instance mentions [...]the public data from TradeWeb and AFME, referring to USD 5 trillion in EGB trades executed across Trade Web in 2018 and daily trading volumes in 2011 of EUR 25 billion and EUR 12 billion for German and French EGB respectively [...].

<sup>45</sup> [...]

<sup>46</sup> Following the merger between Bank of America and Merrill Lynch in 2008, EGB trading was primarily conducted within the EGB desk of Merrill Lynch International, a subsidiary of the merged bank.

<sup>47</sup> [...]

<sup>48</sup> The EGB desk formed part of the Government Bond Desk within the Fixed Income Division of the Capital Markets. Other desks within the Fixed Income Division traded EGBs of non-Eurozone EU Member States.[...]

<sup>49</sup> The Head of Government Bonds and a bond trader. [...]

### 2.3.3. *Nomura*

(57) Nomura is a provider of banking and financial services. *Nomura Holdings, Inc.*, Tokyo, Japan, is the ultimate parent company of the undertaking that has offices and activities in various countries around the world.

(58) In the relevant period, Nomura operated an EGB desk in London.<sup>50</sup> The Nomura employees mentioned in this Decision worked at this desk and were employed by *Nomura International plc.*, a wholly owned subsidiary of *Nomura Holdings, Inc.*<sup>51</sup>

### 2.3.4. *RBS*

(59) The Royal Bank of Scotland ('RBS'), now renamed NatWest, is a provider of banking and financial services. *The Royal Bank of Scotland Group plc*, Edinburgh, United Kingdom, which has been renamed *NatWest Group plc* in 2020,<sup>52</sup> is the ultimate parent company of the undertaking that has offices and activities in various countries around the world. RBS acquired the global wholesale trading activities of the Dutch financial institution *ABN-AMRO Bank N.V.* ('ABN-AMRO') on 17 October 2007 and merged these activities into its business as it existed at the time.<sup>53</sup> *ABN-AMRO Bank N.V.* was renamed *The Royal Bank of Scotland N.V.* in 2010 and *NatWest Markets N.V.* in 2018.<sup>54</sup>

(60) In the relevant period, RBS operated an EGB desk in London and ABN-AMRO in Amsterdam. The activities of the Amsterdam desk were merged into the London desk after the acquisition on 17 October 2007. The RBS and ABN-AMRO employees mentioned in this Decision worked at the desk of RBS and/or ABN-AMRO. They were employed either by *The Royal Bank of Scotland Plc*, later renamed *NatWest Markets Plc*, and/or by *ABN Management Services Limited*, a wholly owned subsidiary of *ABN-AMRO Bank N.V.* Both *NatWest Markets Plc* (previously named *The Royal Bank of Scotland Plc*) and *NatWest Markets N.V.* (previously named *The Royal Bank of Scotland N.V.* and *ABN-AMRO Bank N.V.*) are wholly owned subsidiaries of *NatWest Group plc* (previously named *The Royal Bank of Scotland Group Plc*).<sup>55</sup>

### 2.3.5. *UBS*

(61) UBS is a provider of banking and financial services. *UBS Group AG*, Zürich, Switzerland, is the ultimate parent company of the undertaking that has offices and activities in various countries around the world.<sup>56</sup>

(62) In the relevant period, UBS operated an EGB desk in London, within its Investment Bank Division in *UBS AG*, a wholly owned subsidiary of *UBS Group AG*.<sup>57</sup> The UBS employees mentioned in this Decision worked at this desk and were employed by *UBS AG*.<sup>58</sup>

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<sup>50</sup> [...]

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

<sup>52</sup> <https://otp.tools.investis.com/clients/uk/rbs3/rns/regulatory-story.aspx?cid=365&newsid=1403534>.

<sup>53</sup> [...]

<sup>54</sup> [...]

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

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

<sup>57</sup> Other desks (Credit, Repo, Solutions, Group Treasury) could also trade EGB primarily to hedge their primary investments or for liquidity management.

[...]

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

### 2.3.6. UniCredit

- (63) UniCredit is a provider of banking and financial services. *UniCredit S.p.A.*, Milan, Italy, is the ultimate parent company of the undertaking that has offices and activities in various countries around the world.
- (64) In the relevant period, UniCredit operated an EGB desk within its subsidiary *UniCredit Bank AG*, in Munich, Germany.<sup>59</sup> The UniCredit employee mentioned in this Decision worked at this desk and was employed by *UniCredit Bank AG*, a wholly owned subsidiary of *UniCredit S.p.A.*<sup>60</sup>

### 2.3.7. WestLB

- (65) WestLB was a provider of banking and financial services. *WestLB AG*, Düsseldorf, Germany, was the ultimate parent company of the undertaking.<sup>61</sup>
- (66) In the relevant period, WestLB operated an EGB desk in Düsseldorf. The WestLB employee mentioned in this Decision worked at this EGB desk and was employed by *WestLB AG*.<sup>62</sup>
- (67) WestLB was wound down in 2012 and most of its banking activities, including the EGB trading business, were discontinued. The risk portfolio was transferred to a new entity, *Erste Abwicklungsabstand* and the remainder of the undertaking was renamed *Portigon AG*.<sup>63</sup>

## 3. PROCEDURE

- (68) On 29 July 2015, RBS<sup>64</sup> applied for a marker pursuant to point 8 of the Commission Notice on immunity from fines and reduction of fines in cartel cases (hereafter the ‘Leniency Notice’)<sup>65</sup> in relation to possible collusive bidding in EGB auctions.<sup>66</sup> RBS perfected the marker and submitted a full application for immunity from fines [...]. RBS subsequently supplemented its application.<sup>67</sup>

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They traded EGBs on behalf of various UBS entities, such as UBS Limited, UBS Deutschland AG and UBS AG.

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

The desk operated under the commercial name HypoVereinsbank under the Rates division of the Markets Department and participated in auctions in Germany and Austria and traded EGBs of various Eurozone Member States, mainly from Western Europe. EGBs from Southern Europe were mainly traded in Milan and bonds from other non-Eurozone EU Member States were traded in London.

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

He traded mainly long term German bonds on the secondary market.

<sup>61</sup> [...]

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

WestLB was an important participant for the EGB auctions in Germany. The EGB desk operated within the Debt Markets Business unit. Within that business unit, Primary Debt Markets was in charge of participating in the EGB auctions and Liquid Bond Trading was in charge of secondary market trading. The trader concerned was the Head of Liquid Bond Trading.

<sup>63</sup> Commission Decision of 20 December 2011 on the State aid C 40/2009 and C 43/2008 for the restructuring of WestLB AG, OJ L148, 1.6.2013, p. 1-32.

[...]

<sup>64</sup> *The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc.*

<sup>65</sup> OJ C 298, 8.12.2006, p. 17.

<sup>66</sup> [...]

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

- (69) On 27 January 2016, the Commission granted RBS conditional immunity from fines pursuant to Article 8(a) of the Leniency Notice.<sup>68</sup> RBS continued to cooperate and provide information throughout the investigation.<sup>69</sup>
- (70) On 29 June 2016, UBS applied for a reduction of a fine pursuant to point 23 of the Leniency Notice and continued to provide information thereafter.<sup>70</sup>
- (71) On 30 September 2016, Natixis applied for a reduction of a fine pursuant to point 23 of the Leniency Notice and continued to provide information thereafter.<sup>71</sup>
- (72) The Commission sent requests for information ('RFI'), pursuant to Article 18(2) of Regulation (EC) No 1/2003 and/or point 12 of the Leniency Notice to the addressees of this Decision and other parties.<sup>72</sup>
- (73) On 31 January 2019, the Commission initiated proceedings pursuant to Article 2(1) of Regulation 773/2004 and issued a Statement of Objections ("SO").<sup>73</sup> The Commission informed UBS and Natixis that immunity was not available but that they were the second and third undertakings to submit evidence of the suspected infringement and preliminarily qualified for a reduction of any fine that may be imposed.<sup>74</sup>
- (74) All addressees of the SO were given access to the Commission's investigative file.<sup>75</sup> All addressees made known in writing their views on the objections raised against them.<sup>76</sup> They also presented their views orally during an oral hearing.<sup>77</sup>
- (75) On 6 November 2020, each of the addressees of the SO on whom fines could potentially be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 for their involvement in the infringement received a letter providing further clarifications on the Commission's proposed methodology for calculating the proxy for the value of sales in this case, as well as the underlying figures and resulting value applicable to that party, allowing these addressees to submit comments.<sup>78</sup> On 12 November 2020, all addressees of the SO received a Letter of Facts ("LoF") enabling them to provide their views on the factual additions and corrections concerning certain communications that had been presented in the SO (including its Annex) in support of objections.<sup>79</sup> To this end, the parties received on the same date (renewed) access to the underlying evidence contained in the Commission's investigative file.<sup>80</sup> Most parties submitted their comments on the LoF in December 2020 and January 2021.<sup>81</sup>

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<sup>68</sup> Commission Decision C(2016) 537 final of 27.1.2016[...].

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

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

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

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

<sup>73</sup> Commission Decision C(2019)822 and Statement of Objections C(2019)825[...].

<sup>74</sup> Commission Decisions C(2019)823 and C(2019)824[...].

<sup>75</sup> They received a DVD with the accessible parts of the Commission's investigation file and their legal representatives received further access to those parts that were accessible at Commission premises only.

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

<sup>77</sup> Presentation at oral hearing in Brussels (22-24.10.2009):

[...]

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

<sup>79</sup> [...]

<sup>80</sup> All parties received three emails with the accessible version of the documents on file that were mentioned in the LoF. All documents, except one, had been made accessible before in the context of the access to the file that was granted after the adoption of the SO (see recital (74)).

<sup>81</sup> See footnotes 78 and 79.

(76) State of play meetings were held by telephone conference between 15 and 24 March 2021.

#### 4. DESCRIPTION OF THE EVENTS

(77) This chapter provides first a general overview of the cartel, how it was organised, the participants, the characteristics and the scope of the communications. The second part of this chapter sets out, in chronological order, the conduct that is the subject-matter of this Decision.

(78) The individuals involved in the infringement operated in a working environment in which a considerable volume of their communications was recorded. As a consequence, the main evidence of the events described in this Decision consists of contemporaneous records of various Bloomberg communications. As these communications are characterised by a significant amount of industry jargon, shorthand and indirect references, this Decision also relies on explanations provided by the parties either in their voluntary submissions in support of their immunity and/or leniency applications or in their replies to the Commission's RFIs.<sup>82</sup>

##### 4.1. General overview

(79) During the relevant period, a group of EGB traders were in close contact with each other via persistent chatrooms, but also via contacts in person, via telephone or via instant messages.<sup>83</sup>

(80) Persistent chatrooms are multilateral meetings, in which the participants are not physically present and do not communicate orally, but communicate with each other by sending instant messages to the group that are accessible to all and to which all can react. A persistent chatroom is a continuous conference that is by 'invitation only', meaning that participation is limited to invited members who have automatic access to the full conversation(s). When a chatroom is opened, traders may enter and exit several times per day. When a trader logs back into the same chatroom, the other participants are alerted that he has viewed, or at least can view, the history of the discussions from that day.

(81) The two persistent chatrooms that are of particular relevance in the context of this case are (1) PCHAT-0x0000000000001ac2 and (2) PCHAT-0x0000000000005c91, later PCHAT-0x000000000000fe99.<sup>84</sup>

(82) PCHAT-0x0000000000001ac2 was called '*CODS & CHIPS*' by its participants as from its creation on 5 January 2007.<sup>85</sup> '*CODS*' may have stood for '*Cash on Delivery*' or '*Close of Day*', whereas '*CHIPS*' potentially stood for '*cheap as chips*'.<sup>86</sup> Other names used for this chatroom, albeit very briefly, were '*6 SAUSAGE 2 EGGS*': '*6 SAUSAGE*' and 'WHEN [...] BACK'. The chatroom was used until 28

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<sup>82</sup> See footnotes 67-71. [...]. The explanations provided by these undertakings on the communications were consistent and mutually corroborating.

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

<sup>84</sup> PCHAT-0x000000000000fe99 is the successor of PCHAT-0x0000000000005c91, with the same members and types of exchanges. For the purposes of assessment, they can be considered as one.

<sup>85</sup> Not to be confused with PCHAT-0x000000000000fe99 that was also called *CODS & CHIPS* between 24.09.2009 and 09.09.2010.

<sup>86</sup> [...], more generally referred to the British dish of '*fish and chips*'.

March 2012 and eventually closed on 29 November 2013.<sup>87</sup> It will be generally referred to hereinafter under its first and last operational name ‘*CODS & CHIPS*’.<sup>88</sup>

- (83) PCHAT-0x000000000000fe99 finds its origin in PCHAT 0x0000000000005c91, that was created on 28 February 2007 under the name ‘*RBSUBSABN*’.<sup>89</sup> Soon thereafter, on 18 July 2007, the members replaced PCHAT-0x0000000000005c91 by PCHAT-0x000000000000fe99 under the name ‘*30yr kings*’.<sup>90</sup> Other names used, albeit sometimes only briefly, were ‘*big swinging dks*’, ‘*in need of vaccines*’ and ‘*CODS & CHIPS*’.<sup>91</sup> The name was eventually changed into ‘*DBAC*’ in 2010.<sup>92</sup> The chatroom was used until 8 July 2011 and eventually closed on 6 March 2012.<sup>93</sup> It will be generally referred to hereinafter under its last operational name ‘*DBAC*’.<sup>94</sup>
- (84) Both persistent chatrooms were initiated early in 2007 by a group of four traders. This group had access to both chatrooms from the start and continued to have access throughout, even when changing employer and access had to be technically renewed. It was comprised of [...] of UBS, [...] of RBS, [...] of RBS and later Nomura, and [...], who was employed consecutively by ABN-AMRO, Natixis, WestLB and UniCredit. These traders were involved in the mutual contacts throughout their existence and should be considered the key players in the cartel.
- (85) Some of these four traders introduced colleagues to the contacts. As a result, other traders received access to one or both of the *DBAC* and/or *CODS & CHIPS* persistent chatrooms for more limited periods in time. [...] of UBS, [...] of RBS, [...] and [...] of ABN-AMRO, [...] of ABN-AMRO, later RBS, Nomura and another bank, were given access to *CODS & CHIPS*. [...] of Natixis was given access to *DBAC*. [...] of RBS was given access to both chatrooms. In addition, [...], a trader of Bank of America with a history at ABN-AMRO, also requested and received access to *CODS & CHIPS* for some time during the early stages of the infringement.
- (86) By end of 2011, the RBS traders had ended their participation in the persistent chatrooms.<sup>95</sup> The contacts of the other participants became less frequent and stopped early in 2012.<sup>96</sup> The last contact mentioned in this Decision dates from 28 March 2012.<sup>97</sup> *DBAC* and *CODS & CHIPS* were eventually closed on 6 March 2012 and 29 November 2013 respectively.<sup>98</sup>
- (87) *CODS & CHIPS* was thus wider in terms of temporal scope and membership than *DBAC*.
- (88) Contacts in both persistent chatrooms occurred regularly, sometimes daily, in particular when EGB came up for auction. Communications could be lengthy, lasting

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<sup>87</sup> Recital (356).

<sup>88</sup> In Table 3 and Annex 1, the chatroom is referred to under its actual names.

<sup>89</sup> Recital (107).

<sup>90</sup> Recital (118).

<sup>91</sup> Recitals (253), (255) and (266).

<sup>92</sup> Recital (294).

*DBAC* stands for ‘*Don’t Be A C\*\*t*’ ([...]).

<sup>93</sup> Recitals (336) and (356).

<sup>94</sup> In Table 3 and Annex 1, the chatroom is referred to under its actual names.

<sup>95</sup> Following compliance training. See recitals (349) – (352). Later, RBS also took steps to ban trader participation in multi-bank chatrooms ([...]).

<sup>96</sup> [...]

<sup>97</sup> Recital (356).

<sup>98</sup> *Idem*.

all day or spanning multiple days. The traders used professional jargon and abbreviations. On occasion, the participants also used nicknames and code words.<sup>99</sup> Similar information was discussed in both chatrooms. For the period between 24 September 2009 and 9 September 2010 both chatrooms operated under the same name (CODS & CHIPS) and were interchangeable.<sup>100</sup> The contacts are therefore described chronologically in this Decision for both chatrooms together.

- (89) A chronological overview of the participants (individual traders and their employers) to the two main relevant persistent chatrooms is provided in Table 3:

*Table 3: Chronological overview of persistent chatrooms*

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<sup>99</sup> [...]   
<sup>100</sup> Recitals (266) and (294).

DATE	PCHAT-0x000000000001ac2	PCHAT-0x000000000005c91 PCHAT-0x000000000000fe99	EMPLOYERS		
05.01.2007	<b>CODS &amp; CHIPS</b>		UBS	RBS (incl. ABN AMRO)	Bank of America
[...]					
[...]					
[...]					
[...]					
15.01.2007	[...]				
29.01.2007	[...]				
12.02.2007	[...]				
28.02.2007		<b>RBSUBSABN</b>			
[...]		[...]			
[...]		[...]			
[...]		[...]			
[...]		[...]			
02.05.2007	[...]				
04.07.2007	[...]				
05.07.2007	[...]				
18.07.2007		<b>30yr kings</b>			
[...]		[...]			
[...]		[...]			
[...]		[...]			
[...]		[...]			
06.08.2007	[...]				
18.12.2007	[...]				
21.12.2007	[...]				
31.12.2007	[...]				
03.03.2008	[...]				
03.06.2008	[...]				
26.09.2008	[...]				
06.11.2008	[...]				
18.05.2009	[...]				
19.06.2009		<b>BIG SWINGING DICKS IN NEED OF VACCINES</b>			
22.06.2009					
10.08.2009	[...]				
24.09.2009		<b>CODS &amp; CHIPS</b>			
16.10.2009	[...]	[...]			
[...]		[...]			
19.10.2009	[...]				
22.02.2010	[...]				
07.07.2010	[...]				
09.09.2010		<b>DBAC</b>			
[...]		[...]			
23.09.2010	[...]				
26.10.2010	[...]				
28.10.2010	<b>6 SAUSAGE 2 EGGS 6 SAUSAGE</b>				
17.01.2011					
18.01.2011	[...]	[...]			
[...]		[...]			
02.02.2011	<b>WHEN MURPH BACK 6 SAUSAGES CODS &amp; CHIPS</b>				
[...]		[...]			
20.04.2011	[...]				
01.06.2011	[...]				
10.06.2011	[...]				
27.06.2011	[...]	[...]			
08.07.2011		Last contact			
11.07.2011	[...]	[...]			
09.09.2011	[...]				
22.09.2011	[...]				
06.10.2011	[...]	[...]			
28.11.2011	[...]				
15.12.2011	[...]				
21.12.2011	[...]	[...]			
01.02.2012	Last contact				
05.02.2012	[...]				
06.03.2012		[...]			
		<b>Chatroom closed</b>			
08.08.2012	[...]				
29.11.2013	[...]				
	<b>Chatroom Closed</b>				

- (90) The traders with access to the DBAC and/or CODS & CHIPS persistent chatrooms knew each other very well, met each other socially<sup>101</sup> and were in contact via telephone, usually mobile phone, possibly to avoid any recording of the conversation.<sup>102</sup> A trader for instance stated in the chatroom with respect to the idea to ‘ramp’ an auction ‘*perfect i have an idea but not for bloomberg*’.<sup>103</sup>
- (91) The Decision also identifies a number of communications in other persistent chatrooms<sup>104</sup> and instant messages or emails.<sup>105</sup> These parallel contacts allowed the traders concerned to communicate bilaterally and/or with traders that did not have access to the two main persistent chatrooms. These contacts took place in parallel to, or in support of, the communications in the DBAC and CODS & CHIPS persistent chatrooms and they confirmed and advanced the conduct in those persistent chatrooms.
- (92) An overview of the traders that are mentioned in this Decision and the banks they were working for during the infringement period is provided in Table 4.

Table 4: Employment period of traders<sup>106</sup>

EMPLOYEE	Start date	RELEVANT PERIOD					End date
		04.01.2007	2008	2009	2010	2011	
[...]	[...]			UBS			[...]
[...]	[...]						[...]
[...]	[...]						[...]
[...]	[...]						[...]
[...]	[...]						[...]
[...]	[...]		NATIXIS		WEST LB		UNICREDIT
[...]	[...]						[...]
[...]	[...]						[...]
[...]	[...]						[...]
[...]	[...]		ABN AMRO/RBS				[...]
[...]	[...]				[BANK]		NOMURA
[...]	[...]						[...]
[...]	[...]						[...]

- (93) The contacts between the traders were numerous. The Commission’s file contains hundreds of communications that were selected by the various immunity and leniency applicants as relevant communications and provided to the Commission.<sup>107</sup> This Decision will, in Section 4.2, present instances of the reported collusive behaviour chronologically. In section 5.1.3.2, for analytical purposes of the characteristics of the communications between the parties, the Commission organises

<sup>101</sup> See for instance [...]: communications of 29.01.2007: ‘get a date, will see if Lahore are open!’, 13.11.2007: ‘7:15 tomorrow [...] dinner on me’, ‘where we going’, ‘if it is tomorrow we can do anywhere’, 20.12.2007: ‘so who is comign along to the Magpie later for soem beers?/got lunch in the city, see what state I am in after’, 12.09.2008: ‘Ubon for dinner [...] [...] u can come if u want’, 21.10.2008: ‘full house’, ‘[...] / DBAC’, ‘I’ll try/ you coming for a beer [...]?’ , ‘na tea total these days’ ‘dbac’, 08.05.2009: ‘looking fwd to dinner tonight’ ‘I’ll be in the bar waiting!’.

<sup>102</sup> See for instance recitals (120), (147)-(149), , (204), (229), (244) and (228). See also footnote 882.

<sup>103</sup> Recital (207).

<sup>104</sup> PCHAT-0x10000009659AD (Piggy Baz) in recital (247).  
PCHAT-0x000000000002c60e (RBS-UBS-GOV) in recitals (168), (184), (189), (200), (235) and (283).

<sup>105</sup> [...] Instant messages are exchanges in non-persistent chatrooms. A new chatroom identification ID is attributed to each contact.  
See for instance recitals (156), (167), (236) and (282).

<sup>106</sup> [...]

<sup>107</sup> Recitals (68) - (71).

these contacts or series of contacts into four intertwined and partially overlapping categories of agreements and/or concerted practices:<sup>108</sup>

- (a) attempts to influence the prevailing market price on the secondary market in function of the conduct on the primary market;
  - (b) attempts to coordinate the bidding on the primary market;
  - (c) attempts to coordinate the level of overbidding on the primary market;
  - (d) other exchanges of sensitive information, including on (i) pricing elements, positions and/or volumes and strategies for specific counterparties related to individual trades of EGB on the secondary market; (ii) individual recommendations given to a DMO and (iii) the timing of pricing of syndicates.
- (94) In these contacts, the traders exchanged various pieces of commercially sensitive information that allowed them to be informed about each other's conduct and strategies, and may have allowed them to align or otherwise coordinate their conduct and help each other gain competitive advantages when EGB were issued, placed in the market and traded. Relevant information exchanged concerned prices, volumes and/or positions, such as: information on mid-prices, yield curves and spreads<sup>109</sup> of bonds recently traded or being offered on the secondary market, volumes parties envisaged purchasing at the auctions, information on the bids, the level of overbidding and overbidding strategies at the auctions and so forth. The information exchanged between competitors was often precise and confidential. It was relevant to the traders' decision-making and allowed them to adjust their trading strategies as a result.
- (95) The overall aim of the collaboration between the traders was to help each other in their operation on the market by reducing uncertainties regarding the issuing and/or trading of EGB, with the general purpose of increasing the revenues which they earned from participation in EGB issues and subsequent trading on the primary and secondary markets. In this regard, the parties thereby knowingly substituted cooperation for the risks of competition to the detriment of other market participants, banks, their customers or DMO.
- (96) In terms of scope, the conduct related to trades of EGB on the primary and secondary market. The geographic scope of the cartel was at least EEA-wide.

#### **4.2. Chronological overview of events**

- (97) The chronological overview of events describes contacts between EGB traders in persistent chatrooms or instant messages in the period between 3 January 2007 and 28 March 2012. Most of the communications demonstrate that commercially sensitive information was exchanged between competitors that went beyond simple observations that any market observer could make. Other communications are

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<sup>108</sup> See Section 5.1.3.2., recitals (496) - (544) and Annex 1.

<sup>109</sup> The notion of spreads is used for various situations. Spreads may refer to: (1) the difference between the bid price and offer price for a specific bond; (2) the difference between the yields of two bonds issued by the same sovereign with different maturities; or (3) the difference between the yields of two bonds issued by different sovereigns for the same (or similar) maturities.

relevant because they provide context and contain information on the organisation and functioning of the cartel.

- (98) The chronological overview of events contains extracts of a selection of communications from persistent chatrooms and non-persistent chatrooms. These extracts highlight and illustrate the parties' overall conduct and should be interpreted in the wider context of the communications between the participants that were typically much longer.
- (99) In this chronological overview of events, some instances are described in more detail than others. For instance, the first occurrence of a specific type of conduct explains this conduct in detail, while the descriptions of subsequent occurrences of the same type of conduct may thus be set out more briefly as the same analysis applies *mutatis mutandis*. Annex 1 to this Decision provides an overview of the anticompetitive contacts covered by this Decision, the parties to those contacts, the relevant extracts of the contacts and the conclusions that the Commission draws from those contacts. The chronological overview of events in the Decision should be read in conjunction with Annex 1.
- (100) On **3 January 2007**, traders of RBS ([...]), UBS ([...]) and ABN-AMRO ([...]) discuss trading in a non-permanent chatroom throughout the day.<sup>110</sup> They exchange sensitive information in respect of their bids for an upcoming ten years maturity bonds German auction. For instance, when the ABN-AMRO trader asks at 09:25: '*any clues on the 10y bidding guys*' '+2 here', the other traders reveal their overbidding levels. The RBS trader replies: '*we plus 3*' and the UBS trader adds a bit later: '+3 here'. They also exchange information on their mid-prices. When the RBS trader asks at 15:03: '*were is mid*', the ABN-AMRO trader replies: '55', the UBS trader says: '56' and the RBS trader adds: '*56 mid wat cross*'<sup>111</sup>, asking the UBS trader what was the price of the futures contract that he took as a reference when he priced the mid-price at 56.<sup>112</sup>
- (101) On **4 January 2007**, traders of RBS ([...]), UBS ([...]) and ABN-AMRO ([...] and [...]) discuss, among other things, French EGB maturing in 2017 and Dutch EGB maturing in 2023 and 2038 in a non-permanent chatroom.<sup>113</sup> They exchange information on volumes and pricing on the secondary market and disclose sensitive information, including regarding a specific counterparty.<sup>114</sup> For instance, at 09:08 the first ABN-AMRO trader ([...]) writes: '[...] [*...*] of ABN-AMRO] doing +2 and some +3 for france what u guys doing' '?' to which the UBS trader replies: '+3' and the RBS trader adds: '*plus 3-4*'. Thereafter, at 09:31, the RBS trader informs the group that he has a counterparty who wants to buy Dutch EGB maturing in 2023: '*being asked 23s holland*'. The ABN-AMRO trader ([...]) confirms and reveals its price: '*yep 62*' to which the RBS trader ([...]) reveals his own price: '64'. The customer then trades with ABN-AMRO. At 09:32, the second ABN-AMRO trader ([...]) says: '*we did it*', to which the RBS trader comments: '*well done*'. At 09:36, they coordinate what price to show to the customer. The UBS trader says: '*we bid same*' and the first ABN-AMRO trader replies: '*not budging*', '*he's asking*', '*stay the*

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<sup>110</sup> CHAT-43505-3489966-116780879959504 [...].

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

<sup>112</sup> See also footnote 31 .

<sup>113</sup> CHAT-43505-1302633-1167894342312359 [...].

<sup>114</sup> [...][...], there is potential coordination between traders of auction bids, exchanges on a specific counterpart and traders disclosing sensitive information.

*same*'. They then continue discussing Dutch EGB maturing in 2038 (38s) for the purpose of offering an agreed price to the counterparty, who is looking to buy at a mid-price of 035. The UBS trader quotes: *'hes looking for .035'*. The second ABN-AMRO trader quotes: *'ah we sticking at 02 vs 23x'*. The RBS trader replies: *'i can pay 03 if you guys want'* (where '03' stands for .030). The second ABN-AMRO trader discloses that the counterparty insists: *'he still wants .035 tho i guess'*. In the end the UBS trader suggests: *'bid him 3 hes traded'* and the RBS trader agrees: *'lets go offered then'*.

- (102) On **5 January 2007**, the CODS & CHIPS chatroom is created between traders of ABN-AMRO ([...]), RBS ([...]) and UBS ([...]).<sup>115</sup> All three participants communicate the whole working day. Once all three participants enter the chatroom at 07:06 the RBS trader asks: *'WAT THE FUK IS THIS'* and the UBS trader replies: *'this is nice'*. The ABN-AMRO trader greets the others with: *'morning!' 'chat room' 'but persistent' 'BBG [Bloomberg] technology'*. During the chat, the participants discuss spreads and mid-prices for various bonds. For example, at 08:46 the RBS trader enquires: *'wat spread 37/37 italy?'* and the UBS trader promptly replies: *'37/5' '?'*. A few seconds later the ABN-AMRO trader further complements: *'we got 37.75.'* The RBS trader quotes: *'ok cheers just gonna make it.'* At 13:36, the ABN-AMRO trader asks the mid-price for a (probably Italian) bond maturing in 2037: *'mid 37s?'* to which both the traders of UBS: *'47 49'*, and RBS: *'47'*, immediately respond. The ABN-AMRO trader expresses his gratitude to the other two participants for providing him with the relevant information and adds: *'just checking our pricer.'* Earlier that day, at 08:11, the RBS trader asked for the price of a French EGB maturing in 2029. The ABN-AMRO trader promptly replies and discloses his bid and offer price: *'95 bid vs 72 offer'*. Later that day, at 13:36, he also shares his mid-price for a bond maturing in 2037: *'47' '49'*. At 14:32, UBS discloses the price a specific customer has paid: *'oil bought btp 29s' '15'*.<sup>116</sup>
- (103) Other similar relevant contacts between the traders of ABN-AMRO, RBS and UBS in the CODS & CHIPS chatroom took place on **8, 10, 11, 23, 24, 25** and **26 January 2007**.<sup>117</sup> As set out in Annex 1 to this Decision, these contacts are further examples of the anticompetitive conduct covered in this Decision.<sup>118</sup>
- (104) On **29 January 2007**, following some discussion between the members of the CODS & CHIPS persistent chatroom, a trader of Bank of America ([...]) is admitted to the chatroom.<sup>119</sup> At 08:27 a trader of ABN-AMRO ([...]) asks the other participants in the chatroom at that time: *'[...] wants to know if everyone is cool if he's on the chat'*. One trader of RBS ([...]) agrees on the condition that *'as long as [...] [Bank of America], doesn't see it thats a must'*. The other trader of ABN-AMRO ([...]) confirms: *'i agree'*. The UBS trader ([...]) is a bit reluctant: *'yea it nerves me a bit'*. The RBS trader ([...]) intervenes by quoting: *'sounds like a no then to me'*. The

<sup>115</sup> PCHAT-0x0000000000001ac2 [...].

<sup>116</sup> [...]. [...], there were exchanges of information regarding mid-prices and spreads between traders, traders disclosing potentially sensitive information and useful context for the use of the chatrooms.

<sup>117</sup> PCHAT-0x0000000000001ac2 [...].

See the overview of competitive communications in Annex 1.

<sup>118</sup> [...]. [...], the traders engage in discussions regarding trader positions, order flows, trading strategy and recently executed trades. [...], these communications reveal potential coordination between traders in relation to specific counterparties, exchanges of information regarding mid-prices and spreads between traders and traders disclosing potentially sensitive information.

<sup>119</sup> PCHAT-0x0000000000001ac2 [...].

ABN-AMRO trader summarises: *'i'm quite happy as long as [...] isnt getting anything'*. The RBS trader ([...]) maintains that: *'the problem with that is we cant control when [...] is off the desk'*, to which the ABN-AMRO trader ([...]) replies: *'i guess [...] needs to provide the answers to that'*. The RBS trader ([...]) informs the others that he already: *'told [...] i dont mind as long as [...] does not see it and even we shud ask him to log out when he off desk'*. The ABN-AMRO trader ([...]) approves: *'sounds good to me'*. The UBS trader ([...]) provisionally agrees to: *'go with it if things get out we ll soon know'*. A few minutes later the ABN-AMRO trader and administrator of the chatroom ([...]) seeks confirmation: *'so i am putting [...] on or no' '? he is asking'*. The UBS trader ([...]) confirms: *'sure but we ll cut his balls' 'if things get out' ':-)'*. The RBS trader ([...]) also confirms and concludes: *'fine as long as [...] doesn't see it and when hes away from desk he logs out thats fair and no chance if [...] tries to fuk us'*. The Bank of America trader is admitted to the chatroom and he says: *'Don't worry will close the chat if I am off the desk, nothing goes out'* to which the RBS trader responds *'we are watching u'* and the UBS trader adds *'big brother'*.<sup>120</sup>

- (105) On **12 February 2007**, [...] (UBS) is added to the CODS & CHIPS chatroom.<sup>121</sup>
- (106) On **14 February 2007**, traders of UBS ([...]), Bank of America ([...]), RBS ([...]) and [...] and ABN-AMRO ([...]) communicate in CODS & CHIPS.<sup>122</sup> They discuss trading strategies, cheapening the bonds ahead of an auction (that is steepening the curve) and exchange information on bid prices, volumes and overbidding levels.<sup>123</sup> For instance, at 07:42, the Bank of America trader discloses that he is trying to buy the Italian EGB: *'Our bid in BTP 21's on the tele'*, to which the ABN-AMRO and the RBS trader ([...]) respectively reply: *'lifted by you[...]'* and *'I WAS JUST LIFTED'*. The other traders disclose they have a different strategy and are preparing to sell and cheapen the bond before the auction. The ABN-AMRO trader announces: *'i got 90m to go before auction'*. The trader of RBS ([...]) discloses: *'80'* and the UBS trader adds: *'igit 70mm'*. Knowing that the Bank of America trader had just told them that he was buying the bond, the ABN-AMRO trader suggested: *'so let [...] try to richen it'*, meaning to trade the bond at a price higher than its current market value. The UBS trader shares this suggestion by saying: *'please'*. The Bank of America trader warns them: *'Hold offa little, before trying to offer it'*. The RBS trader discloses: *'2iam putting mine in 2.5 so it annoys everyone'*. The Bank of America trader adds: *'We have been trying to buy for the last two days'*. The ABN-AMRO trader jokes: *'stop lying'*. Closer to the auction, the traders exchange sensitive information on their bidding levels and volumes, allowing them to understand each other's trading strategy and therefore secure the desired allocation of bonds at the auction. At 08:32, the UBS trader enquires: *'wat we over bidding for the italy'*. The RBS trader says: *'i need help with that'*. The ABN-AMRO trader confirms: *'yah i dont remember where the last one came' 'cant find it on my spreadsheet either'*. The UBS trader says: *'+ 13' 'but italy this year' 'has been coming not so high' 'cause of the way we have 2*

<sup>120</sup> [...]. [...], the communication contains relevant context on the use of the chatroom and the relations between the traders.

<sup>121</sup> See Table 3 in recital (89) and PCHAT-0x0000000000001ac2 [...].

<sup>122</sup> PCHAT-0x0000000000001ac2 [...].

<sup>123</sup> [...] this was a discussion on intended trading strategies including aligning positions and Bank of America's desire to richen the price of the bond in the secondary market, as well as exchanging of mid-prices. In the primary market, [...] exchange of information on bid prices, volumes and submitted bids ahead of an auction and the outcome of the auction including information on prices and volumes filled.

*bid*'. The ABN-AMRO trader discloses: '+6-8 u were saying yesty' '?'. The UBS trader adds: 'gonna go higher form my 35' '3%'. The RBS trader says: 'I cant miss'. The UBS trader comments: '+15 then'. At 09:10, the RBS trader notes that: 'some spiv<sup>124</sup> asking offer in long portugal'. The ABN-AMRO trader clarifies: 'i offered small' 'a spiv' 'but he's a key account'. The UBS trader discloses: 'me 2 now 25mm' 'showed high no trade'. The ABN-AMRO trader says, 'i was going to sell some 81s out for this auction as its top of recent channel we've been trading' 'but all this swapped issuance got me nervous to' 'great' 'i am offering btp21 at 94 x 75 if cares[...]'. The Bank of America trader immediately reacts to that: 'He is working a bid on the tele, nothing better now'. At 09:23, the traders start exchanging overbidding levels and volumes ahead of a German auction. ABN-AMRO trader asks: 'what u guys bidding in germany' [...] say +3 for 200m' 'if bund trades lower than 70 he will pay +4'. The RBS trader says: 'plus 3 plus 4'. The UBS trader confirms: 'SAME levels here' 'as well'. At 09:47, the ABN- AMRO trader informs the other traders that someone is buying a bond from him as well as his strategy concerning how he intends to structure additional sales of this EGB: 'someone lifting<sup>125</sup> me in icap (a broker)' '25m' 'im a cent higher for another 25 m' 'now' 'let these chimps go i got another 50-75 to do in 25m clips'. The RBS trader asks: 'wat we paying wops?', the UBS trader discloses: '+16' 'as u say need them' and the Bank of America trader discloses: '+13' 'french firm paying +15'. The RBS trader says 'iam plus 15'. The ABN-AMRO trader says: '+14 for me 4%' 'dont want em bidding below the bidside for other small bits'. The Bank of America trader says: '[...] - at 75 at 9.55 as you wantd'. The UBS trader says: 'bond 2 high'. The Bank of America trader notes: 'we are getting lifted as well' 'Stanley lifting us'. Later, at 13:25, the traders start exchanging mid-prices on the secondary market in relation to Greek bonds. The UBS trader asks: 'where we got 35/38s'. The RBS trader replies: '.7', the Bank of America trader says: '.8' and the ABN-AMRO trader as well: '.8'. The UBS trader says: 'showing pick 1' '.7 give out there'.<sup>126</sup>

- (107) On **28 February 2007**, the founding members of the CODS & CHIPS chatroom [...] (UBS), [...] and [...] (ABN-AMRO) and [...] (RBS) create another persistent chatroom PCHAT-0x00000000000005c91. They give it the name 'RBSUBSABN' but it will be referred to in this Decision under the last operational name of its successor 'DBAC'.<sup>127</sup>
- (108) On **1 March 2007**, there was a discussion between traders of ABN-AMRO ([...]), RBS ([...]) and UBS ([...]) in the DBAC chatroom.<sup>128</sup> They shared specific and recent information on their trading positions, bid levels, overbidding, mid-prices and volumes in a discussion about an upcoming French auction for bonds maturing in 2021, allowing them to coordinate and align their strategies.<sup>129</sup> At 07:47, the RBS

<sup>124</sup> Slang for an untrustworthy person.

<sup>125</sup> To lift the offer is the opposite of to hit the bid.

<sup>126</sup> See also recital (597).

<sup>127</sup> See Table 3 in recital (89).

<sup>128</sup> PCHAT-0x00000000000005c91 [...].

<sup>128</sup> PCHAT-0x00000000000005c91 [...].

<sup>129</sup> [...] the object of the exchange was to enable the participants to ascertain each participant's bidding strategy for the auction in order to try to secure a desired allocation of bonds. The communication demonstrates competitors discussing and potentially adjusting and/or aligning their strategies in the lead up to the auction. [...] the conduct reveals potential coordination between traders of auction bids, exchanges of information regarding mid-prices between traders and traders disclosing sensitive information.

trader proposes that: *'if we bid plus 4 that will be 450 [million] between us thats enough for me'* (meaning that if they bid four cents above the mid-price they should be allocated 450 million bonds which they can split between them). To this proposal the UBS trader responds: *'yup'* and the ABN-AMRO trader confirms: *'thats fair enough'*. He further suggests that the participants: *'bid the offer side of screen'* (that is to seek to reduce the prevailing market price of the bond ahead of the auction). The RBS trader acknowledges that he is: *'up for that'*. Up until the auction, the traders of RBS, ABN-AMRO and UBS attempt to coordinate their trading and bidding strategy and share information regarding their positions. For instance, at 08:53, the RBS trader reveals that: *'if these 15 years tighten in iam not bidding'*. The UBS trader discloses that they are: *'selling more'* as they: *'wanna be flat'* (meaning they will bid in auction at the mid-price). At 09.35, the ABN-AMRO trader indicates that his superior: *'[...] [[...] – his supervisor] wants to get 2% (that is 2% allocation) so i gotta bid higher than offer side of screen... for 50m only'* to which the UBS trader responds that they are *'GOING +5 +6 FROM MID'* (that is 5 or 6 basis points over the mid-price). The RBS trader adds that: *'they [French DMO] just spoke to us my read [head] not too many bids iam buying 100mil plus 3 in both'*. The RBS trader seems to believe that there is not much interest from other primary dealers and therefore intends to bid only 3 cents over the mid-price in the hope of being allocated EUR 100 million from the auction. The ABN-AMRO trader then discloses information received from a trader at another bank to the others and asks if he can give feedback: *'what ur 10yr guys doing [...] asking he going +3'*. The RBS trader immediately responds: *'plus 3'*, the UBS trader states: *'+4'* and the ABN-AMRO trader aligns: *'me too I think I'm gonna go +3 from there'*. *'From there'* refers to the mid-price, for which the traders of ABN-AMRO, RBS and UBS all have already agreed that *'39'* is the mid-price for 21s. The traders of RBS and ABN-AMRO also disclose their intended volumes and overbids ahead of the auction with RBS aiming for 100 million 21s and 200 million 10 years: *'we r going 100 21s 200 ten years'* and ABN-AMRO asking for 50 million of each respectively: *'50m 21s +3 from mid' 'maybe 100 bid side of screen' 'small 10yrs as well bidding for 50 and low bids for more'*. When the auction bidding window has closed, the traders of RBS, ABN-AMRO and UBS discuss the outcome. It appears that their coordination did not work as planned. The UBS trader comments: *'46 lowest'* (referring to .46 as the lowest accepted bid price) to which the traders of ABN-AMRO and RBS each indicate that they: *'missed'*. RBS only: *'got 10 years'*. UBS notes that: *'[one account] bought 600mm' '21s'*.

- (109) On **6 March 2007**, traders of RBS ([...]), UBS ([...]) and ABN-AMRO ([...], [...]) discussed in the DBAC chatroom their bidding strategies ahead of an auction in Austrian bonds maturing in 2021.<sup>130</sup> The traders exchange information on their planned overbidding levels. At 08:01, the UBS trader asks: *'so wat we over bidding gor rags?'*<sup>131</sup> He tells the others that he is thinking +14 up to +18 (that is 14 up to 18 cents/bps over the mid-price). The ABN-AMRO trader comments that the level sounds pretty okay, but asks: *'wasnt the last one higher?'*. The two traders realise that they had recorded the results differently.<sup>132</sup>

<sup>130</sup> PCHAT-0x0000000000005c91 [...].

<sup>131</sup> Rags are Austrian government bonds.

<sup>132</sup> [...]. [...] the contact as a further example of anticompetitive behaviour and [...] there is potential coordination between traders of auction bids.

- (110) Simultaneously, in the CODS & CHIPS chatroom, these traders, together with the Bank of America trader ([...]), discuss their overbidding levels for this Austrian auction.<sup>133</sup> At 08:50, the Bank of America trader asks: ‘*What are we thinking for the austria ? We are +16 for about 70m.*’ The UBS trader replies that he is going: ‘+14 +18’ and needs 110 million, while the ABN-AMRO trader says he needs 60 million. The RBS trader says he needs 25 million. Ahead of the auction, the traders update each other with their bids. The UBS trader states: ‘+14 up tp +18’ ‘for 100m’, and the Bank of America trader discloses: ‘+15 +17 +19... 20m each’. The UBS trader states: ‘85 mid here’ and the Bank of America trader confirms ‘yep.’ The UBS trader reveals: ‘+16 +17 is for 70mm here’ ‘10000 thousand = 10mm’. The ABN-AMRO trader responds: ‘yes [...]’ ‘good job we can get that one clear’. The UBS trader says: ‘was just helping ever[y]one’. The RBS trader reveals: ‘we are paying the figure for 40mm’. The UBS trader explains: ‘at the moment that will be my highest bid’ ‘82 mid’. The ABN-AMRO trader notes: ‘we a tik higher’. The UBS trader adds: ‘u tinker’ ‘using 83 mid’ ‘011 my highest’. The RBS trader states: ‘.001’ and the ABN-AMRO trader: ‘00’. After the auction, the traders discuss the auction results: the UBS trader reports 100mm, the ABN-AMRO trader 60m, the RBS trader 40, and the Bank of America trader 70m. The ABN-AMRO trader congratulates the group: ‘well done everyone’ and the Bank of America trader notes that: ‘all of below the average well done everybody’ and that the average was 94.016.<sup>134</sup>
- (111) Other similar relevant contacts between the traders of ABN-AMRO, RBS and UBS in CODS & CHIPS and DBAC took place on **22 and 26 March 2007, 3 and 17 April 2007**.<sup>135</sup> These contacts are further examples of the anticompetitive conduct covered in this Decision. [...] these communications reveal potential coordination between the traders of auction bids, to protect another member of the group and in relation to specific counterparts; and exchanges of information regarding spreads between traders and traders disclosing potentially sensitive information.<sup>136</sup>
- (112) On **18 April 2007**, traders of RBS ([...], [...]), UBS ([...], [...]), ABN-AMRO ([...], [...]) and Bank of America ([...]) discuss in the CODS & CHIPS chatroom their positions and mid-prices for various bonds in the secondary market.<sup>137</sup> For instance, at 07:39, the UBS trader says: ‘i gone 2 ticks [read ‘cents’] better bid’ ‘spains’ and the ABN-AMRO trader enquires: ‘wot u showing?’ ‘i’ll show a bid in icap’.<sup>138</sup> The UBS trader replies: ‘ok’ ‘95’ ‘02 cross’.<sup>139</sup> The ABN-AMRO trader asks: ‘u now 02 bid vs 06x’<sup>140</sup> and the UBS trader replies: ‘yup’ ‘my mid’. The Bank of America trader confirms that he is the source of the trade that is visible on screen: ‘traded

<sup>133</sup> PCHAT-0x0000000000001ac2 [...].

<sup>134</sup> [...]. [...], there is potential coordination between traders of auction bids and exchanges of information regarding mid-prices between traders.

<sup>135</sup> PCHAT-0X0000000000005c91 [...].

PCHAT-0x0000000000001ac2 [...].

PCHAT-0x0000000000001ac2 [...].

PCHAT-0x0000000000005c91 [...].

<sup>136</sup> See the overview of anticompetitive communications in Annex 1.

[...]

<sup>137</sup> PCHAT-0x0000000000001ac2 [...].

<sup>138</sup> Icap is an interdealer broker.

<sup>139</sup> 95 is the bid price of the bond in question crossing with, i.e. being priced by reference to a future bond price i.e. ‘02 cross’.

<sup>140</sup> The bond is priced based on the price differential between the underlying bond (‘02’) and the bond futures contract (‘06x’), where ‘x’ means crossing with a bond futures contract.

OAT 19/21 at 5.85'<sup>141</sup> and UBS replies: 'ta' [thank you]. This information is typically anonymised and aggregated on screen. At 08:03 the UBS trader discloses: 'went long at 87' 'sold 95s' 'doh' and the ABN-AMRO trader reveals he is showing the market a bid of 84. This leads the UBS trader to ask: 'u think ive bid them up enough' and the ABN-AMRO trader responds: 'not yet' 'only just begun!'. The UBS trader concludes: 'yee ur right' '2 more ticks lets see'.<sup>142</sup>

- (113) On **2 May 2007**, a trader of ABN-AMRO ([...]) invites the trader of ABN-AMRO ([...]) into the CODS & CHIPS chatroom.<sup>143</sup>
- (114) A further relevant contact between the traders of ABN-AMRO and UBS in DBAC took place on **23 May 2007**.<sup>144</sup> As set out in Annex 1 to this Decision, this contact is another example of the anticompetitive conduct covered in this Decision.<sup>145</sup>
- (115) On **5 June 2007**, traders of UBS ([...]), RBS ([...]), ABN-AMRO ([...]) and Bank of America ([...]) exchange information in CODS & CHIPS throughout the day.<sup>146</sup> They exchange sensitive information including regarding mid-prices. For instance, at 08:46, there was on that day an exchange of information regarding mid-prices between traders and coordination with regards to a specific counterparty. The UBS trader talks about a Spanish customer for a German EGB: 'my price garban spain bund'. The ABN-AMRO trader asks: 'what is it?' and the UBS trader gives his price '6.1 6.3'. The ABN-AMRO trader says: 'I was already showing 6.1 there', leading the UBS trader to comment a bit later: 'shall we drive the 150 up his arse'. They keep on exchanging sensitive information. At 12:35, the Bank of America trader discloses: 'we just bid 6m spgb 29' 'covered'. The UBS trader asks: 'wat u bid...screen' and the Bank of America trader responds: '84'. This information is typically anonymised and aggregated. The UBS trader says: 'natch is 88 offered' and the Bank of America trader answers: 'yeah figure that is the comp'. At 13:45, the UBS trader says: 'spain 29s to the moon' 'seeing small buying down here'. The RBS trader enquires: 'wats mid i dont have senaf' and the UBS trader says: 'deal priced'. The Bank of America trader adds: '118.75/118.91' and the trader or RBS thanks him: 'ta'. The UBS trader says: 'bidding spain 29s vs france 29s' 'gave a real shite bide' '40mm'. At 16:03, the UBS trader asks the ABN-AMRO trader: 'where u marked olo 31 bund 31s' '[...]' and the ABN-AMRO trader responds: '-0.25bp' 'where u see it?'. The Bank of America trader adds: '0.65 we got it' and the UBS trader says: '-8...got em 10 mid 47 48' 'sold em at 13'.<sup>147</sup>
- (116) Similar relevant contacts between the traders of ABN-AMRO, RBS, UBS and Bank of America in CODS & CHIPS took place on **11 June 2007**, **29 June 2007** and **3 July 2007**.<sup>148</sup> These communications are further examples of exchanges of sensitive information in the chatroom and contradict Bank of America's claim that its trader

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<sup>141</sup> 5.85 is the difference between the yield of the French bond (OAT) maturing in 2019 and the yield of the French bond maturing in 2021.

<sup>142</sup> [...] the communication reveals potential coordination between traders to move the market and traders disclosing potentially sensitive information.

<sup>143</sup> PCHAT-0x0000000000001ac2 [...]. See also Table 3 at recital (89).

<sup>144</sup> PCHAT-0x0000000000005c91 [...].

<sup>145</sup> See the overview of anticompetitive communications in Annex 1. [...] the communication reveals potential coordination between traders to move the market.

<sup>146</sup> PCHAT-0x0000000000001ac2 [...].

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

<sup>148</sup> PCHAT-0x0000000000001ac2 [...]. See the overview of anticompetitive communications in Annex 1 [...].

did not regularly participate in the contacts and that there are serious gaps between the instances of his participation.<sup>149</sup> For instance, in the contact of **3 July 2007**, the traders are exchanging and aligning their strategy and positions for an Austrian EGB (rag). At 07:26, the UBS trader ([...]) discloses that he is ‘*short 40mm rags*’ but he doesn’t ‘*mind being long 50mm-ish*’. An ABN-AMRO trader ([...]) confirms ‘*that is what everyone is thinking*’. The Bank of America trader discloses that: ‘*we are doing the same coming out long, and hope the dbr will be [...] into the tap at the end of month*’, sharing his strategy supported by his view that Austrian and German bonds (dbr) should underperform. The ABN-AMRO trader notes: ‘*so*’ ‘*everyone doing the same*’ and he asks: ‘*what's gonna happen?*’ ‘*im offnext but ibet the crap performs, rags trade like poo*’ ‘*in this kind of mkt, if we r bidding 1.65b of rags, we should be selling the rags til it gets to +8*’, sharing his strategy of selling Austrian bonds if the auction size reaches 1.65 billion.<sup>150</sup> Later they also share their bids and price on the secondary market for the rag 21: ‘*bidding 40m ragb 21 [...]*’. The UBS trader says: ‘*02*’, the ABN-AMRO trader replies: ‘*ta*’ and the Bank of America trader indicates: ‘*015*’. The chat is an example of coordination between traders to move the market and in relation to a specific counterparty; exchanges of information regarding mid-prices between traders; exchanges of information regarding spreads between traders; and disclosure of sensitive information.<sup>151</sup>

- (117) Similar relevant contacts in CODS & CHIPS between the traders of ABN-AMRO, RBS and UBS took place on **4 July 2007** and **5 July 2007**.<sup>152</sup> These communications are further examples of traders discussing their bidding strategies ahead of an auction and exchanging sensitive information.<sup>153</sup>
- (118) On **18 July 2007**, having moved from ABN-AMRO to RBS, [...] replaces the persistent chatroom with a new persistent chatroom PCHAT-0x000000000000fe99.<sup>154</sup> The name is changed to ‘*30yr kings*’. Whilst the traders change chatroom, and the old chatroom is no longer used, the participants continue the discussion in their new chatroom. Three traders from UBS, RBS and ABN-MRO ([...], [...] and [...]) have access from the start and the fourth participant of the preceding chatroom and trader of RBS ([...]) is added later.<sup>155</sup> Both chatrooms will therefore continuously be referred to in this Decision under its last operational name ‘DBAC’.<sup>156</sup>
- (119) The following day, on **19 July 2007**, when opening, the RBS trader ([...]) says: ‘*morning fellow kings*’ to which the ABN-AMRO trader ([...]) replies: ‘*it's a select club but there you go*’. The trader of UBS ([...]) comments: ‘*ye*’.<sup>157</sup>
- (120) Another contact in DBAC between the traders of ABN-AMRO, RBS and UBS took place on **24 July 2007**.<sup>158</sup> This is another example of traders exchanging mid-prices

<sup>149</sup> Recitals (448)-(450).

<sup>150</sup> Rags: see footnote 131.

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

<sup>152</sup> PCHAT-0x0000000000001ac2 [...].

<sup>153</sup> See the overview of anticompetitive communications in Annex 1.

[...]. [...] the communication reveal potential coordination between traders of auction bids, traders disclosing sensitive information and information that is relevant for the context and the relations between the traders.

<sup>154</sup> PCHAT-0x000000000000fe99 [...].

<sup>155</sup> See recital (126).

<sup>156</sup> See recital (83).

<sup>157</sup> PCHAT-0x000000000000fe99 [...].

and coordinating in the secondary market by exploring steepening the curve before the auction.<sup>159</sup> For instance, at 10:02, the RBS trader ([...]) states: *'i'm going to call him [[...]]<sup>160</sup> and try to collude and squeeze it'*.

- (121) On **25 July 2007**, traders of ABN-AMRO ([...], [...]), Bank of America ([...]), RBS ([...], [...]) and UBS ([...], [...]) exchange sensitive information throughout the communication in Cods & CHIPS.<sup>161</sup> They coordinate their bidding strategy on a German 30 year EGB in the run-up to its auction. Some of the traders attempt to steepen the curve and decrease the bond's mid-price before the auction. Thus, at 06:15, the traders appear to exchange mid-prices for 37s. The Bank of America trader asks the group what the mid-price for 37s is, and a RBS trader ([...]) replies: *'got lifted out of just 25m 39s v late yesty' '27 mid' 'think we steeper a bit now'*. An ABN-AMRO trader ([...]) indicates: *'i got 37s mid 22 here...12/13'* and agrees to further decrease the price of the bond ahead of the auction: *'agree we should be a bit steepers'*. At 06:26 the same trader of RBS informs the others that the future contract is trading at 24 bid crossing with a future German EGB contract maturing in 2037 priced at 12: *'24 offer x 12 37 bund is me'*<sup>162</sup> to which the UBS trader ([...]) responds he is 75 million short of long term bonds: *'ok i think w gotta try and steepen it' 'iam short about 75mm longs'*. The ABN-AMRO trader says *'ok'* and the trader of RBS discloses to the others he is about 30 million short of long term bonds and wants to reduce the price of the bonds ahead of the auction: *'22 offer in my face' 'im only small short longs the like 30m or so' 'so i am going to lean on curve'*. The UBS trader replies: *'i think we wil[l] have 2 bash some...me on screen'* and the RBS trader agrees: *'ok i was going to top that but i wont'*. The Bank of America trader responds: *'i was thinking that as well'*. At 06:58, the traders exchange information on their bidding strategy for the upcoming German auction. The UBS trader asks: *'wat we thinking about levels bid from spot' 'anythoughts' 'mkt here curvr here'*. The ABN-AMRO trader ([...]) responds: *'i think same as we thought yday'*. The UBS trader insists on being supplied information: *'cant remember yesterday'* and he assumes: *'+5 -5'*, which is confirmed by the ABN-AMRO trader: *'yeah...i wil be bidding flat and for the tail'*. The Bank of America trader discloses: *'+6 unpriced -5'*. The UBS trader discloses: *'iam not bidding non conps'*. The RBS trader discloses: *'im a buyer of 39s vs 37s'*. The UBS trader adds: *'feed back no demand at the moment' 'i think we gonna need to sell some longs' 'well iam'*. The traders also exchange information on overbidding. The RBS trader asks: *'whats the + and - mean?'*. The UBS trader explains: *'+5 over bidding then unch' 'then -5' 'to the spot price'*. Later, at 08:47, a few minutes ahead of the German auction, the traders disclose their intended bids. The RBS trader asks: *'ok so market here where we all bidding' '?'*. The Bank of America trader replies: *'28 and 17' '17/18'*, and similarly the ABN-AMRO trader says: *'i am bidding mid and -5'*, while the UBS trader responds: *'15 16' 'wat mid' '20'*. A few minutes after the auction, the traders comment on the results of the auction which did not go well, with the ABN-AMRO trader saying: *'wow' 'wot the fuk'*, the Bank of America trader saying: *'31 stop'* and the UBS trader commenting:

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<sup>158</sup> PCHAT-0x000000000000fe99 [...].

<sup>159</sup> See the overview of anticompetitive communications in Annex 1.

[...] there is potential coordination between traders of auction bids and potential coordination in the secondary market before an auction.

<sup>160</sup> [...] (Deutsche Finanzagentur).

<sup>161</sup> PCHAT-0x0000000000001ac2 [...].

<sup>162</sup> For Bund, see Table 1 in recital (5).

*'iam fuked'*. The ABN-AMRO trader further comments that: *'a few bks must have bid really aggressive and then the 1.6bln on nonn comps got screwed along with him'* and the trader RBS says: *'i missed'*.<sup>163</sup>

- (122) On **30 July 2007**, in the CODS & CHIPS chatroom, traders of RBS ([...], [...]), UBS ([...], [...]), ABN-AMRO ([...], [...]) and Bank of America ([...]) discuss auction bidding strategy ahead of the Italian and Belgian auctions.<sup>164</sup> They share intentions to 'bash' the bonds (that is to lower the bond's price), disclose their mid-prices and attempt to influence the price of the bonds. Throughout the exchange, the participants discuss bidding and general trading strategy, and engage in discussions regarding prices, trader positions, order flow, trading strategy (including steepening) and recently executed (or to be executed) trades in various bonds.<sup>165</sup> Thus, at 06:35, a RBS trader ([...]) tells the group: *'im just going to bash them [Italian auction] i don't want em and dont give a fuuuuuk really'* and an ABN-AMRO trader ([...]) replies: *'prob the best way'*. A UBS trader ([...]) then asks: *'wat we gotta pay up for olo 48 shite'* and the same ABN-AMRO trader replies he is not overbidding: *'dunno' 'but we aint paying up for it'*. The same RBS trader shares with the other traders the price on the screen for BTPs (Italian EGB): *'its my px on the aug17s for info'*. This information is typically anonymised and aggregated. The Bank of America trader tells the same RBS trader that [...] asked whether RBS can reduce the prices of Italian BTPs of 3 and 10 years maturities ahead of the auction: *'[...], asking if u can bash the 3yr down as well?'*. The RBS trader replies: *'you prob better off asking [...]'<sup>166</sup> mate' 'the person who trades it over here is a bit difficult at the moment'*. From 07:37, the traders exchange their mid-prices, with an ABN-AMRO trader ([...]) stating: *'got 30ys 0.75bp wider and 15y 1.1bps wider'* and the Bank of America trader indicating that he traded at that price on Tradeweb: *'oat 21 traded 474 ontweb'*. The traders eventually decide not to pay a premium for Belgian OLOs with the same ABN-AMRO trader commenting: *'belg i dont see why we should psay a premium'* and then disclosing their mid-price and that they are bidding at mid-price only. They then discuss the results of the auction. At 09:39 the Bank of America trader says: *'that is good cheapening preauction ! ! ! !'*. The RBS trader ([...]) confirms: *'this is the way auctions should go' '!''* and the Bank of America trader agrees. Later, at 11:07, the traders exchange their views on the steepening of the curve ahead of the Belgian auction, allowing them to compare views and align their strategy. An ABN- AMRO trader ([...]) says: *'this curve gotta steepen a little tho eh?'* and a UBS trader ([...]) replies: *'probally' 'long'*. The same ABN-AMRO trader adds: *'no one is worried about the curve tho'*. A few minutes later, the traders disclose their bids. At 11:16, that ABN-AMRO trader reveals: *'offered 50m btp31s'* and a UBS trader ([...]) lets him know that it is his *'price on tv'* and he further asks: *'where u offer?'*. This information on screen is aggregated and anonymised. That ABN-AMRO trader replies: *'02'* and the UBS trader replies back: *'ok'*.
- (123) Similar relevant contacts in CODS & CHIPS between the traders of ABN-AMRO, RBS, UBS and Bank of America and between the traders of RBS and UBS in DBAC took place on **9 August 2007** and **15 August 2007** respectively.<sup>167</sup> These are further

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<sup>163</sup> See also recital (605).

<sup>164</sup> PCHAT-0x0000000000001ac2 [...].

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

<sup>166</sup> Probably [...] at ABN-AMRO.

<sup>167</sup> PCHAT-0x0000000000001ac2 [...].

PCHAT-0x000000000000fe99 [...].

examples of traders exchanging sensitive information and coordinating on their (over)bidding regarding mid-prices and specific counterparties.<sup>168</sup>

- (124) On **24 September 2007**, traders of ABN-AMRO ([...]), RBS ([...]) and UBS ([...]) discuss an upcoming auction in Belgium in the CODS & CHIPS chatroom.<sup>169</sup> Other traders, including the Bank of America trader ([...]), had access to the chat.<sup>170</sup> Throughout, the participants exchange information on their mid-prices, positions and attempts to steepen the curve going into an auction and coordinate their trading strategies with the aim of lowering the price. They proceed to discuss overbidding levels and then the results of the auction.<sup>171</sup> Thus, at 07:01, the ABN-AMRO trader says: *'need to push it cheaper cos it will prob trade like a dog after'*. The UBS trader confirms: *'yup' '+8 +10' 'iam gonna go'*. The ABN-AMRO trader notes that: *'the olo48s got really hosed into the tap and came something like +7/8 i think'*. The UBS trader suggests: *'shall we try get it down...what mid u got...I have 72'*. The ABN-AMRO trader discloses: *'109.78' 'i have 93 mid 37s' '95 now'* and the UBS trader reveals he just bought 6 million of bonds maturing in 2037: *'just bid' '6mm 37s'*. The ABN-AMRO trader says: *'that is me on olo31s'*. This information on screen is normally anonymised. The UBS trader comments: *'me 37s' 'lets steepen this'*. The RBS trader agrees: *'yeah lets steepen it'*. At 07:23, the ABN-AMRO trader notes: *'whole curve realy steepening up'*. The UBS trader says: *'nope' '2 cheap'*. A few minutes later, at 07:34, the UBS trader asks *'wat mid' 'we got 31s' '55' '?.'* The ABN-AMRO trader responds: *'i have 55' 'but clearly high'*. At 08:25, the ABN-AMRO trader reveals that [third party bank] bought the bonds maturing in 2031 from them: *'[...] lifting me olo31s'*. The UBS trader says: *'toss er' 'curve flattening a bit' they are cheap'*. The ABN-AMRO trader adds: *'lifted a couple of times now in olo31s'*. At 09:30, the ABN-AMRO trader enquires: *'what overbidding do we think in olo 10y?' 'and5y'*, to which the UBS trader again confirms: *'10 12 10 yr'*. After the auction, at 12:49 the UBS trader asks: *'how many non comps (non competitive bids)' 'u got I got 16mm'* and the ABN-AMRO trader responds: *'dunno' 'haven't rung up yet'*, later adding: *'I got 10m non comp in olo31s'*. The UBS trader congratulates the ABN-AMRO trader with: *'wel dun'*.<sup>172</sup>
- (125) The traders were using both chatrooms interchangeably. While discussing in CODS & CHIPS, they were simultaneously discussing the Belgian auction in the DBAC chatroom.<sup>173</sup> For instance, at 07:41, the ABN-AMRO trader comments: *'olo31s down at 11 on telly'* and at 08:06, the UBS trader discloses his levels of overbidding as +10 cents and +12 cents.<sup>174</sup>

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

<sup>169</sup> PCHAT-0x0000000000001ac2 [...].

The auction is for Belgian OLO's in various maturities.

<sup>170</sup> Traders of ABN-AMRO ([...]), Bank of America ([...]), RBS ([...] and[...]).

<sup>171</sup> [...] the traders discuss bidding strategies and secondary market trading activity, potentially in connection with steepening of the yield curve ahead of auction. The participants engage in discussions regarding prices, trader positions, order flow, trading strategy and recently executed trades in various bonds.

[...] there is potential coordination between traders of auction bids for EGBs, potential coordination between traders in the secondary market before an auction and exchanges of information regarding mid-prices between traders. The excerpts reveal exchange of information about future bidding volumes and prices, coordinated trading with a view to lowering the price.

<sup>172</sup> See also recital (610).

<sup>173</sup> PCHAT-0x000000000000fe99 [...].

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

- (126) A similar contact in DBAC between the traders of ABN-AMRO ([...]), RBS ([...] and [...]) and UBS ([...]) took place on **25 September 2007**.<sup>175</sup> This communication is another example of traders exchanging information on their auction bids and spreads.<sup>176</sup>
- (127) On **4 October 2007**, traders of UBS ([...], [...]), ABN-AMRO ([...]), Bank of America ([...]), RBS ([...], [...], [...]) discuss in CODS & CHIPS bidding strategies in the lead up to a Belgian EGB auction.<sup>177</sup> The traders exchange commercially sensitive information on mid-prices, trading positions and the level of overbidding and discuss their bidding strategy in the lead up to an auction. The chat is an example of coordination between traders of auction bids for EGBs, exchanges of information regarding spreads and traders disclosing potentially sensitive information<sup>178</sup> Thus, at 06:27, one trader of UBS ([...]) asks the other participants what they are bidding: *'wat we gotta pay up for these 25 crap'* and the Bank of America trader replies: *'I was thinking around 4 above mid'*. Later at 07:06, the same trader of UBS asks the other participants about their mid-prices: *'wat mid we got this shite here'* before saying: *'56 57'*. The Bank of America trader replies: *'91'*. Then the ABN-AMRO trader asks: *'whats the call for over bidding on the 25's lads'* and the same UBS trader replies: *'dunno [...] just wondering if someone gonna do an olo 31s job on it'*. At 07:26 the UBS trader enquires: *'wat we think guys'* and the Bank of America trader replies: *'I am just bidding mkt levels, and if we miss cover the short via non-comps'*, disclosing their strategy to not overbid at auction. The UBS trader then asks what RBS thinks: *'wat u thinking [...]'*, before commenting: *'[third party bank] only mid not short'* and the Bank of America trader replying: *'[third party bank] not short 5/6 ticks above'*, suggesting the traders also discussed their bidding strategies ahead of the auction with other third party traders. The participants continue discussing their mid-prices and bidding strategies. For instance, the UBS trader asks: *'52 53 wat mid' '84 or 86'* (08:31) and a RBS trader ([...]) replies: *'i got 86...w 52/3' 'what u got and what u bidding' 'my mid is high' 'i'll [c]heapen it'* and the Bank of America trader reveals: *'86 53/54'*. The UBS trader discloses that they will submit two bids at 12 to 14 cents respectively over the prevailing mid-price: *'86 iam going high for my short' '+12 +14 from mid' '20mm each' 'can t be bothered to get squeezed' 'like olo 31s'* to which that RBS trader discloses how much they pay over the mid-price: *'think +10 here'* to which the UBS trader replies: *'makes sense'*. They continue revealing their mid-prices and trading strategies. At 08:44, the RBS trader asks: *'82 mid here' '?'* and the UBS trader confirms: *'yes'*. A few minutes later, at 08:52, the RBS trader asks: *'what u pay' '?/ [p]aid 90'* and the UBS trader indicates: *'96 94'* to which RBS replies: *'uh oh' 'im gonna miss'*.
- (128) On **11 October 2007**, traders of ABN-AMRO ([...], [...]), Bank of America ([...]), UBS ([...], [...]) and RBS ([...], [...]) discuss in the CODS & CHIPS chatroom pricing for secondary trading of an Irish bond that is about to be issued through

<sup>175</sup> PCHAT-0x000000000000fe99 [...].

<sup>176</sup> See the overview of anticompetitive communications in Annex 1.

[...] there is potential coordination between traders of auction bids, to protect another member of the group, exchanges of information regarding spreads and traders disclosing potentially sensitive information.

<sup>177</sup> PCHAT-0x0000000000001ac2 [...]. The auction relates to OLO's with a maturity of 25 years.

<sup>178</sup> [...]. [...], the traders discuss their strategies in the lead up to an auction, including disclosure of their intended bid levels.

[...]

syndication.<sup>179</sup> The traders speculate on where the market may price the new bond, which may have informed their subsequent trading strategy. They exchange sensitive information about the upcoming syndication and exchange information on their spreads.<sup>180</sup> Thus, at 07:44, an ABN-AMRO trader ([...]) discloses that the Irish DMO has confirmed the issuance of long term bonds for the upcoming syndication: *'Ireland confirm long-dated new issue'* and a UBS trader ([...]) asks: *'is it worth smacking em?'*. Later on, the same trader of ABN-AMRO and the Bank of America trader disclose the banks that are in the Ireland deal. A few minutes later, at 08:01, the UBS trader says: *'36.5 pick'*<sup>181</sup> and the same ABN-AMRO trader confirms: *'yup'*. The traders exchange views on how they think the market will react. The UBS trader asks: *'how far u think we blow out [bid] if they bring 30'* [meaning 30 years long term bonds] and the ABN-AMRO trader responds: *'dunno really' 'think 40bp should be doable tho' 'kind of depends on asw'*<sup>182</sup> *a little'*. The UBS trader confirms: *'yup'* and the ABN-AMRO trader notes: *'36.25/35.75 in icap'*.

- (129) The traders also exchange information for trading other EGB on the secondary market. Thus, at 09:17, the UBS trader discloses: *'offered 40mm rag 37s...french buyer' 'showed 75'*. The ABN-AMRO trader thanks him for this information: *'ta'*. Later that day, at 12:54, they exchange information on an offer of Portuguese EGB for a Dutch customer referred to as 'oil'. The traders reveal to each other the identity and the strategy of a client, as well as their own trades and strategy to each other. The Bank of America trader reveals the level at which he sold the Portuguese bonds maturing in 2021 (pgb21): *'offered 25m pgb 21'*. The UBS trader asks: *'oil' '?'* and the Bank of America trader confirms: *'ya'*. The UBS trader reveals: *'me 2' 'fuking no intersst'*. The Bank of America trader reveals at what level he sold the PGB: *'we did it at 85'*. A RBS trader ([...]) adds that the same customer tried to buy it from him for 81: *'tried to lift me at 81'* and the ABN-AMRO trader thinks that this seems overly ambitious: *'fuking good luck!'*. The UBS trader indicates: *'gonna bid em up'*. The Bank of America trader informs that he bought back most of the PGB he sold: *'lifted most off the tele already.'* The RBS trader responds: *'gud'*. They also discuss an Italian EGB.<sup>183</sup> In this context, the UBS trader discloses that he is flat overall in Italian EGB, but short 37s and long 34s. The ABN-AMRO trader asks him about his spread estimate for those two bonds: *'where u got sprd?'* and the UBS trader jokingly replies: *'fantasy land'*. The ABN-AMRO trader then replies: *'no worries' 'I got 33/34s' 'thought I had 34/37s for a minute' 'im short 34s vs 33s'*, meaning that he is actually not interested in the spread between the Italian bonds maturing in 2034 and 2037, but in the spread between the Italian bonds maturing in 2033 and 2034. The UBS trader discloses: *'.4 through i have it' '37s' 'think its probally -.55'*, meaning that he currently prices the spread between the Italian bonds maturing in

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<sup>179</sup> PCHAT-0x0000000000001ac2 [...].

Other traders of RBS ([...] and [...]), ABN-AMRO ([...]) and UBS ([...]) also participate in the chatroom on that date.

<sup>180</sup> [...]

<sup>181</sup> Pick or pick up or PU means to sell the bond with shorter maturity versus buying the bond with longer maturity or to sell a bond with a smaller yield spread versus buying a bond with a higher yield.

<sup>182</sup> Asset swap spread is used to determine the relative value of one bond against other bonds of the same currency. The ASW is the aggregate price that bond holders would receive by exchanging fixed rate bonds for floating rate bonds. ASW are a useful tool to understand which bond(s) maximise the spread or price over a reference interest rate benchmark. [...]

<sup>183</sup> See, for instance, the extracts between 10:07 and 10:09 and between 10:27 and 11:06.

2034 and 2037 at 0.4, but he thinks the correct spread should rather be -0.55 (hence corroborating his ‘fantasy land’ estimation of his current incorrect spread).

(130) On **16 October 2007**, traders of RBS ([...]), UBS ([...]) and ABN-AMRO ([...]) discuss in the DBAC chatroom an Italian EGB which will be issued by syndication.<sup>184</sup> The traders attempt to work out when this EGB is going to price.<sup>185</sup> The timing of the bond pricing is known only to those in charge of the syndication and should not be disclosed to EGB traders before it is announced to the market.<sup>186</sup> For instance, at 06:08, the ABN-AMRO trader says: ‘*seems like Italy r gonna keep a v close eye on the 37s ahead of pxx [pricing] so we may not get much of a move on the sprd [spread]*’. The UBS trader asks: ‘*ok...when u reckon they price it*’. The ABN-AMRO trader says: ‘*weds still best guess*’ ‘*if it has gone well o/n [overnight] in Asia then they will prob close the bk [book] this afternoon, allocate and then prie tom morning*’. At 12:52, the ABN-AMRO trader says: ‘*5bln new italy*’. The UBS trader asks: ‘*priced*’ ‘?’’. The ABN-AMRO trader responds: ‘*no*’ ‘*but it will be 5bln*’. The UBS trader thanks him: ‘*ta*’. The ABN-AMRO trader adds: ‘*pxg [pricing] not til later*’. The RBS trader enquires: ‘*does later mean after 3pm*’ ‘?’’. The ABN-AMRO trader responds: ‘*im still working on around 3pm*’ ‘*i keep getting lifted on a few issues but the hedges seem bigger than expected so i am staying offered in screens*’. The RBS trader says: ‘*thanks*’.

(131) On **8 November 2007**, traders of UBS ([...], [...]), RBS ([...], [...]), ABN-AMRO ([...], [...]) and Bank of America ([...]) discuss in CODS & CHIPS a French EGB auction on that day for bonds maturing in 2055.<sup>187</sup> The communication is an example of a chat in which the traders exchange sensitive information on mid-prices and potentially coordinate their bidding strategy before an auction. Also afterwards, they check and compare their actions. They share information from a specific counterparty (French customer) and exchange specific forward looking sensitive information.<sup>188</sup> Thus, at 09:39, the ABN-AMRO trader ([...]) reveals that he ‘*just spoke to 1 [...] bk [French bank] who is gonna be bidding at least +20 for his 55s*’ ‘*he said he has to get bonds so cant afford to miss*’. After the auction, at 10:07, the RBS trader ([...]) asks if anyone bought the 55s and the ABN-AMRO trader says he did not, but the traders of UBS and Bank of America confirm they bought 50 million at 80 and 82 and 20 million respectively. The RBS trader notes that ‘*someone paid 95*’ and the UBS trader discloses: ‘*I payed*’ ‘*had 70 mid*’. Later, at 14:12, the traders of ABN-AMRO, UBS and Bank of America discuss and coordinate their strategy for a specific counterparty on the secondary market trying to sell them 20 million French OAT35 bonds. They disclose the volume offered and price offered to the client. This helps them to increase transparency to the detriment of the client that will not get a competitive price. The ABN-AMRO trader says: ‘*offered 20m oat35s*’ and the UBS trader replies: ‘*yup...36*’. The ABN-AMRO trader says: ‘*39*’ after which both banks confirm it: ‘*hasn’t traded here*’. At 14:15, the Bank of America trader comments: ‘*asked us twice as well*’ ‘*we’re flat*’ and then alerts the traders that he has the counterparty on the phone: ‘*[...] - He is asking over the phone now*’. The UBS trader replies: ‘*lucky*’, and the ABN-AMRO trader says: ‘*he will dither til it pops up 10 ticks then buy them*’ and the Bank of America trader replies: ‘*good call*’. The ABN-

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184 PCHAT-0x000000000000fe99 [...]

185 [...]

186 Recital (33).

187 PCHAT-0x0000000000001ac2 [...],[...],[...] and [...] do not participate actively in this chat.

188 [...]

AMRO trader then asks whether the client bought them because he wants: *'to know when i can sell it'* and the traders of Bank of America and UBS indicate that the client did not buy from them. Later, at 16:40, the traders of UBS and ABN-AMRO discuss their mid-prices as UBS is *'checked'* by a client. The UBS trader enquires: *'wat mi d u have 55s' 'being checked vs gilts'* and the ABN-AMRO trader replies: *'i was checked too' 'he has asked my offer and my bid today' 'i told him no int[erest]' 'and bid v low'*. The UBS trader asks ABN-AMRO what mid he has before revealing that he: *'got 85'*. The ABN-AMRO trader replies: *'90/90.90'* and tells UBS that he just bid for the same customer: *'think i bid him 90.50 with futs 31' 'got no int In that fuker going round everywhere til he gets a wrong price'*. The UBS trader indicates that: *'ill bid same sort of level if he comes'* and when the client returns, UBS thinks he: *'shot it low'*.

- (132) Similar relevant contacts in DBAC between traders of ABN-AMRO ([...]), RBS ([...], [...]), UBS ([...]), and in CODS & CHIPS between the aforementioned traders as well as traders of ABN-AMRO ([...]), Bank of America ([...]), RBS ([...]) and UBS ([...]) took place on **23 November 2007**, **26 November 2007**, **10 December 2007** and **11 December 2007**.<sup>189</sup> These communications are further examples of traders cooperating and exchanging sensitive information on their auction bids and other sensitive information. UBS explained that these communications reveal potential coordination between traders in relation to specific counterparts, to protect another member of the group, exchanges of information regarding mid-prices and traders disclosing potentially sensitive information.<sup>190</sup> Thus, on **23 November 2007**, at 07:57 mid-prices are exchanged: *'so as a guess where do we have mid 37s?'*, *'[92.]70' (...) 'might be 2 high', '92.70', 'havent steepened us up yet this am', '92.73' [92.]75'*. Also at 08:21 the traders disclose to each other their mid-prices in the secondary market: *'can u see the depth of [...] austria ?' 'no' 'Two [...] shadow pricing off each other' 'just bid 63' 'for 37s' 'customer came back to hit me' 'tried that, shadower is intelligent' 'i showed 59'*. Or, on **26 November 2007**, the traders disclose to each other their bidding strategies and mid-prices ahead of a Belgian auction for bonds with various maturities. At 08:53, the traders coordinate to keep the price low ahead of the auction only to increase it after: *'let it stay cheap til auction then we can charge him' 'wat mid we got 98/99' '69' 'same ok'*. At 10:33 the UBS trader asks the others: *'wat we over bidding then'* and discloses later that his mid-price is 81 and that will put in a number of bids ranging from eight to ten cents over the prevailing mid-price (*'gonna[scale from] +8 +10'*). Or, on **10 December 2007**, at 09:15 when mid-prices and trading positions are exchanged *'100m' 'where u guys got that?' '18.9 mid' 'y/y [yield/yield]' '?' 'yah' 'where u got p/p? [par/par]' '17.3' '.4' 'ta' 'i had it 17.7' 'offered him high'*.
- (133) On **12 December 2007**, traders of RBS ([...]), UBS ([...]) and ABN-AMRO ([...]) coordinate in the DBAC chatroom their trading strategies with regards to a specific counterparty that has showed interest in purchasing Portuguese bonds on the secondary market. Thus, at 08:27, the ABN-AMRO trader reveals: *'that german guy who asks 2 ways [bid and ask] is asking 2 ways in decent size out there'* and the UBS

<sup>189</sup> PCHAT-0x0000000000001ac2 [...].

PCHAT-0x000000000000fe99 [...].

<sup>190</sup> See the overview of anticompetitive communications in Annex 1.

[...] as further examples of communications appearing to evidence a level of cooperation and in some cases potential coordination between competitors.

[...]

trader asks: *'any clue which way'*. The ABN-AMRO trader responds: *'looking at mkt im guessing seler but I have absolutely no clue'*. The UBS trader retorts: *'he can f off'* and the RBS trader adds: *'if he comes here I am going to tell him to fuk off'*. They also discuss another counterparty who has just sold Portuguese bonds. The RBS trader states at 08:45: *'so this dude dumped the portugals I take it'*, to which the ABN-AMRO trader replies: *'I guess so' 'poor guy who has em...he is totally fucked' 'would have been 200m ish with this guy in 1 clip'*. The UBS trader enquires: *'shall we fuk him'*. Later in the chat, the traders also check mid-prices and spread pricing of various bonds, including Austrian and Italian bonds.<sup>191</sup>

(134) On **13 December 2007**, traders of ABN-AMRO ([...]), RBS ([...]) and UBS ([...]) are in contact in the DBAC chatroom.<sup>192</sup> Simultaneously, traders of ABN-AMRO ([...] and [...]), RBS ([...] and [...]), UBS ([...] and [...]) and Bank of America ([...]) are in contact with each other in the CODS & CHIPS chatroom.<sup>193</sup> The communications of that day give context on the participation in the chatrooms. They are also another example of traders exchanging sensitive information on mid-prices and spreads and attempting to coordinate their strategy for specific counterparties.<sup>194</sup> The ABN-AMRO trader that is in both DBAC and CODS & CHIPS ([...]) first asks the traders of RBS and UBS in DBAC ([...] and [...]) if they agree to invite another trader of ABN-AMRO ([...]) into the CODS & CHIPS chatroom. At 10:42, the ABN-AMRO trader explains that: *'[...] will be taking over from me from middle of next wk so do either of u guys mind if i invite him into the other chat?' 'I will only invite [...] as [...] doesnt really want to get involved in the cash anyway'*. No one expresses any concerns about the new trader of ABN-AMRO, but the traders of RBS and ABN-AMRO apparently have issues with a certain '[...]' and comment that he *'can't be trusted'*. Shortly afterwards, at 11:13, the ABN-AMRO trader ([...]) likewise asks the traders of RBS, UBS, ABN-AMRO and Bank of America in CODS & CHIPS if they have any objections to inviting the other trader of ABN-AMRO into their chatroom. The ABN-AMRO trader says: *'I am gonna invite [...] into this chat unless anyone has any objections?' 'speak now or forever hold your peace'*. Another trader of ABN-AMRO ([...]) says: *'i dont trust him...seriously [...] is sound as a pound'* and the RBS trader ([...]) repeats: *'just no [...]'*. As a result, the ABN-AMRO trader ([...]) is invited to the CODS & CHIPS chatroom on **18 December 2007**.<sup>195</sup>

(135) Back in the DBAC chatroom, the traders also share the prices they are showing to a specific counterparty ("frog insurer") in the secondary market for Spanish bonds maturing in 2040. At 16:21, the ABN-AMRO trader comments: *'frog insurer [French insurer] asks me if I can offer 25m sp40s...I said I can offer...not sure you will want them there tho'* to which the UBS trader asks what mid-price are you showing to the insurer: *'me 2...where u'*. The RBS trader then says: *'those guys are back...french insurers' 'that was a nightmare' 'a couple months back'* and the ABN-AMRO trader continues *'there r here to fuk the last week'*. The UBS trader asks again what mid-price the ABN-AMRO trader had shown to the French customer: *'where u'* and the ABN-AMRO trader replies: *'i never showed it'*. The UBS trader

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

<sup>192</sup> PCHAT-0x000000000000fe99 [...].

<sup>193</sup> PCHAT-0x0000000000001ac2 [...].

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

<sup>195</sup> See Table 3 in recital (89).

says '59' *then showed 62*' and the ABN-AMRO trader goes on: *'i would have said 75'*.<sup>196</sup>

- (136) On **2 January 2008**, traders of ABN-AMRO ([...],[...]), RBS ([...], [...]), UBS ([...]) and Bank of America ([...]) communicate in the CODS & CHIPS chatroom.<sup>197</sup> They exchange sensitive information on trading strategies, including mid-prices and attempt to coordinate their trading strategy ahead of an auction.<sup>198</sup> [...] the disclosure of the primary dealer's mid-prices is informative for the participants' pricing and trading strategies as it allows them to compare pricing for the bonds that are due to be auctioned. This allows the participants to alter or align their trading and bidding strategies. For instance, the participants start discussing ahead of a French auction taking place on the same day. At 07:48, an RBS trader ([...]) shares: *'my offer 38s and 55s on screen'* and the UBS trader replies: *'ta' 'wat mid 37s...91/92'*. This information is typically anonymised and aggregated. The two traders at RBS and UBS continue exchanging their mid-prices until 07:53 with the RBS trader suggesting: *'gonna steepen then'*, meaning he will try to depress the price of the bonds ahead of the auction with a view to purchase the bond at a lower price at the auction. At 10:04, the Bank of America trader comments: *'crap auction, withheld 1.3bn !!'* and UBS agrees: *'yup'*. Bank of America trader says: *'not even covered !!!'* and the ABN-AMRO trader ([...]) replies: *'its still xmas all the lads just bid what they had to bid wouldn't read too much into cover'*. An RBS trader ([...]) agrees, but he says he does not think it is a good sign for the auction taking place the following day, and Bank of America trader replies: *'total bids was only 5.7bn for a 6bn auction'*. Later, between 13:10 and 13:46, the RBS trader ([...]) and the UBS trader ([...]) share their bid levels while between 15:30 and 15:35, the same traders discuss their positions and trading strategies in the secondary market, thereby increasing transparency and allowing the two traders to align their trading strategies.
- (137) A similar relevant contact between the traders of ABN-AMRO ([...],[...]), RBS ([...], [...]), UBS ([...]) and Bank of America ([...]) takes place on **3 January 2008** in the CODS & CHIPS chatroom.<sup>199</sup> The communication is another example of traders exchanging information on their mid-prices and overbidding levels.
- (138) Another similar relevant contact between the traders of RBS ([...] and [...]) and UBS ([...]) took place on **3 January 2008** in the DBAC chatroom.<sup>200</sup> The communication is another example of traders exchanging information on their auction bids, mid-prices, spreads, volumes and overbidding levels in relation to French bonds maturing in 2038 and 2055 while it also reveals potential coordination between the traders of auction bids.<sup>201</sup> For instance, at 07:26, the UBS trader asks the two traders of RBS: *'so +8 +10 38s' '?' '+6 +8' '55s' 'or is that 2 punchy'*. One of the traders of RBS ([...]) replies: *'sounds about right' 'i'll ask [...] to open up my old spreadsheet'*. Just a few minutes later, at 07:30, the same trader of RBS says: *'unless we get 55s to -4 I will do 38s'*. The UBS trader asks: *'wat mid u have them'* and at the same time suggests: *'lets offer'*, while he also reveals his position: *'37s i have 53 8/9'*. The RBS

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<sup>196</sup> Traders often use the term *axe* to represent someone's interest in buying or selling a security that is already on their books.

<sup>197</sup> PCHAT-0x0000000000001ac2 [...].

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

<sup>199</sup> PCHAT-0x0000000000001ac2 [...].

<sup>200</sup> PCHAT-0x000000000000fe99 [...].

<sup>201</sup> See the overview of anticompetitive communications in Annex 1.

[...]

trader ([...]) replies: '50 w 5/6' 'so i'm a little hi[g]her guess'. The UBS trader responds: 'ok'. At 07:33, the traders are comparing their prices. The UBS trader asks: '5/6 where u got 55s' 'i have 23'. The same trader of RBS replies: '20'. The UBS trader responds: 'ok'. At 08:03, they again compare. The trader of RBS ([...]) asks: 'where u got em mid?'. The UBS trader replies: 'i showed 5.2' '5.3 ish' 'did nt show' 'i have' '5.3 mid is what ive got'. The RBS trader confirms: 'same' and concludes that the price is not good 'too rich'. The UBS trader agrees: 'yea i guess' 'not got a great feel for that'.

- (139) Later on the same day, at 08:51, the UBS trader discloses his overbidding levels (+8 and +10) and volumes he intends to buy (50mm total) for the French 38s and 55s : 'I think iam gonna go +8 +10 38s' 'same 55s' 'iam om[n]ly buying 50mm total'. A trader of RBS ([...]) responds: 'thinking the same' 'in overbidding'. The UBS trader confirms: 'ok', and the trader of RBS adds: 'gotta get 100m total' '50 each i guess'. At 09:02, the traders compare their positions. The RBS trader ([...]) asks: 'where u got 35/38?', and reveals that he: 'got it flat'. The UBS trader confirms: 'ya'. The trader of RBS discloses that he is: 'offering 38s vs 35s'. A few minutes later, the UBS trader announces: '35/38s here now'. They also compare prices. The trader of RBS reveals that he: 'showed +.25', and adds: 'he wanted 0'. The UBS trader replies: '=5' '=5' '+5'. Just before the auction closes, at 09:56, they update on the bidding. The UBS trader shares: 'bid 89.06 89.08 55s' '89.95 89.97 38s' 'dunno if i get those'. At 09:58, he continues: 'out' '89.95' '89.03'. Afterwards, they give each other feedback on the results. The trader of RBS asks: 'everybody ok' '?'. The UBS trader replies: 'YA' 'got 50mm'.
- (140) On **4 January 2008**, traders of RBS ([...], [...]) and UBS ([...]) comment in the DBAC chatroom on other traders that participate in the CODS & CHIPS chatroom.<sup>202</sup> They complain that the ABN-AMRO trader ([...]) who was recently admitted to the CODS & CHIPS chatroom, and to some extent also the Bank of America trader ([...]), do not share enough information. The communication gives context on the participation and sensitivity of the chatrooms at that time. It shows the expectation of other traders that each participant must share commercially sensitive information which was the purpose of the chatroom. Thus, at 11:41, the UBS trader says: 'does the other chat work anymore :-)?' and a trader of RBS replies: 'yeah, [...] doesnt say shit' 'm [...] doesnt say shit but boa always spivving in italy' 'not real I y gonna say much there anymore' 'too olne way'. In the communication, the traders also exchange sensitive information on spreads.<sup>203</sup> The communication of **4 January 2008** leads to a number of related comments in the DBAC chatroom over the next few days.
- (141) On **7 January 2008**, the RBS trader ([...]) states in DBAC: '[...] [[...]] aint using the chat no more...too upset...with tht trade'.<sup>204</sup> In this communication the traders also exchange sensitive information on mid-prices for secondary market trading.<sup>205</sup> For instance, at 10:40, the UBS trader discloses that he bought 22 million of a bond

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<sup>202</sup> PCHAT-0x000000000000fe99 [...]. Throughout the chat, the traders also discuss spreads.

<sup>203</sup> See the overview of anticompetitive communications in Annex 1. [...]

<sup>204</sup> PCHAT-0x000000000000fe99 [...].

<sup>205</sup> See the overview of anticompetitive communications in Annex 1. [...]

maturing in 2037 at a bid price of 91 when the bund futures traded at 97/98<sup>206</sup>: *'got hit 22mm 37s at 97' 'at 91' '97/98 bund'*. The RBS trader then compares its mid-price of '02' for the same bond with the bid price of the UBS trader: *'I got em 02 middle but not sure if thats right'*. The UBS trader says: *'00 98/99'*, explaining that his mid-price is at '00' for bund futures trading at 98/99, and *'i have seemed a low hit' 'cover was 1 cent'*, explaining that the next best price (the cover) was one cent above his price. The RBS trader admits that his *'mid was with 97/8'*, specifying the bund futures price he took as reference to determine his mid. The UBS trader replies: *'ok' 'I marked mine down again'*, indicating that he lowered the price of the bond again.

- (142) The next day, on **8 January 2008**, the UBS trader says in DBAC: *'someone wake [...] up'*, to which the RBS trader replies: *'nope never met him...abn shares nada...[o]nly time I am telling them anything is when I want them to know'*.<sup>207</sup> The traders also share their mid-prices and positions ahead of an Italian auction.<sup>208</sup> For instance, at 16:33, the UBS trader asks: *'wat mid u got 37s[?]'*. The RBS trader replies: *'59' '70/1'* and the UBS trader says: *'same'*.
- (143) A similar relevant contact between the traders of ABN-AMRO ([...]), RBS ([...], [...], [...]), UBS ([...], [...]) and Bank of America ([...]) in the CODS & CHIPs chatroom took place on **9 January 2008**.<sup>209</sup> In this chat the traders discuss bidding strategy ahead of an Italian auction. They disclose to each other how much they will bid for which is sensitive information and it can influence the bidding behaviours of traders benefiting from this increased transparency. At 14:06, the UBS trader asks: *'how many we gotta buy'* and the Bank of America trader discloses the volume they will buy: *'we are going for 100'*. The RBS takes this information into account and immediately adds: *'thought we all had to buy 5% and no more no less righf?'* to which the UBS traders responds: *'4%'*.
- (144) A similar relevant communication involving the same traders takes places on **10 January 2008** in the CODS & CHIPs chatroom.<sup>210</sup> The traders coordinate to protect Bank of America. When the Bank of America trader asks the other traders at 11:19 to *'turn 37's off lads'*, meaning to stop trading in the 37s bond by turning off their price on the broker screens the RBS and UBS traders both reply: *'off'* and Bank of America trader thanks them.
- (145) On **10 January 2008**, the UBS trader ([...]) asks the RBS traders ([...] and [...]) in DBAC: *'you think we should just stay on here and use other for mofo talk'* to which the RBS trader replies: *'yeah...dude [...] hasn't said anything since he joined except good morning'*. The UBS trader agrees: *'yea lets say on here'*. In the chat, the traders also exchange sensitive information on mid-prices and spreads.<sup>211</sup>

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<sup>206</sup> The bund futures price is often taken as reference when traders quote bonds because traders tend to hedge their trades with those futures (for example by buying futures immediately after having sold a bond). Note that in the chat the first price given by the trader ('at 97' most probably refers to the bund futures price and not the bond price, which is '91', as the trader rectifies immediately after).

<sup>207</sup> PCHAT-0x000000000000fe99 [...].

<sup>208</sup> See the overview of anticompetitive communications in Annex 1.  
[...]

<sup>209</sup> PCHAT-0x0000000000001ac2 [...].

<sup>210</sup> PCHAT-0x0000000000001ac2 [...].

<sup>211</sup> PCHAT-0x000000000000fe99 [...].

- (146) On **11 January 2008**, traders of RBS ([...] and [...]) and UBS ([...]) discuss their bidding, overbidding and mid-prices in DBAC and also Bank of America ([...]) in CODS & CHIPS.<sup>212</sup> In DBAC, the traders also agree to steepen the curve ahead of an auction (drive the prevailing market price down in the run-up to the auctions by opening short positions thereby speculating on a price decrease). The communications are examples of exchanges of commercially sensitive information in parallel in both persistent chatrooms.<sup>213</sup> Thus, at 07:05, the UBS trader says: *'i think we can steepen this curve mate' 'and get italy down (reduce the prevailing price)' 'iam gonna offer 37s'*. The RBS trader ([...]) agrees: *'yup'* and comments: *'I was told yday I might have a buyer of italy'*. The UBS trader suggests to the last comment: *'shall i offer 37s at'* (offer 37s to the buyer) and the RBS trader confirms that could be useful but will come back: *'that's one prob' 'i will let you know if im doing anything'*. At 07:20, the RBS trader already notes: *'over a bp (basis points) steeper... nice'* to which the UBS trader responds: *'yea I'm doing my best'*. The RBS trader reveals his position: *'im only short 20m longs' ':-('* and the UBS trader replies: *'30mm :-(...) but don t forget we was both long' 'we chopped it' 'so that's good'*. The UBS trader comments: *'fuk were fuking this long end' 'my offer btp 39s' 'and 37 bunds'* and the RBS trader congratulates him on the efforts to steepen the curve: *'you man, not me' 'good job' 'very good effort'*. Later, the traders discuss mid-prices and bid levels in the primary market. At 09:06, the UBS trader asks: *'what u bidding up' 'if you get no orders'*. The RBS trader responds: *'dunno actually'*. A bit later the RBS trader suggest to discuss over the telephone: *'free can I call?', 'yup'*. At 09:41, the RBS trader asks: *'what wud you use as ur mid-price to bid against here?'* to which the UBS trader replies: *'00 mid' '6/7'*. The RBS trader confirms: *'same'* and queries whether: *'like 16, 08 and 96'* would be appropriate bids: *'if we bid here with 6/7' 'does that sound rightish'*. The UBS trader confirms: *'yup'*. In CODS & CHIPS, at about the same time, the traders disclose their bidding strategies for the Italian BTPs. At 09:45, the RBS trader asks: *'what we bidding' '?'* and the Bank of America trader replies: *'10 cents here'* (meaning ten cents over the prevailing market price). The RBS trader asks: *'assume for the last 1%? or top bid?'* to which the UBS trader replies at 09:50: *'higher 4 my top bid'*. Back in DBAC, a few minutes later, at 09:57, the RBS trader asks: *'mid 99 here' 'or lower?'*. At 10:00, after having submitted his bids for the auction, the RBS trader asks: *'what u bid... I hope I didn't fuk it' 'bid 11, 02 and 92'*. The RBS trader was successful in being allocated the volume of bonds he wanted to (*'80m' 'as expected'*). After the auction, the traders continue exchanging in DBAC information on their secondary market trading.
- (147) Other contacts in DBAC between the traders of RBS and UBS took place on **14 January 2008, 21 January 2008, 23 January 2008, 30 January 2008** and **5 February 2008**.<sup>214</sup> As set out in Annex 1 to this Decision, these contacts are further examples of the conduct that is explained in this Decision. [...] these communications reveal potential coordination between traders of auction bids, potential coordination to move the market, potential coordination on the secondary market ahead of an auction, mid-prices and spread checks and disclosure of potential

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<sup>212</sup> PCHAT-0x0000000000001ac2 [...].

PCHAT-0x000000000000fe99 [...].

<sup>213</sup> [...]

<sup>214</sup> PCHAT-0x000000000000fe99 [...].

sensitive information.<sup>215</sup> Thus, on **14 January 2008**, throughout the communication, the participants exchange information on mid-curve prices and spreads. At 07:56, the UBS trader asks: *'wat we got 37s mid' 'low hit in the btp 39s' 'I got 42' '51/52'*. The RBS trader ([...]) replies: *'37'*. The UBS trader says: *'yea think iam 2 high'*. At 13:37, the UBS trader says: *'my 32/34s in[...]*', then he asks: *'where u got that spread[?]'* and, at the end, he adds: *'bid 20 34s'*. The RBS trader comes back and reveals: *'5.4' 'mid'*. The UBS trader exclaims: *'cool iam showing pick 5.5'*<sup>216</sup>. On the following day, the same traders exchange information on mid-curve prices and spreads as well as other potentially sensitive information.

- (148) On **21 January 2008**, the same traders discuss a forthcoming German auction. At 07:08, the UBS trader says: *'think we can steepenen this long end' 'ahead of wednesday'*. The RBS trader replies: *'yeah'* and, at the same time, he asks: *'where u got it makred [marked]'*, while he adds: *'97 42/3 but that way too high'*.
- (149) On **5 February 2008**, when they are exchanging information on their bidding regarding Austrian bonds maturing in 2017, the RBS trader ([...]) asks the UBS trader ([...]): *'can you ask' 'for the size if you put 20m is the 20.000 with a period' 'also what are you guys doing' '? im bidding for this thing' 'i have no clu'*, indicating that he does not know what to bid. The RBS shares some information but the UBS trader suggests to further discuss orally the amount and eventually the UBS trader replies: *'what yer number', 'ill call'*.
- (150) On **7 February 2008**, there are contacts in DBAC and CODS & CHIPS, mainly concerning an upcoming French auction.<sup>217</sup> The traders exchange sensitive information on their bidding strategy before the auction and exchange of sensitive information (the level at which individual bids are filled in the French auction are not publicly available). The communications show that the traders were using both chatrooms in parallel.<sup>218</sup>
- (151) In CODS & CHIPS, traders of ABN-AMRO ([...],[...]), Bank of America ([...]), RBS ([...], [...], [...]) and UBS ([...]) disclose to each other what they will bid and agree not to *'pay up large'*. One trader of RBS refers to a strategy that has *'worked well'* so far, indicating that this is not the first time that they have collaborated. Thus, at 07:43, the Bank of America trader asks the participants: *'What you thinking for the 15yr's today'* and the UBS trader replies: *'bond is cheap vs wings'*<sup>219</sup>. The Bank of America trader reveals that: *'we are thinking of just doing 23's and no 19's'* and the UBS trader says: *'iam only gonna buy 23s...don t think need to pay up large big auction really'* to which the Bank of America agrees. A trader of RBS thinks that: *'no agreed...shouldnt pay up...worked well as a strategy so far'*. At the same time, in

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<sup>215</sup> See the overview of anticompetitive communications in Annex 1. [...].

<sup>216</sup> Pick or pick up or PU means to sell the bond with shorter maturity versus buying the bond with longer maturity or to sell a bond with a smaller yield spread versus buying a bond with a higher yield.

<sup>217</sup> PCHAT-0x000000000000fe99 [...].

PCHAT-0x0000000000001ac2 [...].

<sup>218</sup> [...]

<sup>219</sup> The short and long maturities are referred to as the wings (for example 10 year and 30 year) and reflect traders' views on the shape and convexity of the yield curve ([...]). Thus, when the UBS trader states that *'bond is cheap vs wings,'* he means that, based on recently exchanged information, the 15 year French Government Bonds appear cheap on the yield curve in comparison to the risk-weighted equivalent amount of the 10 year French Government Bonds and the 30 year French Government Bonds ([...]).

the DBAC chatroom, traders of UBS ([...]) and RBS ([...], [...]) have a similar conversation about the French auction. At 08:09, the UBS trader asks what level of overbidding the other participants think is necessary suggesting: '+4 +5 +6 +7' before confirming at 08:10 that he thinks that: '*gets it*'. A trader of RBS responds that he was thinking: '*+4ish at most*' to obtain his target volumes.<sup>220</sup>

- (152) In a parallel communication on the same day, **7 February 2008**, two traders of ABN-AMRO ([...]) and RBS ([...]) discuss their strategy in the lead up to an auction, including their intended overbidding levels.<sup>221</sup> From 08:09, the ABN-AMRO trader asks: '*what you thinking overbidding*' and the RBS trader replies '*not massive at all*'. The ABN-AMRO trader then reveals '*4 cents for the 10 year*'. Later at 08:41 the ABN-AMRO trader tells the RBS trader that he is '*talking to [a trader at another bank]*' and several minutes later he comes back with: '*they aren't going large, he is only bidding 10 years rekons no more than 3-4 cents over less the market collapses*'. At 08:49, the RBS trader adds: '*plus4*' which apparently is his intended bid level for the upcoming French auction. At 09:06, they jest about the DMO accusing them of collusion with each other.<sup>222</sup> At 09:06, the ABN-AMRO trader says: '*dutch [DMO] accused me of colluding with you on the last dutch tap by the way, I denied, with a laugh*' and the RBS trader replies: '*we didn't did we*'. The ABN-AMRO trader adds: '*we usually do*' '*cant remember tho*'.
- (153) Similar relevant contacts in DBAC and CODS & CHIPS took place on **13 February 2008**<sup>223</sup> and **21 February 2008**<sup>224</sup>. For instance, on **13 February 2008**, the UBS trader ([...]) asks at 08:12: '*how much we paying up for the bund tap today*'? and the RBS trader discloses: '[...] [RBS trader [...]] *going non comp*' '*but he saying he think 4cents*'. On **21 February 2008**, traders of UBS ([...]) and RBS ([...]) discuss their bidding strategies and disclose their trading positions and mid-prices.
- (154) On **17 February 2008**, the trader of ABN-AMRO ([...]) started working at Natixis. He continued the practices that he had previously engaged in at his former employer with his circle of fellow traders. On **26 February 2008**, nine days into his new employment, [...] offers to '*lend a hand too*' to UBS' plan to '*destroy tomorrow*' an Italian auction. UBS' reaction is: '*excellent, normal service resumed*'.<sup>225</sup> Soon after, on **3 March 2008**, the RBS trader ([...]) invited the Natixis trader ([...]) back into the DBAC and CODS & CHIPS chatrooms.<sup>226</sup>
- (155) On **25 February 2008**, traders of RBS ([...] and [...]), UBS ([...]), Bank of America ([...]) and ABN-AMRO ([...])<sup>227</sup> discuss in the CODS & CHIPS chatroom bidding strategies ahead of the forthcoming Belgian OLO auction of bonds with a maturity of three years.<sup>228</sup> The traders exchange sensitive information on their bidding strategy before an auction, as well as on the auction results.<sup>229</sup> For instance, at 09:23, the ABN-AMRO trader asks: '*anyone out there bidding for the olo 3 year auction this*

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<sup>220</sup> PCHAT-0x000000000000fe99 [...].

<sup>221</sup> CHAT-10146-3489966-120236803210949 [...].

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

<sup>223</sup> PCHAT-0x0000000000001ac2 [...]. See the overview of anticompetitive communications in Annex 1.

<sup>224</sup> PCHAT-0x000000000000fe99 [...]. See [...] the overview of anticompetitive communications in Annex 1.

<sup>225</sup> CHAT-5379228-43505-1204009378274123 [...].

<sup>226</sup> See Table 3 in recital (89).

<sup>227</sup> Other traders of ABN-AMRO ([...]) and UBS ([...]) stay silent in this contact.

<sup>228</sup> PCHAT-0x0000000000001ac2 [...].

<sup>229</sup> [...]

*morning?*'. The UBS trader confirms that they are and the Bank of America trader says no. The ABN-AMRO trader then asks whether: *'5 cents over bidding'* is too much. The RBS trader is doubtful: *'not enough I think'* and the UBS trader isn't certain. The RBS trader continues: *'515 bid cash if you wanne sell some'* and the UBS trader asks: *'what we doing in belg then? 3?? 3 cents?'*. The ABN-AMRO trader replies: *'i think more like 5 cents, [...] [RBS] seems to think more' 'probably sttagger bids from +3 to +7 should get some'* to which the UBS trader says ok. At 10:44, the ABN-AMRO trader says they will be: *'staggering bids out from flat to 6 cents'*. After the auction has closed, the participants discuss the auction results. At 11:05, the trader of ABN-AMRO comments: *'2 cent premium 1.7 times covered not too flash!'* *'4 cents. lowest accepted .51 average 0.537 highest .59.'* The RBS trader replies: *'i got some at 47'*.<sup>230</sup>

- (156) On **26 February 2008**, a week before the French auction OAT38 which was due to take place on 6 March 2008, the Natixis trader ([...]) exchanges sensitive information with other traders in various communications in a non-persistent chatroom, allowing the traders to identify opportunities for coordination and/or use the information given by other traders to position themselves at the upcoming auction to their own advantage.<sup>231</sup> He exchanged information on the recommendations to be given to the French DMO for that auction with a UBS trader ([...]).<sup>232</sup> They discuss and exchange information on what maturities they are interested in and what they will communicate to the DMO. At 13:48, the Natixis trader asks: *'what u gonna ask for from france tomorrow?'*, the UBS trader replies: *'10 yrs'*, the Natixis trader asks again: *'no longs at all?' 'not even 15y?'* and the UBS trader responds: *'done 15 yr last time'*. The Natixis trader adds: *'they prob want 38s then' 'haven't got a clue what the mkt is looking for'* and the trader of UBS says: *'38s kinda suits'*. The Natixis trader reveals: *'think i will ask for 10s and 38s unless someone says otherwise'* and the UBS trader notes that: *'just talking here we feel may be a new 10 yr'*. The Natixis trader concludes that: *'then prob only 1 line then' 'maybe they would go for a 2nd line in the 38s to help them in case bids for a new 10y r not good enough...helps them save face'* and the UBS trader says: *'maybe would suit me short 35s' 'flat 38s'*. In parallel, the Natixis trader asks another trader in another non-persistent chatroom his thoughts about the French auction as it: *'seems 38s is a poss but also a new 10y may come so then no longs if so'*.<sup>233</sup> The trader replies: *'not sure actually' 'haven't thought about it yet' 'thinking about it now, i just can't see how they can justify tapping the longs and they did 15s last time' 'what do you think? when is the meeting?'*. The Natixis trader notes: *'mtg is tom' 'I haven't got any clue myself but 38s would seem possible just to give them a 2nd line in case bids for a new 10y r not so great' 'helps them save face'*. The trader of the other bank adds: *'i don't even know who from here is going'*. The Natixis trader also checks with an RBS trader ([...]) in another non-persistent chat: *'wot u gonna ask for in france tom?'*.<sup>234</sup> And in yet another non-persistent chat with a trader of another bank, the Natixis trader shares that there: *'seems chance of a new 10y fro, france' 'so then normally only 1 line unless they add the 38s just in case bids for 10s r not enough' 'face saver'*. The other trader confirms: *'yes - that would make sense'* and

<sup>230</sup> [...]

<sup>231</sup> [...]

<sup>232</sup> CHAT-5379228-43505-1204009378274123 [...].

<sup>233</sup> PCHAT-0x000000000002543f [...].

<sup>234</sup> CHAT-5379228-3489966-1204009378447235 [...].

asks: *'syndicated money machine or regular?'*. The Natixis trader replies: *'regular I guess'*.<sup>235</sup>

- (157) On **27 February 2008**, traders of UBS ([...], [...]), RBS ([...], [...]), ABN-AMRO ([...],[...]) and Bank of America ([...]) meet in CODS & CHIPS.<sup>236</sup> The UBS trader ([...]) talks about the existence of another chatroom where he transfers information: *'other chat' 'pasted it'*. In that other chatroom, DBAC, the UBS trader ([...]) complains about one of the ABN-AMRO traders ([...]) and recommends to use DBAC: *'big trades keep on here [DBAC] we get nothing from[...]' 'to many on that chat [CODS & CHIPS]'*.<sup>237</sup>
- (158) On **3 March 2008**, the new Natixis trader ([...]) is given access to DBAC and CODS & CHIPS.<sup>238</sup> The traders exchange information on mid-prices and discuss in DBAC their positions ahead of a forthcoming French tap auction on **6 March 2008**.<sup>239</sup> Once the DMO announces the issuance calendar, the primary dealers know there are new bonds coming in and adjust their positions accordingly. Typically, the traders start selling their old bonds to make space for the new issue. In this respect, in DBAC, the RBS trader ([...]) said that market players were selling their old French EGB (OAT38s) in order to buy new ones at the auction: *'oat38s look v offered to me' 'supply' 'I guess'*. The Natixis trader reveals that he *'got it 12.8 mid' 'ahead of tap on thurs'* (that is before the auction on Thursday) and the RBS trader confirms: *'same'*. This symmetric information helped the traders to know what level to bid at the auction and/or informed their trading strategies on the secondary market.
- (159) On **4 March 2008**, in CODS & CHIPS the traders of UBS ([...], [...]), RBS ([...], [...]), ABN-AMRO ([...], [...]) and Bank of America ([...]) are mainly discussing an Austrian auction.<sup>240</sup> Thus, when the ABN-AMRO trader ([...]) asks at 09:39: *'right where we bidding this austria flat?'* the RBS trader ([...]) confirms: *'flat' 'for 25m'*. The ABN-AMRO trader checks: *'anyone bidding more than mids for this thing?'* and the RBS trader says *'32 bid'*.
- (160) On **4 and 5 March 2008**, traders of RBS ([...], [...]), Natixis ([...]) and UBS ([...]) continue the discussion in DBAC, among other things, on their bidding levels for the French tap auction of the next day and the attempts to reduce the price of the EGB ahead of the auction.<sup>241</sup>
- (161) For the French auction, the traders of Natixis ([...]), RBS ([...], [...]) and UBS ([...]) try to steepen the curve (cheapen the price of the bonds) by selling the EGB in the secondary market ahead of the auction.<sup>242</sup> The RBS trader asks the other participants in DBAC on **5 March 2008** at 07:36: *'french auction tomm' 'what we thinking paying no better than mids?'* and the Natixis trader responds: *'my thought now is mid' 'kind of depends how it trades into it'* and the other trader of RBS adds: *'even less'*. The UBS trader shares, *'I we can cream 3[8]s' 'tomorrow' '38s'* (take

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<sup>235</sup> CHAT-5379228-3617904-1204009378743990 [...].

<sup>236</sup> PCHAT-0x0000000000001ac2 [...].

<sup>237</sup> PCHAT-0x000000000000fe99 [...].

<sup>238</sup> See Table 3 in recital (89).

PCHAT-0x000000000000fe99 [...].

PCHAT-0x0000000000001ac2 [...].

<sup>239</sup> [...]

<sup>240</sup> PCHAT-0x0000000000001ac2 [...].

<sup>241</sup> PCHAT-0x000000000000fe99 [...].

<sup>242</sup> [...]

advantage) and the Natixis trader adds: *'if it cheapens further then we will have to pay up a little'*. In the meantime, the traders of Natixis ([...]) and RBS ([...]) try to obtain information (*'griff'*) from other traders at other French banks, although the Natixis trader is cautious about the trustworthiness of his contacts. At 07:38, the Natixis trader reveals that: *'i need to try and get some griff from the other frog bks if i can' 'not sure how trustworthy they r yet tho'*. At 07:44, the UBS trader ([...]) discloses his bid price (information which is ordinarily anonymised) for comparable EGB: *'my bid 37s'*, to which the Natixis trader asks: *'u trying to flatten curve ahead of supply?'*. The Natixis trader thus criticises the UBS trader for stepping out of line and not helping to lower the price of the EGB ahead of the auction by selling. The UBS trader claims he had to buy and the RBS trader protests: *'thats the danger curve too steep wud u rather buy or sell 100'*. The Natixis trader reminds: *'but curve steepening is the trend'* and the UBS trader agrees. At 09:39, the UBS trader asks the other participants whether they think they could: *'destroy'* the upcoming OAT38s, potentially by lowering the price ahead of the auction, with the aim of acquiring bonds for a cheap price at the auction and then pushing the price up afterwards. The UBS trader is confident: *'I think we can if no one stands in the way'* and refers to what happened previously: *'l[i]ke 23s'*. The traders are also revealing their spreads. At 09:45, the RBS trader sends a Bloomberg email to a trader from another bank to discuss “bashing” (lowering) the price of the bonds at the French auction occurring on 6 March 2008: *'I think we should really bash up 38stomorrow' [...]* *[[...]* - UBS] *and [...]* *[[...]* - Natixis] *are up for it' 'think we get a group and really take them cheap'*.<sup>243</sup> At 10:11, the RBS trader explains to the Natixis trader in a separate non-persistent chatroom that: *'i was just chatting with [other traders] and said you me and [...] wanted to cheapen up 38s into the auction'*.<sup>244</sup> In the same non-persistent chatroom, the RBS trader ([...]) and the Natixis trader ([...]) discuss UBS' strategy. They still resent that the UBS trader is not fully adhering to their strategy and is saying one thing (that is sell) but doing the other (that is buy). The Natixis trader says: *'am I dum or something but in this mkt, [...] aint gonna get hit on stuff he is short of by bidding screens is he?' 'he is just fuking himself' ([...]* will not be able to buy bonds he is *'short'* of – that is where he has a negative net position – by *'getting hit'* – that is by being the counterparty of an investor trying to sell and hence paying his own (lower) bid price – if he *'bids screens'* himself – that is by accepting to buy at the (higher) ask price of another trader. For [...], buying a bond by *'bidding the screens'* is less profitable than by *'getting hit'*) and the RBS trader replies: *'cant believe[...]' 'keeps talking abt cheapning up 38s then lifts the screen (buying from the screen)' 'and i look like an idiot getting others to say yeah we'll bash it with you [...] and [...] and then [...] lifts ml'*. The Natixis trader adds: *'if he wants it to cheapen then he has to hit SGs (Société Générale) bid!!!'*.<sup>245</sup>

- (162) At 09:58, back in DBAC, the traders of Natixis ([...]), RBS ([...]) and UBS ([...]) continue their discussion regarding their expected bidding levels and pre-auction strategy for the French EGB for the next day. The Natixis trader discloses information received from the French DMO: *'just got AFT on the phone...bout auctio[n]'* and the RBS trader considers pushing the price further down first: *'they wont do many 30yrs prob' 'unless we bash it'*, before placing their bids at the auction

<sup>243</sup> [...]. The time stamp on Bloomberg emails is in EST. In the current instance this time stamp (04:45:10) equates to 09:45:10 GMT.

<sup>244</sup> CHAT-5379228-4906547-1204699639506154432/33 [...].

<sup>245</sup> [...]

close to the mid-prices or: *'a little above'* in order to buy back their short positions. The Natixis trader adds: *'not much int from them to issue 30yrs at this level so dont expect much'* *'he isnt expecting any overbidding at all either'* and the RBS trader adds: *'bidding 25m 38s'* *'guy cutting half the posy [position] he put on yday [yesterday]'*. Much later, at 15:27, the UBS trader indicates that he wants to fight against flattening of the curve by *'pummeling'* (cheapening) the 38s. The RBS trader asks: *'how many u gotta buy?'* and the UBS trader responds: *'10mm'* to which the Natixis trader replies: *'thats chunky in this mkt'*. The UBS trader asks: *'what do they usually clear'* and the Natixis trader replies: *'they have to come at mids'*. The UBS trader gives his view and how they could change it: *'thts what i recon unless we gewt them 16.5...ish...and steeper...then bid up a tad'* and the Natixis trader reveals his bidding strategy and concludes: *'either way u wont need to pay a premium'* *'AFT r really worried about their papers'* *'most supply will come in 10yrs so they have suffered v heavily'* *'im gonna bid at mid and below mid to see if i can get some cheap'*. Throughout the day prior to and up to the morning of the French auction, the traders of RBS, UBS and Natixis follow the trading activities around long term bonds and discuss their spreads. The spread that the traders are referring to is the yield differential between the German Bunds37s and the French OAT38s. The wider that spread, the higher the yield on the OAT38s and the lower the price of the OAT38s in the secondary market and therefore the steeper the curve. Towards the end of the day, the traders of UBS, Natixis and RBS go over the day's activities and congratulate one another. The RBS trader says: *'tomorrow will hopefully be a good day'* *'bash french'* (17:01) to which the UBS trader replies: *'iam gonna kill ir / it'*.

- (163) On **6 March 2008**, the day of the French auction, the traders of UBS ([...]), RBS ([...], [...]) and Natixis ([...]) continue their monitoring activities in the DBAC chatroom and share their mid-prices, trades and spreads between the French OAT38s and the German Bunds37s.<sup>246</sup> At 08:27, the UBS trader reveals: *'i ve marked 38s to a5.5/38s 15.5'*, a trader of RBS says: *'15.7 here'* and the UBS trader concludes: *'as long as we keep up with 37s and 38s'* *'we ll know where to bid'*, indicating that the spread increased and the curve steepened further. The RBS trader asks: *'38/55 where we got?'* and the Natixis trader says: *'4.8'*. The UBS trader seems to agree: *'yea 4.9'* *'ish'* and the Natixis trader observes: *'think the curve is finding its feet now'*. The UBS trader shares that he is: *'buying some longs back'* and the trader of Natixis notes: *'only 1 hour til auction!'*.
- (164) In parallel, the traders of ABN-AMRO ([...]), RBS ([...], [...], [...]), UBS ([...], [...]), Bank of America ([...]) and Natixis ([...]) also discuss the upcoming auction in CODS & CHIPS.<sup>247</sup> Natixis has explained that the traders exchanged competitively sensitive information on mid-prices, their bidding strategy, pricing and bid sizes ahead of and at the time of the auction.<sup>248</sup> For instance, the Natixis trader, in response to the ABN-AMRO trader's question regarding mid-prices, replies: *'i think he will be happy to sell them at mids'*. The Bank of America trader ([...]) agrees to bid at mid. At 09:24, the Bank of America trader discloses his mid-prices for the bonds maturing in 2015 and 2017: *'oct 17 at -6.61, oct 15 at 8.41 mids'*. They also discuss their bidding strategy bilaterally and/or sometimes with other traders in non-

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<sup>246</sup> PCHAT-0x000000000000fe99 [...].

<sup>247</sup> PCHAT-0x0000000000001ac2 [...].

<sup>248</sup> See the overview of anticompetitive communications in Annex 1. [...].

persistent chatrooms.<sup>249</sup> For instance, the traders of RBS ([...]) and Natixis ([...]) discuss the strategy of the French DMO for this auction with another trader of another bank.<sup>250</sup> They are apparently aware that the French DMO was concerned about low demand and was willing to get the volume at the expense of the price.<sup>251</sup> The trader of the other bank suggests the traders of RBS ([...]) and Natixis ([...]) at 09:33: *'lets give it a push' 'think 80 best to be honest' 'u boys think they will sells bonds at mid ? i have only small to buy'*.<sup>252</sup> The participants in the persistent chatroom submit defensive bids.<sup>253</sup> Afterwards, the participants reveal their bid levels and discuss the results of the auction.

- (165) On **27 March 2008**, traders of, Natixis ([...]), RBS ([...]) and UBS ([...]) discuss an upcoming Spanish auction in DBAC, as well as the traders of ABN-AMRO ([...]) and Bank of America ([...]) in COD & CHIPS.<sup>254</sup> The traders exchange sensitive information on their bidding strategy (including prices) before the Spanish auction and on the back of the information received from the Spanish DMO, the traders worked together to obtain allocations of bonds at a low price ahead of and at the auction. Some traders agreed to push the price of the Spanish bonds down ahead of the auction.<sup>255</sup> The traders of RBS, UBS ([...]) and Natixis had already exchanged information on the volume and price level in preparation for this auction on **20 March 2008**, **25 March 2008** and **26 March 2008**.<sup>256</sup> In both the DBAC and CODS & CHIPS chatrooms, the traders discussed the possibility of buying Spanish bonds at a low price as the Spanish DMO was more interested in volume rather than price.
- (166) In DBAC, the Natixis trader discloses at 08:13: *'not a single price up in spain 29s gonna make the tap easy to buid in'*, indicating that the Spanish market is underperforming and will probably come cheap. The RBS trader adds: *'116.05 on 78 cross 29s trade'* (08:24), meaning that he traded the Spain 29 bond at a price of 116.05 while *'crossing'*, that is making the opposite trade with bund futures, at a price of 78 . At almost the same time, in CODS & CHIPS, the ABN-AMRO trader asks: *'where we gonna bid this spanish auction?'* *'very low'* and the Natixis trader shares: *'116.05 vs 78x just got given in gesmosa'*, adding afterwards that he: *'just spoke to the tesoro and he is happy to sell supply and he seemed ok not to get a premium'*. The participants in the communication discuss allocations and trading strategies, including information on mid-prices of the 2029s and whether they would bid low or at what level and what would be lowest price at which bids would be

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<sup>249</sup> CHAT-207338-4906547-1204792625216526 [...].  
 CHAT-5379228-7966547-1206694364470 [...].  
 CHAT-5379228-4211233-1204790202288537 [...].  
 See overview of anticompetitive communications in Annex 1.

<sup>250</sup> CHAT-207338-4906547-1204792625216526 [...].

<sup>251</sup> [...]

<sup>252</sup> CHAT-207338-4906547-1204792625216526 [...].

<sup>253</sup> [...]. Defensive bids are also known as parachute bids. A DMO may request that primary dealers to submit defensive bids if it is concerned that there is not enough demand for an issuance. Defensive bids occur when a trader submits a bid that will be successful only if the price of the bond is at a low level. Otherwise, they would normally be a non-competitive bid.

<sup>254</sup> PCHAT-0x0000000000001ac2 [...].

PCHAT-0x000000000000fe99 [...].

<sup>255</sup> See the overview of anticompetitive communications in Annex 1.

[...].

<sup>256</sup> PCHAT-0x000000000000fe99 [...].

See the overview of anticompetitive communications in Annex 1.

[...].

allocated in this auction. At 09:26, in CODS & CHIPS, the Bank of America trader ([...]) reveals information about the position of a Spanish primary dealer in the auctioned bond and the consequence in terms of bidding strategy: *'ceca could bid aggressively for them, as they hold most of them already'*.

- (167) On **3 April 2008**, traders of RBS ([...] and [...]), UBS ([...]) and Natixis ([...]) attempt to coordinate in DBAC their bids and influence the pricing for a French auction.<sup>257</sup> Already on **28 March 2008**, the Natixis trader says: *'new 10y in France seems sure'* and the RBS trader ([...]) discloses: *'we asked [the AFT] for 5 new ones we want supply guys so we can smash it'*. The Natixis trader shares its intention that: *'10y france gonna get a whacking into the auction. The UBS trader agrees: 'yup'*.<sup>258</sup> On the day of the auction, the traders exchange sensitive information in DBAC on their bidding strategies, pricing and bid sizes ahead of the auction.<sup>259</sup> Just before the deadline, an RBS trader asks the Natixis trader to call him: *'[...] call me'* and at the same time, the traders of RBS and UBS exchange how much they are going to bid in a separate non-persistent chatroom.<sup>260</sup> Afterwards, they give each other feedback.
- (168) Similar relevant contacts took place between the traders of RBS, UBS and Natixis in DBAC or other chats on various EGB auctions on **2 April 2008**, **4 April 2008**, **16 April 2008**, **17 April 2008** and **18 April 2008**.<sup>261</sup> These communications are other examples of traders discussing their bidding strategies and exchanging sensitive information, such as trading positions and mid-prices.<sup>262</sup>
- (169) On **24 April 2008**, a week before a French EGB auction on **30 April 2008**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) engage in a detailed conversation in the DBAC chatroom.<sup>263</sup> They exchange information on the bonds that they intended to request from the French DMO. This allows them to align their position and their views in relation to requesting French 10 year bonds and 15 year are aligned, rather than forming their views independently.<sup>264</sup> RBS disclosed that it was not asking for anything. The Natixis trader discloses at 08:53 that: *'they def want to issue more new 10yr so i think we will go for 10 plus 32 or 29 small tap'*. The UBS trader replies that it had no positions in those maturities and the Natixis trader confirms that: *'there has been a little interest to buy them so thought I'd ask for them' 'think they [might] do 15y maybe too'*. At 08:55 the UBS trader confirms: *'think ill ask 15 yr'*. Later at 14:59, the Natixis trader confirms that: *'we r gonna ask for 10yr, [23s] and a small tap in 29s France'* to which the UBS trader confirms: *'10 yr 3 [billion]' '15 yr 2 [billion]' 'wat we saying'*. The Natixis trader states: *'yeah' 'I think thats likely' 'i [always ask for the] 3rd issue to tell them to be more flexible about off the runs'* and the UBS trader confirms: *'yea was gonna say 21s' 'but French guy said leave it'*. The Natixis trader confirms: *'no chance of getting those'*.
- (170) On **25 April 2008**, at 06:06, in DBAC, the trader of Natixis ([...]) and the trader of UBS ([...]) start checking their views on an upcoming French auction. The Natixis

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257 PCHAT-0x000000000000fe99 [...].

258 PCHAT-0x000000000000fe99[...]

259 [...]

260 CHAT-5379228-3489966-1207212120387916 [...].

261 PCHAT-0x000000000000fe99 [...].

262 PCHAT-0x000000000002c60e (RBS-UBS-GOV) [...].

263 [...]

264 PCHAT-0x000000000000fe99 [...].

265 [...]

trader discloses: *'10y and 23s likely next week from France'*. The UBS trader agrees: and the UBS trader confirms: *'yea seems that way'*. At 09:00 the Natixis trader confirms that: *'10s and 15yrs Oats' '5 to 5.5bln'*.<sup>265</sup>

- (171) On **28 April 2008**, in DBAC, the RBS trader ([...]) discloses at 06:12 that he is working on long dated bonds that week: *'iam doing longs this week lads ifu see owt'*.<sup>266</sup> Two hours later, at 08:06, the Natixis trader ([...]) notes a number of: *'big month end extensions this month'?*, meaning there will be a lot of buyers as a result of the index rebalancing exercise which would increase the price of the bonds. The RBS trader suggests at 08:09: *'lets all get long together squeeze it tomorrow'*, indicating to buy the long term bonds ahead of the auction because of the high demand and benefit from the price increase at the auction.
- (172) On **29 April 2008**<sup>267</sup>, after having exchanged mid-prices and volumes on various EGB in DBAC, the Natixis trader turns the conversation to the French auction and asks at 08:32: *'is it me or are 15 yrs holding in well ahead of tap tomorrow?'*, *'they seem quite bid on telly given we r getting supply'*. The UBS trader comments: *'been buyers around'*, to which the Natixis trader reacts: *'not of france tho' 'only btp and dbr'*. A bit later, the traders discuss the curve ahead of the French auction the following day, exploring possibilities to align their strategy. From 09:39, the RBS trader asks: *'is it to obvious for the curve to flatten tomorrow cos of extensions?'* and the Natixis trader replies: *'i think it flattens' 'but mkt prob goes lower before the extension'*. The RBS trader notes: *'we have france tomorrow again i fancy 85 today the sell again'* and the Natixis trader shares his trading strategy: *'i would love to sell it there but think we see 35 before 85'*, meaning the market would go down to 35 before going up to 85, where the RBS trader wanted to sell. The UBS trader intervenes saying that he: *'just lost 20 odd 23s...france'*. The Natixis trader adds: *'flat longs but short [15yrs] for the auction'* and the UBS trader replies: *'not got much on short 50mm 15 yr vs 30s / only short 19mm'*.
- (173) On **30 April 2008**, the day of the French tap auction with various maturities, the traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) further attempt to coordinate their bids in DBAC.<sup>268</sup> The traders continue to share their bidding strategies.<sup>269</sup> For instance, at 06:08, the Natixis trader says: *'prob gonna go for 75-100m 15yrs'*, followed by the RBS trader ([...]) replying: *'buying 200 oct 14, 200 ten years 100 15 years'*, while the UBS trader ([...]) comments: *'75 i, need'*. The Natixis trader concludes at 06:16 that they could submit: *'275m between us in 15y.'* The participants discussed bidding and general trading strategy ahead of the auction in order to secure their desired allocation.<sup>270</sup> At 06:17, the UBS trader asks: *'wat do we have 2 over bid'* and the Natixis trader responds: *'that is the real question...would like to think we could still get them with no premium but mkts all over seem like people r happy to pay money away again'*. The RBS trader notes: *'just at the time offer them on screen bid that they cant ignore us'* and the Natixis trader adds: *'think 275m is too much to ignore.'* At 07:31, the UBS trader says: *'[save] some ammo [ammunition] nearer the time'* to take advantage of any price increase following an

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<sup>265</sup> PCHAT-0x000000000000fe99 [...].

<sup>266</sup> PCHAT-0x000000000000fe99 [...].

<sup>267</sup> PCHAT-0x000000000000fe99 [...].

<sup>268</sup> PCHAT-0x000000000000fe99 [...].

<sup>269</sup> [...]

<sup>270</sup> PCHAT-0x000000000000fe99 [...].

index-rebalancing exercise.<sup>271</sup> This means they would hold on to a sufficient volume of bonds to sell them right before the auction cut off time and try to depress the price of the bond. At 07:46 the Natixis trader says: *'i think i might just not buy anything at the tap now'* arguing that there is *'no chance of any syndicated deals and the bonds r too expensive now to be left holding them after'*. The trader then decide to bid at a low level, rather than not bidding at all as they were under the obligation to bid since they were primary dealers. At 07:58 the Natixis trader further explains that he: *'had a rethink on our strategy here and i think i will not buy any 15yrs now' 'unless it comes at a sensible level'* and goes on to say that they will: *'bid at lower level and let barcs [Barclays] buy them all'* because: *'there is zero chance of any syndicated deal from france this yr and so i think its better to send a msg that we r not gonna subsidise stupid activity in the mk'*.<sup>272</sup> At 08:00, the RBS trader ([...]) announces that: *'i wont go for any then'*. The Natixis trader says that he would: *'bid the screen price for some but no more'* and that he *'wouldnt expect to get any there but if i do it just shows how stupid the pre mkt activity is.'* The UBS trader says that he would: *'buy only 50mm'*.

- (174) In parallel, in the CODS & CHIPS chatroom, the traders of Natixis, RBS and UBS share the strategy just discussed in the DBAC chatroom with the traders at ABN-AMRO ([...]) and Bank of America ([...]).<sup>273</sup>
- (175) The DBAC traders realised that the 15 year bonds are not worth going after, and decided to go for the 10 years, which they pass on to the traders in the CODS & CHIPS chatroom. At 08:36, the Natixis trader restates: *'there is zero chance of syndicated deals so ranking is not important this yr'*. The ABN-AMRO trader ([...]) then asks if UBS has any plans for the auction, and the UBS trader says he is buying 50mm 23s at +5. The UBS trader says he was going to buy more: *'but with out perforamnce' 'no interest'*. The ABN-AMRO trader says: *'doesnt seem too much demand aroud for these auctions'* and the UBS trader replies: *'concentrat on tens' 'seen very little'*.
- (176) Back in DBAC, at 08:39, the UBS trader checks the mid-price and the Natixis trader confirms his agreement with the *'70 90/91'* price disclosed by the UBS trader. At 08:40, the RBS trader says *'73'* and the Natixis trader says *'72'*. Post auction, the traders discuss the outcome of the auction and the exact bids submitted by all the primary dealers.<sup>274</sup> The Natixis trader notes that there were: *'4 major hands in the*

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<sup>271</sup> [...]. At the calendar end of each month, fund managers must rebalance their index by buying EGB bonds. The rebalancing is done to reflect changes in the index due to the issuance by the DMO of new bonds with longer maturities, meaning the bond benchmark for the current month will reflect these new issues. Since fund managers are required to buy a significant amount of assets on the secondary market because of the rebalancing exercise, this tends to drive up the prices of EGB at the end of the month. The intention was to set up long positions before the auction day as they anticipated that others would be buying from the market at the end of the month because of the index rebalancing. After this period, the traders then reverted to discussing the best time to sell bonds in the secondary market to push the price of the auction bond down in the primary market ahead of the auction. While in normal circumstances, traders would sell bonds ahead of the auction to depress the price of the bonds in the auction, the traders bought ahead of demand. Once the traders realised there would not be any syndicated deals, and therefore no possibility of associated fees, they decided not to put in serious bids at the auction.

<sup>272</sup> [...].  
PCHAT-0x000000000000fe99.

<sup>273</sup> PCHAT-0x0000000000001ac2 [...].[...] does not actively participate to the discussions.

<sup>274</sup> Natixis, UBS and RBS were primary dealers in 2008 in France.

*whole tap*' and the UBS trader suspects that there may have been: '*a bit of collusion*' '*going on there*'. The Natixis trader agrees and notes that the primary dealers paid 95.79 for EUR 700 million and one paid 95.86 for EUR 100 million. The UBS trader concludes that it is a '*bit dodgy that*'. The traders were apparently well aware that price coordination constitutes a wrongdoing.

- (177) Similar relevant contacts, in DBAC and CODS & CHIPS, between traders of UBS, RBS, Natixis and Bank of America took place on **7 May 2008, 13 May 2008, 14 May 2008, 15 May 2008, 19 May 2008, 21 May 2008** and **22 May 2008**.<sup>275</sup> These communications are further examples of traders disclosing their trading positions and mid-prices in particular as regards a Spanish EGB auction that occurred on **22 May 2008**. These communications reveal that traders exchanged their views on the size of the bond issuance they would recommend to the Spanish DMO, as well as other commercially sensitive information and tried to push down the price of the EGB ahead of and during the auction. The traders also exchanged information on their bidding intentions, mid-prices, spreads and bid levels ahead of the auction.<sup>276</sup>
- (178) Other contacts in DBAC between traders of UBS, RBS and Natixis took place on **28 May 2008, 29 May 2008, 30 May 2008, 2 June 2008, 4 June 2008, 5 June 2008**, and **6 June 2008**.<sup>277</sup> These communications are further examples of traders disclosing their trading positions and mid-prices in particular as regards a French auction that occurred on **5 June 2008**. Thus, the traders attempt to drive the market price of the auctioned bonds down (steepen the curve): '*u short them ahead of thurs?*' and to coordinate their bidding: '*what we paying up for 30s tomorrow[?]*' and overbidding strategies: '*what we thinking overbidding*'. After the auction they discuss the results of that auction. On **4 June 2008**, the administrator of the DBAC chatroom ([...]) grants permission to another Natixis trader ([...]) to join DBAC. This trader is disinvited again on 18 May 2009 on the grounds of lack of participation.<sup>278</sup>
- (179) On **25 June 2008**, the traders of RBS, UBS, Natixis and Bank of America discuss, in the CODS & CHIPS chatroom, the recommendations they plan to submit to the French DMO (AFT) for a forthcoming French auction on **3 July 2008**.<sup>279</sup> The traders attempt to coordinate on what they would specifically ask the DMO to issue and some of them appear to be in agreement.<sup>280</sup> The objective was to influence the price and size of the auction in respect of the requested bond types.<sup>281</sup> Thus, at 09:12, the

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<sup>275</sup> PCHAT-0x000000000000fe99 of 07.05.2008 [...].  
PCHAT-0x000000000000fe99 of 13.05.2008 [...].  
PCHAT-0x000000000000fe99 of 14.05.2008 [...].  
PCHAT-0x000000000000fe99 of 15.05.2008 [...].  
PCHAT-0x0000000000001ac2 of 19.05.2008 [...].  
PCHAT-0x000000000000fe99 of 19.05.2008 [...].  
PCHAT-0x000000000000fe99 of 21.05.2008 [...].  
PCHAT-0x000000000000fe99 of 22.05.2008 [...].

<sup>276</sup> See the overview of anticompetitive communications in Annex 1.  
[...].

<sup>277</sup> PCHAT-0x000000000000fe99 [...].

<sup>278</sup> [...]

<sup>279</sup> PCHAT-0x0000000000001ac2 [...].

<sup>280</sup> Recitals (580) and (623).

<sup>281</sup> See the overview of anticompetitive communications in Annex 1.

[...] the traders were in agreement as to what they would specifically ask the AFT to issue at the next French auction. [...] the participating traders in this communication appear to request specific tenors

RBS trader announces that he plans to request the AFT for bonds maturing in 2018, 2019 and 2023: *'tomorrow lads iam asking for 18s 19 23s'* for France and the UBS trader says: *'23s deffo' '4 me'*, while the Natixis trader says: *'18,19, 23 here'*. The RBS trader asks the UBS trader to ask for 19s also and the UBS trader confirms: *'sure...aprils'*. The Bank of America trader steps out of line, stating: *'I don't want 10's we are just asking for 30's'* and the UBS trader reminds him: *'dbac dbac' '©'*. The traders of Natixis and RBS mock him and ask him to request the AFT for French bonds 19s: *'ask for april 19s'* and *'19s [...] please'*<sup>282</sup>. The Natixis trader adds: *'I luv dbac'*.

- (180) On **27 June 2008**, the AFT announces that on **3 July 2008**, it would issue three lines of French Government Bonds maturing in 2018, 2019, and 2023 at auctions. Thus, in the following chats up to **3 July 2008**, the traders are exchanging sensitive information in DBAC, [...] and other supportive chatrooms, including aligning strategies to shorten the OAT23s (the traders agree to create short positions ahead of the auction, meaning they would try to lower the price of the relevant bonds to ensure the mid-price of those bonds at the auction would also be low at the time of bidding) and disclose their prices and bid levels in order to obtain allocations of bonds at lower prices.
- (181) On **2 July 2008**, in a separate chat, the Natixis trader ([...]) discusses with a trader at another bank their views on the market. The market was short of the 10 and 15 year maturity bonds which could have an impact on the auction. The Natixis trader later disclosed he had to sell OAT23s.<sup>283</sup> As the market was short, there would be significant buying which could move the prices up ahead of the auction.<sup>284</sup> On the same day, in DBAC, at 09:47, the UBS trader ([...]) says: *'everyone short france it seems' '23 france getting lifted high'* suggesting that there are still buyers for long end bonds which explained why the prices was going up.<sup>285</sup> The traders were concerned and thought this was a wrong strategy before the auction since their intention was to lower the price. A trader of RBS ([...]) asks the other traders the price at which they are selling. A trader of Natixis ([...]) replies: *'83' 'thats my mid'*. Earlier in the day, at 06:51, the same trader of Natixis has, also, revealed that: *'someone keeping the 23s bid this morning so far'* to which a trader of RBS ([...]) suggests that the group shorten the bond on the day of the auction the following day: *'keep it tight sell tomorrow'*. The Natixis trader agrees: *'yeah'*.<sup>286</sup>
- (182) On **3 July 2008**, the day of the French OAT23s auction, traders of RBS ([...], [...]), UBS ([...]), and Natixis ([...]) attempt to steepen the curve and coordinate their bidding strategies. As from 06:15, in DBAC, the traders attempt to drive down the price of the bonds before the auction.<sup>287</sup> The UBS trader ([...]) says: *'can t believe no one bidding 23s up' 'all my prices on tv'* and the RBS trader replies: *'got to get that down'*. At 06:27 the UBS trader expresses his frustration: *'fuk sake why cant these twa ts' 'just let bonds cheapen' 'then richen afterwards'* and the Natixis trader responds *'cos they r stupid'*, and later asks: *'who is offering 23s with me?'*. The UBS

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and adjust the recommendations they plan to submit to the DMO based on this request, thus appearing to coordinate their requests. [...]

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See recital (184).

283

PCHAT-0x00000000000278fe [...].

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[...]

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PCHAT-0x000000000000fe99 [...].

286

[...]

287

PCHAT-0x000000000000fe99 [...].

trader replies: *'not me'* and the other trader of RBS answers: *'im bidding em u want to sell' 'gonna lift screens' 'kidding' 'of course'*. A bit later at 08:31, the RBS trader says: *'curve gonna steepen once we get them'* and the Natixis trader confirms: *'yup' 'mkt gonna trade like shite' 'esp 23s'*.

- (183) Still in DBAC, the traders disclose, check and align their bidding strategies and coordinate their overbidding levels.<sup>288</sup> At 06:29, the RBS trader ([...]) asks: *'wat mid 19s'*, the UBS trader says *'[...] has 96' '94.96'*, the Natixis trader replies: *'96 too'* and the RBS trader thanks them for the replies: *'ta thats the one iam buying and small 23s'*. The UBS trader announces: *'150 23s' 'I buying' 'wat we have to pay up'*, the Natixis trader says: *'100-150 here...why we have to pay up?'* and the UBS trader thinks it will clear above. The Natixis trader notes: *'u might b right but i dont see why other than non comps'*. Later at 07:57, the other trader of RBS asks: *'wat we doing at auction lads'* and the UBS trader responds: *'just looking last 1 came up +5' '15 yrs'* and the Natixis trader thinks: *'fear of missing factor is the only reason for premium'*. The UBS trader agrees: *'yup' 'dont help with pricks on screen' 'wat mid we got 23s'*. The traders share then their mid-prices. The Natixis trader: *'19'*, the UBS trader: *'22/23' 'ok 18'* and the RBS trader: *'yes i am 19 gonna pay 23 here'*. The UBS trader adds: *'+5 +6' 'my idea'* and the Natixis trader agrees at 08:00: *'ok' 'makes sense' '+4-5 i would say'*.
- (184) In parallel, a trader of RBS ([...]) discusses the same matter with two UBS traders ([...], [...]) known to him but who were outside DBAC and CODS & CHIPS chatroom through another chatroom, where they exchanged information on how high they need to overbid for the French bonds maturing in 2018.<sup>289</sup> The UBS trader ([...]) asks at 08:34: *'how high to we have to pay from mid in 10yrs?'* and the RBS trader replies: *'plus 3 ish iam not bidding them iam doing 19s and 23s'*. The UBS trader confirms he is not bidding for 19s, the bonds the RBS trader previously asked the Bank of America trader to ask the AFT (see chat of 25 June 2008)<sup>290</sup>: *'ok' 'im not bidding 19s' 'was gonna do 4cents to make sure'*. The RBS trader asks: *'wat about 19s?'* and the UBS trader responds: *'dunno' 'that is why i avoid it' 'gonna do a parachute bid for em'*.
- (185) Back in DBAC, the traders review their bidding strategies The Natixis trader notes at 08:36: *'gonna rething strategy and buy some 10yrs and fewer 23s now'*. At 08:40, he asks the others: *'mid 23s now?'* to which the UBS trader responds *'06' 'i guess'*. The Natixis trader says: *'07'* and the UBS trader replies: *'but 04 my shhet says'*. The RBS trader reports that he notified the DMO that he would bid less for the 23 year EGB: *'yes just told the trasury less 23'*, suggesting that he would bid for more of the 10 year EGB. He says: *'I am paying 10 for 23 90 for 19s'* and the Natixis trader discloses: *'08 on 23s here' '88 19s'*. The RBS trader replies: *'88 19s 08 23s'*.<sup>291</sup> After the auction, the participants discuss the results with the RBS trader stating at 08:57: *'well done guys'* and the Natixis trader saying: *'well done everybody'*, before commenting on the mid-prices used.

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<sup>288</sup> [...]

<sup>289</sup> PCHAT-0x000000000002c60e (RBS-UBS-GOV) [...]. Other contacts in this chatroom are mentioned in recitals (168), (189), (200), (235) and (283).

<sup>290</sup> See recital (179).

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

- (186) On **18 July 2008**, the traders of RBS ([...]), UBS ([...]) and Natixis ([...]) discuss Portuguese bonds (port37) in the DBAC chatroom.<sup>292</sup> The participants discuss, speculate and exchange information on the identity of possible counterparties on the secondary market.<sup>293</sup> Such information is anonymised on broker screens. At 07:35, the Natixis trader thinks that the ‘port37’ on the screen is: ‘muppetman’. The RBS trader replies that: ‘[...] said he thought it was chimp of the year’. The UBS trader responds: ‘proper’ and the Natixis trader asks: ‘citi isnt that?’. The RBS trader confirms: ‘yeah’ and the Natixis trader adds: ‘could be either chimp or muppet but muppet was bidding for port37 on asw yday’. Several minutes later, the RBS trader says that ‘oil’ is asking for axes. The UBS trader explains that oil is a buyer of Dutch EGB 5s, 10s, and 30s, and the RBS trader adds: ‘Belgium too’. Later in the day, the Natixis trader indicates that: ‘chimp’ is Citigroup and: ‘muppet’ may be Morgan Stanley. The Natixis trader says Citigroup was buying port37 from Morgan Stanley and then writes: ‘chimp buying from the muppet.’
- (187) Other contacts in DBAC took place on **21 and 22 July 2008**. As set out in Annex 1 to this Decision, these contacts are further examples of the anticompetitive conduct covered in this Decision.
- (188) On **23 July 2008**, the traders of RBS ([...]), UBS ([...]) and Natixis ([...]) discuss in the DBAC chatroom an upcoming German bonds auction.<sup>294</sup> The traders exchange views on the market and disclose their trading intentions, allowing them to alter or align their strategy or prices, should they wish to do so.<sup>295</sup> At 05:56 the UBS trader says: ‘iam short gonna bash some on open’ ‘just depends if they try and flatten it’ and the Natixis trader replies: ‘they bound to try and flatten it tho eh?’. The RBS trader says: ‘wonder if time to cover short ad we rally a bit’ ‘or add to short’ and the Natixis trader replies: ‘mkt always gets whacked into the bidding these days’. Then the RBS trader asks: ‘we going to be a bp flatter’, with the UBS trader replying: ‘lbp steeper’ and the Natixis trader: ‘rest of curve steeper of course’. Later in the morning, the DBAC traders exchange mid-prices, overbidding levels and bidding strategy for the forthcoming German auction in order to secure a desired allocation of bonds from auction. At 08:07, the UBS trader asks: ‘wat u overbbiding[...]’ ‘[...]’. The RBS trader expresses his disappointment at the market and indicates that he ‘might small overbid’ ‘maybe bid high for 50m’ ‘then at market for like 100’. The UBS trader replies: ‘simular strategy’. They compare their bids up until the auction. Later from 08:38 they begin disclosing their mid-prices of 40s ahead of the auction.
- (189) Other contacts in DBAC, as well as in another persistent chatroom and non-persistent chatrooms between traders of RBS, UBS and Natixis took place on **28 July 2008, 27 August 2008, 28 August 2008, 29 August 2008 and 1 September 2008**.<sup>296</sup> These are further examples of traders exchanging information on their bidding and

<sup>292</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>294</sup> PCHAT-0x000000000000fe99 [...]. Another Natixis trader ([...]) is silent on the chat.

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

<sup>296</sup> PCHAT-0x000000000000fe99 of 28.07.2008, 27.08.2008, 28.08.2009, 29.08.2009 and 01.09.2009 [...].

PCHAT-0x000000000002c60e (RBS-UBS-GOV) of 28.07.2008 [...].

CHAT-4906547-43505-1219132376733366 of 19.08.2008 [...].

PCHAT-0x000000000000fe99 of 28.08.2008 [...].

PCHAT-0x000000000000fe99 of 29.08.2008 [...].

PCHAT-0x000000000000fe99 of 01.09.2008 [...].

overbidding ahead of an auction.<sup>297</sup> For instance, on **28 July 2008**, at 09:46, the RBS ([...]) trader asks: *'hey belgium what do we overpay?'*. The UBS trader replies: *'massive' 'last one was 12c on average' 'in region +9 to +15' 'for high to low allocation'* and adds at 09:48: *'I am doing mid +5 to +12 going fishing'*.

(190) Prior to a French auction on **4 September 2008**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss in DBAC the recommendations they plan to submit to the French DMO.<sup>298</sup> Already on **27 August 2008**, they prepare the ground by exchanging their views on the type of French bond they would ask for at the meeting with the French DMO.<sup>299</sup> At 12:12 the Natixis trader asks: *'when next french tap?'* to which the UBS trader replies: *'next week I guess'*. The Natixis trader concludes that there: *'must b a mtg this thurs?'*. A bit later, he asks: *'what we gonna ask for?'* *'38s?'*, and the UBS trader says he would ask for 30 years French bonds maturing in 2038 to be auctioned on 4 September 2008: *'38s'*. The Natixis trader concludes that the pressure on the prices of Austrian bonds (the traders previously agreed to push down the prices of Austrian bonds) would impact the prices of French 38s since they both have similar maturities: *'so rag37s and 38s next wk could keep a lid on peerformance for now'*. The UBS trader notes: *'don thnik well flatten 10bp into supply like we did in 40s'* and the Natixis trader adds: *'i was thinking of asking them to tap the 4/19s and 10/25s and make them the new benchmarks' 'that would leave room for 38s to be tapped' 'but if they go for a new 10yr then they will have to wait til Oct to b able to tap it'*. The RBS trader reveals that he does not want to ask for longs because *'longs sh!tty'*, but the Natixis trader is of the opinion that they need 38s: *'once they become a proper 30yr in Oct I think that opens up a lot of people to buy it'*. The RBS trader asks: *'u think that limits people' 'a long maturity?'* and the Natixis trader explains that: *'it does for some accounts'*.

(191) On **2 September 2008**, in the DBAC chatroom, the traders of RBS ([...]), UBS ([...]) and Natixis ([...]) are monitoring the price of the French OAT38s.<sup>300</sup> The UBS trader is considering whether they should wait until the Austrian auction of 2 September 2008 or until the French auction of 4 September to see the price of the OAT38s recover. The Natixis trader considers it is better to wait until the French auction on 4 September 2008 before *'richening'* [pushing the prices back up] the bonds, potentially because of the risk of a squeeze<sup>301</sup> (prices going up) ahead of the French auction.<sup>302</sup> This indicates that the traders were concerned they would not be able to make a profit after the auction because the demand would have been pre-filled, so they were trying to avoid getting squeezed in the auction (that is having to pay more at the auction). At 07:31, the UBS trader tells the group: *'looking cheap' 'wonder if we richen' 'back after' 'rags' 'or gotta wait for france'*<sup>303</sup> and the Natixis trader thinks they have to: *'wait for france to b honest'*, so as to benefit from the price after the French auction. Later at 09:18, the RBS trader asks the group to

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<sup>297</sup> See the overview of anticompetitive communications in Annex 1. [...]

<sup>298</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>300</sup> PCHAT-0x000000000000fe99 [...]. The other Natixis trader ([...]) is silent on the chat. See also recital (80).

<sup>301</sup> As the prices go down and the market becomes short because of the high demand for those bonds, there is a risk that the market becomes "squeezed". Consequently, the traders who are short buy back their bonds and push the price up at the time of auction. The risk is that the primary dealers will not be able to make a profit after auction as the demand has already been pre-filled ahead of the auction.

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

<sup>303</sup> Rags: see footnote 131.

confirm that they will first wait for the French auction: *'we going to squeeze this france arent we into Thursday...is there any market out there?'* and the Natixis trader gives his opinion: *'if asw stay this cheap for sure'*, meaning they could make a profit considering the price of asset swaps remain low. The Natixis trader then indicates that he is bidding for OAT38s: *'my bid tv in 38s' 'want to find out whats out there'*. The traders then exchange positions with the RBS trader asking: *'anyone long em?'*. The Natixis trader replies: *'short 14m'* and the UBS trader confirms he is short, indicating that they were all positioning themselves short ahead of the auction. The discussion is continued in DBAC on **3 September 2008**.<sup>304</sup> For instance, when the UBS trader ([...]) inquires: *'u gotta buy tomorrow' '?'*, the RBS trader ([...]) discloses: *'yeah will want to come out long of those im just v nervous of buyers coming in tomm and squeezing it as we'll be trading libor plus going into aution'*, meaning he wants to buy 38s before the auction to avoid getting squeezed. The DBAC traders (*'we'*) will be trading (or at least they will aim at trading) the 38s bond at a *'libor plus'* spread, that is at relatively high spread equivalent to a relatively low price. This low price could attract buyers that would push the price back up and could therefore *'squeeze'* the RBS trader. So, the RBS trader will first buy ahead of the auction, in order to be able to sell enough to counter the potential price increase buyers might trigger. He then adds: *'going to try and leg and sell dsl on cross'*, indicating that he will cross, that is offset his increased exposure in 38s bonds by selling dsl (Dutch bonds).

(192) On **4 September 2008**, the day of the French auction, the traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...], [...]) exchange information in DBAC.<sup>305</sup> They share their mid-prices, volumes and overbidding levels, and discuss selling the French EGB to a certain counterparty on the secondary market, as well as the outcome of the auction.<sup>306</sup> For instance, at 08:16, the UBS trader asks the RBS trader what he is going to bid and the RBS trader replies: *'deciding between +10 and +15 but defo [definitely] +10' 'u?'*. The UBS trader reveals his bidding levels: *'+10 +12'*. Later that day, the traders of RBS ([...]), UBS ([...]) and Natixis ([...]) also shared information in DBAC about their spreads and pricing in relation to Dutch bonds on the secondary market. At 11:15, the RBS trader asks: *'u wanna go over spreads i got everything wider not sure if im right' '37/37 56.4' '38/37 10.7'dsl37/37 7.6'* and the UBS trader replies: *'56.2' '10.7' '7.5'*. The RBS trader says: *'28 sspain'* and the UBS trader says: *'yup'*.

(193) When discussing and aligning their conduct for the auction, they also take into account what the EGB did in the past and cross check in both persistent chatrooms.<sup>307</sup> When the UBS trader asks in DBAC at 07:10: *'any one remember how far last 38s cleared'*, he cross checks in CODS & CHIPS, specifically addressing the Bank of America trader ([...]): *'[...]' 'the last 38 tapped' 'cleared high' 'u remember how much' 'cant see records'*. The RBS trader ([...]) replied: *'yeah i wasnt in but remember we bid +8 and missed think it came 10-12'* and the Bank of America trader reveals how many basis points above the mid-price had been paid to

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<sup>304</sup> PCHAT-0x000000000000fe99 [...]. See the overview of anticompetitive communications in Annex 1.

<sup>305</sup> PCHAT-0x000000000000fe99 [...].

<sup>306</sup> [...]

<sup>307</sup> PCHAT-0x0000000000001ac2 [...].

obtain bond allocation at that previous auction: *'stop was 14' 'and avg was 18 cents'*. The UBS trader adds: *'14 cents up' 'wow'*.<sup>308</sup>

- (194) On **8 and 9 September 2008**, the traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss the syndication of a Spanish EGB bond in the DBAC chatroom.<sup>309</sup> On **8 September 2008** at 08:33, the RBS trader ([...]) tells the others: *'new spain announced'* and later at 10:46 the Natixis trader asks: *'Anyone gonna buy this spain 15y?'*. At 10:50, the UBS trader replies: *'the old 1 trades at about +19' 'curve adjusted' '+22 +25'*.<sup>310</sup> On **9 September 2008** at 09:42, the Natixis trader discloses the timing of the pricing of the syndication<sup>311</sup>: *'Pxx [pricing] at 11. Your time I hear'*. At 10:45 he discloses that: *'The pxx call is beginning again now'*, and eventually confirms at 10:59 that the syndication has *'priced'*. The traders also discuss the cheapening of the EGB in the run up to the syndication to increase yield and try to boost the syndication by the lead managers.<sup>312</sup> The traders also start reviewing their positions and strategies ahead of an Italian auction for 10s, 15s and 30s that will take place on **11 September 2008**. The UBS trader ([...]) inquires at 06:30: *'15 yrs look very cheap on the fly' 'might buy some vs longs' 'as we have Italy supply' 'is it worth doing before or will they drive the 23s through the floor on pricing' 'any thoughts.'* At 06:36 the RBS trader says: *'not sure how much further they will move it buy some and average in i think'* the UBS trader thanks him: *'OK TA.'*
- (195) On **10 September 2008**, the traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) continue discussing in the DBAC chatroom their bidding strategies for the upcoming Italian auction.<sup>313</sup> The RBS trader ([...]) asks at 14:41: *'how you guys want to come out after this auction in long italy' 'long/flat/short?'* and shortly after the Natixis trader replies: *'im not bidding in them.'* The UBS trader replies: *'flat [...]' 'but will be long 39s vs 37s'*.
- (196) On **11 September 2008**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss a forthcoming Italian EGB auction on that day in the DBAC chatroom.<sup>314</sup> They disclose their mid-prices ahead of the auction, possibly attempting to influence the curve and price, and discuss trades, bidding strategy ahead of the auction and auction results.<sup>315</sup> Already at 06:57, the RBS trader asks: *'wheres ur mid 37s' 'I got 78'* to which the UBS and Natixis traders both respond: *'80'*. The participants attempt to move the price of the EGB down in the secondary market ahead of the auction (*'steepen the curve'*). For instance, the UBS trader makes the comment at 06:58 that: *'at least we try and get [the] curve steeper'* and when the Natixis trader comments at 07:13 that: *'someone leaning on curve and btps now'*, the UBS trader responds: *'at least someone with me getting curve steeper'*. They compare their respective pricing. The Natixis trader states at 07:15: *'58.5 [price] was out there earlier'* and the RBS trader notes: *'i got mid 58.3 happy to trade there'* and the Natixis trader adds: *'58.25 i got'*. At 07:20, the Natixis trader discloses that he thinks the curve will flatten and the price increase: *'[market] lower' 'curve [is going to]*

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<sup>308</sup> [...]

<sup>309</sup> PCHAT-0x000000000000fe99 of 08.09.2008 [...].

PCHAT-0x000000000000fe99 of 09.09.2008 [...].

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

<sup>311</sup> See recitals (33) and (528).

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

<sup>313</sup> PCHAT-0x000000000000fe99 [...].

<sup>314</sup> PCHAT-0x000000000000fe99 [...].

<sup>315</sup> [...]

*flatten right bout 30 mins b4 tap*. The UBS trader is not sure: *'maybe'* and asks what *'mid'* the other participants have. The UBS trader responds: *'57 74/5'* and the RBS trader says: *'same'*. At 07:27, the Natixis trader notes that: *'someone really pushing the curve right now'* to which the UBS trader responds: *'me'* and the RBS trader comments: *'me btp37'*. The UBS trader makes the comment: *'yup [I] hit a low bid'* to which the Natixis trader says: *'saw that low hit' 'wondered what muppet did that'* with the UBS trader further responding: *'if we [can't] get the spread to widen at least get bonds cheap on curve'*. Shortly after and in reference to the hit on the low bid, the UBS trader explains that: *'it was me' 'mupprtbell'*. The RBS trader still hopes the price will decrease: *'hopefully [market] goes to 115.00/10 sell up there' 'steepen curve'* to which the Natixis trader responds: *'thing is everyone is short btps so it suits everyone'* with the RBS trader noting: *'would be nice'* and the UBS trader agreeing. The traders continue comparing their mid-prices and disclosing information regarding trades they have recently executed (or to be executed) in the secondary market. At 08:10, the traders of UBS and RBS further check their mid-prices, with the RBS trader concluding: *'I am going to cheapen stuff' 'just don't want to get lifted here'*.

- (197) At 08:15, the traders align their overbidding levels. The UBS trader asks the RBS trader: *'what u over bidding [...]' '10 and 12' 'or more' 'with this move'* and inquires about the spread between BTP37s and BTP39s: *'where we got 37/39' 'btps' 'now'* (08:21). They try to prevent the price of the EGB from increasing before the auction and are concerned about other traders making offers that could increase the price. They discuss the trades executed ahead of the auction on screen (information that would not typically be available to the other dealers in the communication as they would only know what their own trade offers/bids are) and at 08:24, when the Natixis trader says: *'[...] [broker from Tullett Prebon] bidding 37s now'*, the RBS trader comments: *'we need it to stay here'*. Other traders may be showing low offers: *'on-screen'* and the RBS trader refers at 08:26 to: *'other mofos offering as well' 'some ammo'*. At 08:42, the Natixis trader indicates his offer to buy the EGB is the one on screen and the RBS trader asks the Natixis trader: *'why u selling?'* and the Natixis trader explains that he is selling to assist the other traders and prevent the price from rising before the auction: *'I got hit on telly earlier' 'so just offering it back' 'im helpful like that for you guys'*. At 09:00, when the auction window closes, the Natixis trader asks: *'give me a shout when you see the results pls lads'*. The RBS trader asks *'what u bid [...]' '54 here' 'that going ti get em?'* and the UBS trader replies *'59 and 60 here'*. The RBS trader comments: *'sh!t#'*. The UBS trader tries to reassure him: *'think you ll be ok' 'never dropped' 'the bid'* and the RBS trader discloses he received EUR 90 million: *'yeah I dropped' 'phew' 'got me 90' [...]' 'out'*. The UBS trader congratulates him: *'wel dun' '48'* and the Natixis trader says: *'ta'*. Overall, the participants were generally satisfied with their allocations.
- (198) At 09:10, after the auction, the participants reverse course and discuss strategy to increase the price of the Italian EGB on the secondary market and flatten the yield curve. The RBS trader asks: *'so we going to try and flatten this sh!t now?' 'think dlads wanted to'* to which the UBS trader responds *'ya' 'shall we'*. The Natixis trader comments on the auction outcome and trading thereafter: *'should be like this all the time'*. At 09:13 the UBS trader asks: *'wat bond everyone short of ... should bid those' 'that ll get it flatter.'* The UBS trader suggested that the traders should jointly target those bonds in which other traders had short positions and so *'flatten'* the curve (increase prices). The traders continue to discuss employing a strategy to increase the price of BTPs with the UBS trader commenting: *'whheeyyyyyyyy'*. At 09:16 the UBS trader asks the group what mid-prices they have for the EGB which

was just auctioned with the traders of Natixis, UBS and RBS all disclosing mid-prices. At 10:35, the traders discuss the spread of French OAT32s, including whether a mid-point of ‘2.5’ is appropriate. The UBS trader suggests ‘2.65 is fine’ ‘so we do 2.5’ to which the RBS trader responds: ‘yeah [that is] what I was thinking’. The traders each disclose information about their trading relative to that spread.

- (199) Later, at 10:50, the traders discuss how their common bidding strategy worked. The traders were frustrated that other traders traded the EGB ahead of auction, thereby increasing the price, making the EGB perform poorly when the auction closed. The RBS trader comments: ‘longs going to trade like sh!t we all get stopped out’ ‘then mofos are going to buy and going to sharply outperform’ ‘then everyone will say’ ‘oh its because no more supply til year end’ ‘and i will be p!ssed off thinking yes you cnut i’ve known that for ages’ and the Natixis trader notes: ‘you know its true’. The RBS trader expresses his frustration: ‘why the F was long italy so bid when we knew we had to take this sh!t down only to trade horrible after’ ‘i just dont get it’ ‘who was bidding it and why’ and the UBS trader says: ‘knuts’. The RBS trader adds: ‘would have been great if got spread concession, 1030 box worked’ ‘then got out’ ‘now its all fuked’ and the UBS trader comments: ‘yea was up loads’ ‘fuked it’.
- (200) Similar relevant contacts between traders of RBS ([...]), UBS ([...]) and Natixis ([...]) in DBAC took place on **12 September 2008**, **25 September 2008** and **26 September 2008**.<sup>316</sup> These contacts are further examples of traders exchanging confidential information on mid-prices, bid levels and volumes ahead of an auction. Traders sell bonds on the secondary market in an effort to depress the price of ahead of the auction. When trading on the secondary market, the RBS trader discloses on **12 September 2009** that he is ‘being asked offer in 50m’ ‘i had 51.5’. The UBS trader asks him: ‘wat did u show’ and the RBS trader replies: ‘so i offered 50.9’ ‘then i said off’ ‘offered 50.6’ ‘u seeit [...]?’’. The Natixis trader adds that: ‘he wanted to lift at 50.9 i guess’. The UBS trader discloses: ‘here now’ ‘50.15’ and the RBS trader writes: ‘yeah’ ‘ok i will show same’ and the group goes on to discuss the price they are showing this counterparty. On **25** and **26 September 2008** they discuss the upcoming French auction of 2 October 2008. There is also a bilateral communication between traders of RBS and UBS on **29 September 2008** in another chatroom, where they discuss their bidding and trading for a Belgian auction and discuss the cheapening of the French EGB ahead of the auction on 2 October 2008;<sup>317</sup> these bilateral discussions are related to multilateral discussions before and after that date.
- (201) On **30 September 2008**, the traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss in DBAC secondary trading of German EGB.<sup>318</sup> A trader of RBS failed to sell 10 year German EGB and disclosed his intention and strategy to sell French OATs instead: ‘actually no want to kill oats’.<sup>319</sup>
- (202) On **1 October 2008**, the traders of RBS ([...], [...]), UBS ([...]) and of Natixis ([...]) continue throughout the day in the DBAC chatroom the discussion on the

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<sup>316</sup> PCHAT-0x000000000000fe99 [...].

<sup>317</sup> PCHAT-0x000000000002c60e (RBS-UBS-GOV) [...].

<sup>318</sup> PCHAT-0x000000000000fe99 [...].

<sup>319</sup> [...] The French auction on 2.10.2008 took place shortly after the collapse of the leading US investment bank Lehman Brothers on 15.09.2008. The financial markets were volatile and the spread was increasing between the benchmark German EGBs and other EGBs which the market perceived as less creditworthy, including in particular Spain and to a lesser extent France.

French auction of 2 October 2008 and other EGB.<sup>320</sup> They exchange information that they know to be sensitive (for instance, at 09:35: *'keep it in the circle'*) and consider that the price of the German and Spanish bonds would have depressed the price of French bonds. At 13:00, the Natixis trader asks the RBS trader: *'how u set up for this auction tom?' 'you still got more france to sell?'* and the RBS trader reveals his positions: *'iam short 200 mil at mo'* and indicates he wants to depress the price of the French bonds: *'yes want to kill france dont we'*. The Natixis trader agrees with the strategy: *'i want to try and lean on it tom'*. The RBS trader indicates that he has sold different French bonds such as: *'april 18 oct 18 and aptil 19s now'*, possibly in an attempt to depress the price of the French bonds ahead of the auction. The Natixis trader comments: *'ok' 'if the bids r clustered at the right levels tom then they wont b able to ignore them'* to which the UBS trader says: *'i hear u. bewteen us girls they have already asked for covers that will be 1/2 point down'*. The exchange shows that the traders coordinated their bids by bundling them at the right levels which the French DMO would not have been able to ignore. This would have helped the traders to obtain their allocations of bonds at the French auction at a lower price.<sup>321</sup>

- (203) Later at 14:40, the Natixis trader notes: *'i guess france has to widen more if bunds stay up at this level'* and a trader of RBS ([...]) adds: *'ye hope so fuk spain 5 years first then france'*. The other trader of RBS asks: *'where we got 37/37 btp/bund'*, the UBS trader replies: *'65.2'* and the RBS trader comments: *'same thought i was high though' '31 and 27s offered thru my mids'* (14:48). These exchanges show that the traders discuss how the selling of the Spanish bonds in the secondary market has depressed the price of the French bonds.<sup>322</sup>
- (204) On **2 October 2008**, in DBAC, the traders of RBS ([...]), UBS ([...]) and Natixis ([...]) attempt to lower the price of French EGB, ahead of the auction that day.<sup>323</sup> For instance, at 06:05, the RBS trader states: *'lets give those french twats some bonds this morning'* and the Natixis trader says: *'got to see it cheaper'*, to which the RBS trader replies: *'easy'*.<sup>324</sup> The Natixis trader ([...]) also tries to coordinate in a separate chatroom with another trader.<sup>325</sup> For instance, at 07:09, he asks: *'frog 10 y today' 'you know what your guys r planning?'* and continues: *'i think if the bks concentrate their bids around the same area, even if they're cheap, the AFT has no choice but to hit them'*. Thereafter, in another chatroom, he briefs RBS ([...]) on his action.<sup>326</sup> At 07:37, he discloses, *'i spoke to calyon and he is going for 250... gonna chat just ahead of bidding to get lvls'*. A few minutes later, at 07:40, the RBS trader ([...]) tells him, *'call me now'*. Later that day, from 10:47, back in DBAC, the RBS trader, UBS and Natixis traders also discuss retaliation against the Spanish DMO: *'they cancelled our non comps for todays auction in spain' 'cos we never quoted tight enough' 'I told them I will take that into acct in the huge fuinding needs coming up' 'not gonna bid for the 40s now...fuk em'* to which the UBS trader responds: *'don't blame you' 'they need us more'* and the Natixis trader agrees.<sup>327</sup>

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320 PCHAT-0x000000000000fe99 [...].

321 [...]

322 [...]

323 [...]

324 PCHAT-0x000000000000fe99 [...]

325 CHAT-0x10000000E5D6E [...].

326 CHAT-0x10000000E76F0 [...].

327 PCHAT-0x000000000000fe99 [...].

- (205) On **3 October 2008**, in DBAC, the traders run through and congratulate each other on their trading activities of the week.<sup>328</sup> At 15:18, the RBS trader congratulates the UBS trader on his trading by saying: *'well done'*. The UBS trader immediately responds: *'how the fuk we keep doing this'* and later at 15:50 he adds: *'wat a week'*. Between 16:08 and 16:10, the RBS trader and the UBS trader reveal to each other their personal profit and loss account which constitutes confidential information to their respective banks.<sup>329</sup> The next week, the discussions in DBAC continue, including on **6 October 2008** as regards various EGB.<sup>330</sup> They try to help each other and exchange positions and mid-prices throughout. For instance, at 10:07, the RBS trader ([...]) asks: *'gonna try go offered if no one objects?'*. The Natixis trader ([...]) says: *'go ahead'* and the RBS trader confirms: *'30'*. At 13:32, the RBS trader asks: *'shall we try to steepen it ?'* and the Natixis trader replies: *'go for it'*.
- (206) On **13 October 2008**, the traders of RBS ([...]), UBS ([...]) and Natixis ([...], [...]) start exchanging positions and mid-prices in the DBAC chatroom ahead of the Spanish auction for 30 year bonds of 16 October 2008.<sup>331</sup> In the exchanges, they also cover comparable French and German bonds.<sup>332</sup> At 06:06, the RBS trader asks: *'when is apin?''spain?''the 2040?'* to which the UBS trader replies: *'[...] a spain queen' 'he should know'* and the Natixis trader says: *'It's the 16th I think'*. At 06:16, the UBS trader asks: *'wat we think curve'* and the RBS trader replies: *'longs may get bid later but short end fuked'*, indicating that bonds with a long maturity might *'get bid'*, that is they might receive some buying interest from the market, but that investors have currently no interest in the short end of the curve, that is in bonds with short maturity. The UBS trader confirms: *'yea think we flatter even in down move'*, implying that even in the case of a general price decrease - equivalent to a general increase in yields, see recital (39) - the yield curve would end up *'flatter'*. This means that the interest rates for the short-term bonds would increase more than the interest rate for the long term bonds - hence RBS trader reference to *'short end fuked'*. From 06:34, the traders also exchange their mid-prices for different long term bonds maturing in 2023, 2028 and 2037 for different auctions that were taking place that week. They also cross check to see whether their levels were too high and check their positions. For instance, the UBS trader states at 07:54: *'what mid we got 37s' '34/5' 'I got 91.77' 'is that 2 high' /'july 28' 'mid'*, and the RBS trader replies: *'that's too high I think' '91.15 37s'/'37 91.33 mid wat about 23s?'/ 'fuk the same'*. The traders also exchange their spreads between long term bonds. For instance, a trader of Natixis ([...]) asks at 09:00: *'where have you got 37/39 please?'* and the RBS trader replies: *'-.7'* and the UBS trader *'-.3'*. The traders also disclose the spreads between bonds maturing in 2037 and bonds maturing in 2040.
- (207) The discussion on the Spanish auction continues on **14 October 2008** in DBAC.<sup>333</sup> The traders try to help each other and devise a common strategy.<sup>334</sup> Early on, the Natixis trader discloses: *'gonna try and buy small 40s'*. At 06:49, the traders share their spreads between these Spanish 40s and the German 37s. They also exchange their mid-prices. At 10:52, the UBS trader says: *'we could fuk thid I up big time' '-:*

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<sup>328</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>330</sup> PCHAT-0x000000000000fe99 [...].

<sup>331</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>333</sup> PCHAT-0x000000000000fe99 [...].

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

D' to which the Natixis trader replies: *'well none of us r planning to bid in it and u r not pd [primary dealer] r u?'* and the UBS trader confirms: *'we not p/d'*. The RBS trader confirms he does not intend to bid at auction either: *'iam not'*. The Natixis trader concludes: *'so we shud really try to ramp it if we get the chance'*, suggesting to artificially increase the price of the bond before the auction. The UBS trader agrees: *'yee'* and at 10:54, the RBS trader adds: *'perfect i have an idea but not for Bloomberg'*. At 11:08, the UBS trader comments: *'gonna be a buyer of 50 long spains' 'out there' 'not done it yet' 'but i will be no where near screens'*, suggesting he will show a price higher than the one showed on the platform for the bonds maturing in 2040 (*'40s yes'*). He then reveals: *'offered 40mm' 'showed screen' 'traded away'*, indicating that eventually he showed a price closer to the price on the screen. Later at 11:43, the traders try to tighten the Spanish yield with the yield of other long term bonds. The UBS trader asks: *'wher spain now'*, the Natixis trader replies: *'44.8'* and the UBS trader suggests: *'shall we get it tighter'*. The Natixis trader adds: *'why not' 'may be a little early to push it too far but will def gives us a clue where this stuff trades'*.

- (208) The discussion on the Spanish auction continues on **15 October 2008** in DBAC.<sup>335</sup> At 06:18 the traders of Natixis and RBS complain about another trader trying to reduce the price of the bonds before the auction which was against their strategy of increasing the price ahead of the auction:<sup>336</sup> *'some muppet up early trying to offer spain down' 'wonder who that cud be'*. They find out: *'its calyon on screen...he is buying 75m tom he said to me'*. Later, at 10:54, the RBS trader asks for help from other DBAC traders to sell Spanish bonds at a higher price before auction: *'hey guys u watching spain 10 years'*. The Natixis trader replies there is a lot of interest in the bonds and this will have an impact on the auction next day: *'this tap tomorrow is gonna be a mess'*. The RBS trader proposes to increase their prices for the bonds by 25 basis points: *'mine as many as u have move them up 25 ticks'* as he thinks his client will buy them: *'this guy gonna buy bthem honest'*. Later from 12:56, the RBS trader asks again the Natixis trader to increase his price: *'poke it'*. The Natixis trader indicates that he increased his price to 107.00: *'i bid 107.00'* and asks the RBS trader whether he should increase more: *'poke it more'*. The RBS trader agrees *'ay'*. In the afternoon, from 16:27, the traders discuss non-core country bonds. The UBS trader asks: *'wat u think periph'* and the RBS trader replies: *'thats the best day its gonna have get some auctions and we fuk it again'*.
- (209) On **16 October 2008**, the day of the Spanish auction, in the DBAC chatroom, the traders of RBS ([...]), UBS ([...]) and Natixis ([...]) further attempt to hedge their risk by lowering the price of the EGB for the non-core countries such as Portugal and Greece and to steepen the related yield curve.<sup>337</sup> The RBS trader comments at 06:09: *'periphary [non-core countries] gets its it doesnt it'* to which the UBS trader replies: *'fuking hope so'*. The RBS trader comments: *'so steepened my curve 1.8'* to which the UBS trader replies: *'yup' '90.64' '27/8' '?'*. The Natixis trader says: *'got 70'* and the UBS trader adds: *'the way my model works only moves 20 yr s 1.4 bp steeper' 'righto' 'periph 10 bp wider' ':-)'*. The Natixis trader comments: *'spain 25bp tighter'*, suggesting the traders increased the price of the Spanish bonds and therefore reduced their spread with other yield curves. The UBS trader adds: *'think iam gonna*

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<sup>335</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>337</sup> PCHAT-0x000000000000fe99 [...].

*buy more spain to go against my pgb's [Portuguese Government Bonds] and ggbs [Greek Government bonds]...did nt see that' 'probably'. The traders continued their discussion regarding their trading strategy. The Natixis trader says: 'im not bidding' 'not even gonna show a bid' and the UBS trader states: 'gonna squeeze it before' (that is increase the price of the bonds ahead of the auction). The RBS trader, who was a primary dealer, says: 'just gonna miss it'. The UBS trader suggests to the other traders to buy bonds before the auction, in line with their strategy: 'if you want some buy em before'. Just before the auction, at 08:07, the Natixis trader states he will eventually show a bid but in order to miss the auction: 'im gonna bid like 2bps lower than mid so i miss it'. Later at 08:16, the Natixis trader indicates: '61 trades SP40s on sena'. The RBS trader reveals his bid price: 'iam paying 40', the Natixis trader says: 'iam paying 20' and the RBS trader replies: 'iam paying 30 then'. The traders' strategy to reduce the price of non-periphery bonds worked as indicated, at 06:49, by the UBS trader: 'trade has got to be sell italy ports or ggbs into these spains' and the RBS trader replies: 'just sell'. The Natixis trader agrees with this view: 'yeah for sure' 'the all those periph look too exp vs spain' 'think custys [customers] will do those trades but not sure it will happen today' 'best way is to sell it all tho'. The UBS trader adds: 'vs core', suggesting to sell the non-core countries versus the core ones.*

- (210) Throughout the day, the DBAC traders continue to exchange information on their trading activity and prices, monitoring the moves of the price of long term EGB and the Spanish EGB in particular. For instance, at 12:06, the UBS trader asks the group: 'u spain 40s' '?' '65 bid here' and the Natixis trader replies: '76 mid i got'. The UBS trader confirms: 'yup' 'what mid spain 32s' '28' '?' and the Natixis trader says: '25'. The RBS trader replies: '55' (12:13). Later from 13:44, the traders continue exchanging their mid-prices for Spanish bonds. The RBS trader asks: 'wat mid 37s?' and the Natixis trader says: '45', while the UBS trader says '50'. And at 15:39, the Natixis trader: 'sp40s mid?' and the RBS trader replies: '96.70'. In the end, they did not buy in the auction but: 'bought them cheap in the mkt'.<sup>338</sup>
- (211) A non-DBAC trader told Natixis ([...]) on the day of the Spanish auction: 'Its fantastic to cheat the spanish banks and get a super price on the bookies.'<sup>339</sup> Only two banks had taken up most of the auction. The DBAC traders now expected the price to increase and continued to exchange their price levels and coordinate their strategy.<sup>340</sup> In DBAC, at 11:53, the Natixis trader comments: 'u see the grid on sp40s?' '1 guy took 458m' 'another 160m' 'that's 60% of the whole thing' and the UBS trader replies: 'thought that happenend' 'they really gonna squeeze'. The Natixis trader says: 'hope so' and then asks: 'what u got 37/37 spain' '42.5 here'. The UBS trader responds: '42' and the Natixis trader: 'what bout 37V40 in spain?' and the RBS trader replies: '1.4', while the UBS trader says: '1.25' (12:25). Later at 14:43, the RBS trader tells the group: 'moved em down for u and iam short'. The initially higher spread pick-up offered by RBS (1.4 vs. 1.25 at UBS) would make it more attractive for investors to 'make the switch' (selling Spain 37 and buying Spain 40) with RBS. However, the RBS trader is ready to adjust his offered spread down in order not to compete with UBS. The UBS trader replies: 'how kind' and the Natixis trader says at 14:45: 'good work' 'everyone'.

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<sup>338</sup> CHAT-0x1000000171059 [...].

<sup>339</sup> PCHAT-0x000000000000257c8 [...].

<sup>340</sup> PCHAT-0x0000000000000fe99 [...].

- (212) Similar relevant contacts in DBAC took place on 17 October 2008, 20 October 2008, 21 October 2008, 22 October 2008, 24 October 2008, 30 October 2008, 31 October 2008, 3 November 2008, 4 November 2008 and 5 November 2008.<sup>341</sup> As set out in Annex 1 to this Decision, these contacts are further examples of the anticompetitive conduct covered in this Decision. Thus, on 22 October 2008, three weeks before the Italian auction on 13 November 2008, the traders already discussed what bonds they would ask the Italian DMO to issue.<sup>342</sup> Similarly, on 4 November 2008, an UBS trader ([...]) and another RBS trader ([...]) agree not to trade with a client. At 13:54, the Natixis trader says: *'just got checked axes in france by oil', '10-20 yrs', 'bet he wants to sell 10s to buy 20s'* with one RBS trader replying: *'yeah was asked' 'said el nada'*. The Natixis trader indicates *'no int to get butt fuked by him'*, with both the RBS traders agreeing *'nope'* and *'same here i would not tell him what i had'* respectively. The UBS trader also agrees: *'yee nothing for him'*.
- (213) On **6 November 2008**, traders of RBS ([...]), UBS ([...]), Natixis ([...]) and Bank of America ([...]) attempted to coordinate the French tap auction of that day for 30 year French OATs maturing in 2038 (OAT38s) in DBAC and CODS & CHIPS.<sup>343</sup> The traders disclosed their trading and bidding strategies including their overbidding levels and/or mid-prices. Natixis has explained that the traders attempted to coordinate their bid submissions prior and during the French auction in order to limit the extent of their overbidding and to ensure that each trader received his allocation.<sup>344</sup> Thus, at 08:38, the UBS trader ([...]) asked in DBAC: *'do you think we have to overbid'* and shared: *'might go 12 ticks' 'is that 2 much'*. Later, at 09:16, the UBS trader asked his fellows for information on the French auction and shared his own prices: *'wat mid 38s guys' '89.58' '85/5'*. The Natixis trader disclosed: *'60'* and the RBS trader shared that he: *'had 64 but I am high to screen'*, meaning that his price was higher than the UBS and the Natixis trader (at 64 vs. 58 and 60) and that he realises that his price is high.
- (214) On the same day, at around the same time, at 08:49, in the CODS & CHIPS chatroom, the Bank of America trader ([...]) asked the group: *'what do you think of Auct today?'*. The RBS trader replied: *'will go ok'* and the UBS trader added: *'longs will'*. The Bank of America trader then disclosed that for the 10 year issue it would be priced in the *'+4 area'*. Later at 09:05, the RBS trader asked the UBS trader: *'what u pay to mid' 'at auction'*. At 09:08, the Natixis trader ([...]) said: *'longs' 'no reason to pay over mid I can see'*.
- (215) On **10 November 2008**, traders of RBS ([...]), UBS ([...]) and Natixis ([...]) start discussing in DBAC an Italian auction that will take place on 13 November 2008.<sup>345</sup> They check the spread between the Greek and Italian bonds and between French and Italian bonds and discuss a customer (called *'oil'*) enquiry, including the mid-prices associated with the enquiry.<sup>346</sup> Thus, at 12:29, the RBS trader asks: *'what spread to italy'* and the Natixis trader replies: *'31ish'*. The RBS trader expresses his frustration

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<sup>341</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>343</sup> PCHAT-0x000000000000fe99 [...].  
PCHAT-0x0000000000001ac2 [...].

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

<sup>345</sup> PCHAT-0x000000000000fe99 [...].

Other traders of RBS trader ([...]) and Natixis ([...]) are also present in the chatroom, but do not engage in the discussion explained.

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

and discloses his positions: *'fuk that hurt' 'im only small short' 'i had 35, short just under 10m' 'doh!' 'all these posys [market positions] whipping around really costing loads'*. Later at 13:04, the Natixis trader discloses that he: *'just bought 34 btps vs 29s' '99.65' 'into 103.00'* and the RBS trader states: *'could have bought 29 sold 34 btp in 10m'*. At 13:15, the Natixis trader asks the group if anyone is interested with regards to: *'a seller of 50m BTP27 v Jul28'* and then adds: *'not the loveliest of trades' 'let me know if either of you guys gets asked to quote it'*. The UBS trader replies: *'ok'* and the RBS trader responds: *'havent, what spread u show out of interest' 'i will show same.'* The Natixis trader then discloses his spread: *'71.66bp i showed' 'see it 68 mid so bit cheeky but really think i will find no int 2 days ahead of 30y btps'*, suggesting there will be no interest two days ahead of the auction. The RBS trader responds: *'yup got 67 mid but hey' '2 v difficult bonds'* and the Natixis trader adds: *'it's got buttfuk written all over it'* and the RBS trader agrees. Minutes later the Natixis trader asks about the spread between Italian and French bonds: *'where we got btp23 vs oat23?'*. The UBS trader replies: *'99.30 98.77'* and the Natixis trader says: *'ok' 'bout same'*. At 13:37, the UBS trader comments on other traders buying Italian bonds: *'chimps lifting 37 btp'*. The Natixis trader adds a comment on Italian BTPS 27s: *'got no feedback on the btp27s so he prob did it away'*. Later, at 14:24, the traders discuss what mid-prices to show to a client (nicknamed *'oil'*). The UBS trader says: *'btp 23s' 'oil asking' 'wat mid'*. The Natixis trader reveals: *'39'* and the UBS trader states: *'same ok'*. The trader of Natixis then asks: *'which way is he on those [...]?'* and the trader of UBS replies: *'no idea said id be a small buyer'*. The Natixis trader suggest to wait and see what happens : *'pk' 'see if he comes back'*.

- (216) On **11 November 2008**, the discussion in DBAC on the Italian auction of 13 November continued.<sup>347</sup> The traders exchange information on their prices, spreads, and positions ahead of the auction.<sup>348</sup> At 07:03, the Natixis trader comments: *'so decent amt [amount] of long italy eh?'* and the UBS trader replies: *'well its 1 to 1.5 39s' 'combo of feb 13 and btp 37s' '2.5 to 3.5 bln'*. The Natixis trader thinks *'thats decent in itself but the 37s will prob get a bln too' 'yeah so good chunk' 'when no fukker wants them'* and the UBS trader notes: *'wel lets hopw we get out above 89bp again'*. The RBS trader ([...]) comments and reveals his position: *'i assume its 1-2 longs' 'but yes would be nice to get them down' 'im only 20k/01 short but hey' 'well 15k' '01'*. The UBS trader then asks: *'italy' '?'* and the RBS trader reveals his position: *'yeah' 'longs flat now'*. The UBS trader also shares: *'45k dollars' 'so very similar short.'* Later from 07:39, the traders continue monitoring the prices and spreads of Italian bonds. The RBS trader asks: *'that u italy [...]?' 'someone crushing it' ':-)' 'got 37s 40 89/90 might be a bit high though'* and the UBS trader replies: *'btps getting hozed' 'moved to 80 over'*. The Natixis trader then reveals: *'got 80 too'*. At 07:44, the UBS trader asks: *'anyone heard 37/39 btps trade' 'apparently at 4.9' 'this morning'* and the RBS trader replies: *'not heard'*. The UBS trader makes a comment about the trade saying: *'good siz' 'must admit i got it wider than 4.9'*. A few minutes later the Natixis trader reveals: *'i got 5'* and the RBS trader also shares: *'got it 5'*. The Natixis trader then commented: *'39s got to be the better one to buy at that sprd really'* and the UBS trader replies: *'ok' 'bit wider ill mark at 5' 'all those chimps buying italy yesterday'*. At 07:52, the Natixis trader comments: *'yeah' 'with the curve 3bp flatter too' 'hahahaha' 'lots of supply this wk now tho' '10y dbr plus 30y btps' 'and 10y US'*. In the afternoon, from 15:16, the RBS trader asks about the

<sup>347</sup> PCHAT-0x000000000000fe99 [...].

<sup>348</sup> [...]

mid-price for Italian bonds maturing in 2037: '[...] gone wat mid 37s 23s' to which the Natixis trader replies: '37s 40 i think' '23s 03'. The RBS trader reacts, 'wow i got bothe them' and the UBS trader then discloses: '40 00'.

- (217) On **12 November 2008**, the discussion in DBAC on the Italian auction of 13 November 2008 continued.<sup>349</sup> The traders of RBS, UBS and Natixis disclose their bidding strategies.<sup>350</sup> For instance at 08:19 the UBS trader asks the RBS trader ([...]): 'how many btps u gotta buy [...]' 'gotta do 4.5 of the 39s' 'so say thats 1.25 bln' 'thats 56.250mm 39s' 'then 4.5' '%' 'of 3 bln' '135mm' 'are u gonna do all feb 13s there.' The RBS trader replies: 'no no' '.was going to do 4.5% of 39s like you then was just going to put a low bit in for 37s here' 'think they wont issue much', while the UBS trader shares that: 'still think u have to take 4.5% of the 2.5bln to 3.5bln' 'so iam probally gona buy 20mm of those' 'rest feb 13s.' At 08:21, the Natixis trader asks: 'buy all 2013s easier innit?' to which suggestion the UBS trader agrees with some scepticism: 'probally' 'but'.
- (218) On **13 November 2008**, the day of the Italian auction, the traders of RBS, UBS and Natixis discuss again in DBAC.<sup>351</sup> The auction window closes at 10:00. Before that, they exchange confidential information such as mid-prices, volumes and overbidding levels in relation to the 10 year and 30 year BTPs.<sup>352</sup> RBS and UBS were primary dealers in Italy in 2008. The RBS trader and the UBS trader compare their bids and volumes for the auction. The UBS trader suggests setting the mid-price. Thus, at 09:21, the RBS trader asks: 'what we bidding' 'overbidding for italy?' to which the UBS trader replies: 'fuk knows today' 'lets sey our mids' 'set' and discloses his pricing: '83.02' '96.81' 'I had 54/55'. The RBS trader also discloses his prices: '83' '96.84' 'so close enough'. At 09:25, the UBS trader reveals: 'offerd at' 'my mids now' to which the RBS trader replies: 'i don't think im really bidding to get 37s'. The UBS trader then discloses that: 'iam bidding to get 20mm of those (that is 37s)' 'and 57mm' '39s' and asks: 'what u thing +12' 'or is that 2 low'. The RBS trader ironically replies: '[...] off the desk but we are buying them all again please delete' 'joe king'. Just before the auction closes, the Natixis trader is happy with the result, and after the auction, when they compare what each of them got, they all seem to be content with the positive outcome. At 09:59, the Natixis trader comments: 'this is the perfect auction' 'mkt trades lower, curve steepens, btps cheapen' 'being an Italina PD is easy eh?' and the RBS trader replies: 'mofos still offering Italy tho!' 'and ive done my cods again today!'. The Natixis trader adds: 'all gone bid now'. Shortly after the cut-off time, the traders disclosed to each other what they bid in the auction, although results are only communicated thirty to forty five minutes after the closing. At 10:21, the UBS trader discloses to the Natixis trader: '96.40' '39s' and that he got his allocation of Italian bonds maturing in 2037. The UBS trader shares: '1.5 yrds' '1.4 odd' 'so given full amount'. At 10:47 the Natixis trader comments: 'perfect auction' 'mkt higher, curve flatter, btps tighter' 'easy'. The UBS trader asks: 'how many u buy [...]' and the RBS trader replies: '70m 39s'.
- (219) On **20 November 2008**, DBAC traders at RBS ([...]), UBS ([...]) and Natixis ([...]) discuss various Spanish bonds.<sup>353</sup> They agree not to bid or bid only very low for the

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<sup>349</sup> PCHAT-0x000000000000fe99 [...].

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<sup>351</sup> PCHAT-0x000000000000fe99 [...].

<sup>352</sup> [...]

<sup>353</sup> PCHAT-0x000000000000fe99[...].

auction of 10 year Spanish EGB maturing in 2018.<sup>354</sup> Thus, at 09:08, the Natixis trader asks the UBS trader: '[...] can u ask ur 10yr guy if they overpaying in spain?' and the UBS trader replies: 'we not primary [...]'. The Natixis trader adds: 'we r not bidding' 'or will show only v low bid'. The RBS trader comments: 'well I was going to bid but now might have a custy looking to go in' 'so I might take 25m in the bookies' 'they are really cheap no' 'or maybe I should leave it alone I don't give a fuk' 'yeah better strategy'. The Natixis trader thinks that: 'they r cheap' 'but im leaving spain alone' 'fukked up mkt' and the UBS trader agrees (09:15). At 09:28 the Natixis trader reveals that, 'we gonna show a bid at 95 cas in spain 10s here'. Eventually only the Natixis trader places a bid.

- (220) Similar relevant contacts in DBAC between traders of RBS, UBS and/or Natixis took place on 14 November 2008, 17 November 2008, 18 November 2008, 19 November 2008, 24 November 2008, 25 November 2008, 26 November 2008 and 27 November 2008.<sup>355</sup> These contacts are further examples of traders exchanging information on their positions, pricing and bidding levels ahead of an auction or on their secondary market trading.<sup>356</sup>
- (221) On **3 December 2008**, traders of RBS trader ([...]), UBS ([...]) and Natixis ([...]) discuss in DBAC the prospects for an Austrian RAG20 auction that will take place on 9 December 2008.<sup>357</sup> They disclose their positions and mid-prices.<sup>358</sup> For instance, at 14:10 the UBS trader refers to secondary market trading in RAG21s: 'rags' '21s hit' 'low' '96.66' 'no' '?' and the Natixis trader replies: 'yeah but we have rag20 soon eh?'. The UBS trader disclose his short position: 'yea' 'i like iam short both' 'seemed a bit low' and ask for a mid-price: 'wat mid 20s then' to which the Natixis trader responds: '101.40'. The exchange of information in DBAC as regards the Austrian auction continued on **4 December 2008**, **5 December 2008** and **8 December 2008**.<sup>359</sup>
- (222) On **9 December 2008**, the day of the Austrian auction, the traders continue the exchange of information in DBAC.<sup>360</sup> Right until the auction window closes, the traders discuss their bidding strategy, including the premium they should pay.<sup>361</sup> Thus, at 09:24, the Natixis trader asks: 'what u paying in rag20s then?' 'over mkt or mids?'. The UBS trader says: 'gotta be like 20' 'hasnt it' and the Natixis trader asks: '20 over mid u mean?' 'or 99.20'. The UBS trader replies: '20 over mid' and the Natixis trader adds: 'yeah' 'would have thought that should get u bonds'. The UBS trader notes: 'look fuking cheap' and the Natixis trader asks: 'but where is mid!?!'. The trader of UBS discloses: '98.68 81/2 i got' 'u' '?' and the Natixis trader reports: 'look bout right' 'im 10tiks higher' (09:26). At 09:47, the RBS trader asks the group what they are bidding for Austria and the Natixis trader says he is not bidding but that the trader of UBS is bidding: '+20'. The RBS trader asks: 'plus 20 to wat' and the UBS trader replies: 'my mid is the offer' '+20 to that' 'i gto 98/70' '96/7' 'wat u

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354 [...]  
355 PCHAT-0x000000000000fe99 [...].

356 [...]  
357 PCHAT-0x000000000000fe99 [...].

358 See the overview of anticompetitive communications in Annex 1.  
359 [...]

359 PCHAT-0x000000000000fe99 [...].  
See the overview of anticompetitive communications in Annex 1.

360 PCHAT-0x000000000000fe99 [...].

361 [...]

got'. The RBS trader reports: '98.85' (09:49). Post-auction, the traders continue discussing secondary market trades in Austrian EGB.

- (223) Similar relevant contacts between traders of RBS, UBS and Natixis in DBAC took place on **10 December 2008, 11 December 2008, 12 December 2008, 18 December 2008, 30 December 2008** and **7 January 2009**.<sup>362</sup> These contacts are further examples of traders exchanging information on their recommendations given to the DMO, their pricing and bidding levels, including the overbidding, ahead of the auctions and on their trade on the secondary market.<sup>363</sup>
- (224) On **8 January 2009**, after the results of a French bond auction are disclosed, traders of RBS ([...]), UBS ([...]) and Natixis ([...]) immediately discuss in DBAC the flattening of the curve on the secondary market to make a profit from their positions after the auction.<sup>364</sup> At 10:01, the Natixis trader discloses that he: '*just lifted port37s to get curve in*' and the UBS trader suggests: '*can we flatten it now*'. They try to create the impression that there is a lot of demand for the EGB by placing bids. For instance, on 13 January 2009, the RBS trader informs the other traders in DBAC that he has placed a bid and warns the others not to hit it: '*my bod in 23s oat again so don't hit it*'.<sup>365</sup> The Natixis trader replies: '*oops its me on the offer*' and pulls back his offer: '*pulled my offer back*'. Similar relevant contacts took place in DBAC on **9 January 2009** and **12-13 January 2009**.<sup>366</sup>
- (225) On **14 January 2009**, various traders of RBS, UBS and Natixis discuss various auctions and syndications in DBAC and CODS & CHIPS chatrooms and other parallel non-persistent chatroom.<sup>367</sup> [...] the traders discuss their bidding strategies and attempt to steepen the curve ahead of the auction(s), exchange information on their positions and mid-prices and share information on the pricing of a syndication.<sup>368</sup>
- (226) In DBAC, traders of RBS ([...]), UBS ([...]) and Natixis ([...]) discuss an upcoming Italian bond auction on that day and a Spanish auction the next day.<sup>369</sup> They discuss the bid levels and overbidding and attempt to coordinate their strategies for reducing the price of the EGB before the auctions. They also checked their mid-prices. For instance, at 07:21, the Natixis trader reveals he has: '*shed loads of supply today*'. The UBS trader replies by revealing his position: '*yup...bit short*'. The Natixis trader asks: '*what mid we got 39s*' and adds: '*107.52 I got*'. The UBS trader replies: '*68*'. The Natixis trader reveals his trading strategy when he says: '*i was low yday compared to that 38 price so guess I will have to flatten a tad*'. The UBS trader replies: '*yea I hit 10mm in the end*' '*seemed high but fuk knows*'. At that point, the Natixis trader discloses: '*ive put up my quotes on tv*' '*me in port 37s*' '*nice and skewed*'. The Natixis trader is satisfied: '*good*' and adds: '*just looking at the records*

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<sup>362</sup> PCHAT-0x000000000000fe99 [...].

<sup>363</sup> See the overview of anticompetitive communications in Annex 1.  
[...]

<sup>364</sup> PCHAT-0x000000000000fe99 [...].

<sup>365</sup> PCHAT-0x000000000000fe99 [...].

<sup>366</sup> PCHAT-0x000000000000fe99 (09.01.2009) [...].

[...] See the overview of anticompetitive communications in Annex 1.

<sup>367</sup> PCHAT-0x000000000000fe99 [...].

PCHAT-0x0000000000001ac2 [...].

CHAT-0x100000044ECAB [...].

<sup>368</sup> [...]

<sup>369</sup> PCHAT-0x000000000000fe99 [...].

*last btp 39s* 'came really high' 'rely don't want to over bid the shite today'. At 07:36, the UBS trader says: 'got 66 mid in 40s' 'offered again'. The Natixis trader follows: 'so did i' 'but i just steepened 0.7'. The trader of RBS aligns 'ive steepened'. The UBS trader asks: 'so wat mid 39s'. The RBS trader replies: '107.28 mid 39s' to which the Natixis trader replies: 'I got 50 mid 40s now' '32 in 39s' '39/40 I got about flat' and he asks: 'where u got em?'. The RBS trader replies: 'flat'. At 08:46, the UBS trader asks the RBS trader: 'what you over bidding [...] from offer' 'for this stuff [?]'. The RBS trader is quick to reply: 'it really depends' and he deploys his plan ahead of the auction when he says: 'if we can manage to crush it loads up until the uaction might pay a bit higher' 'if it tightens some I wont' and he suggests: 'I think we should have a chat closer to time'. At 09:12, the UBS trader asks: 'where we got Italy now' '150'. The Natixis trader agrees ('150'). Moving closer to the closing of the auction bidding window, at 09:32, the UBS trader says: '151 mid Italy now' 'I have' '37/9s wat we got here'. At 09:34, the RBS trader suggests that they 'just need to keep it low for 25 more minutes!!', that is the end of the auction. The same trader asks: 'please' 'I would feel better if we traded 125.000 italy wont tighten'. The Natixis trader responds: 'i will wait for 15mins then start lifting screens'. This exchange suggests a coordinated approach to drive down the price of Italian bonds before the auction closes. Just before the auction, the traders once again coordinate their bids and wish each other good luck. Only a few minutes before the end of the auction, the traders continue to check respective bid levels. At 09:53, the Natixis trader says: 'screens r hosing them now eh?'. The RBS trader replies: 'gotta keep it here now' and he apologises for having been off desk. He reveals: 'I got mids well high' '71 29s' '68 39s' and he says: 'I am going to cheapen' 'I am using screen offer and paying +15 I think if it says low what u think' 'or too high?'. The UBS trader agrees ('same'). The Natixis trader reveals his bid when he says: 'offered 10m dbr 24'. The RBS trader wishes them 'good luck' and the Natixis trader wishes back: 'yeah good luck guys'. After the end of that auction, the traders discuss the results and appear to be disappointed that they did not obtain their desired allocations of Italian bonds.

- (227) The same traders also exchange information on the timing of pricing of a Belgian syndication both in the DBAC and CODS & CHIPS chatrooms. At 09:06, the Natixis trader ([...]) asks in DBAC: 'whats the crack on the OLO pxx [...]?' 'someone just said its in 5mins?' to which the UBS trader replies: 'priced'. *In parallel, in CODS & CHIPS, at 09:13, the Bank of America trader ([...]) is equally looking for information and asks if the Belgian syndication has been priced: 'is it priced?'. [...]* and his contract with the bank ends on [...].
- (228) In the afternoon, the traders of RBS ([...]) and Natixis ([...]) continue the discussion on the Spanish auction for the next day in a parallel chatroom.<sup>370</sup> They exchange their short positions and the RBS trader confirms: 'im not coming out long spain'. The Natixis trader agrees: 'me neither'. Before that, he has added: 'im short 15m 40s and flat the 24s so that's no use to me at all'. They agree to flatten the curve ahead of the auction and attempt to get the price down. The RBS trader states: 'im going to have to bash it' and the Natixis trader agrees: 'we can bash it in the morning'. He also wants that they coordinate their bids: 'i think also that if we bid the same prices then they cant ignore it' 'tho for the purposes of the tapes that's not really allowed'. The RBS trader agrees and suggests to discuss on the phone: 'yeah maybe we get on

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<sup>370</sup> CHAT-0x100000044ECAB [...].

a phone'. The Natixis trader agrees: 'yeah', and the RBS trader confirms, 'ok done' 'lets do that'.<sup>371</sup>

- (229) On **15 January 2009**, the day of the Spanish auction, traders of RBS ([...]), UBS ([...]) and Natixis ([...]) continue the discussion in DBAC.<sup>372</sup> They discuss their bidding strategies and, later, discuss the results of the auction.<sup>373</sup> Thus, at 09:18, the RBS trader suggests to the Natixis trader: 'hey [...] lets get on a call at 10:25 ur time'. At 09:22, the RBS trader discloses his €35 million short positions on both auctioned bonds: 'im only short 35m 24s and 35m 40s'. At 09:41, the UBS trader asks the Natixis trader: 'so you get them at 103.22' 'and 100.80[?]' to which the Natixis trader replies: 'no' 'at the average'. A few seconds later, the UBS trader reveals: '103.545' '100.987' 'so ur mids'. The RBS trader is rather frustrated: 'fuk me that was sh!t'. The Natixis trader ([...]) also discusses the auction in another communication where a trader states in respect of the Spanish EGB: 'oh yes' 'I am going to make sure they get marked lower' and the Natixis trader replies: 'me too' 'I will be leaning on screens as much as poss' 'I have to get around 50 of each I think' 'lets check mids in Spain' 'I guess I pay cls to mids'.<sup>374</sup>
- (230) On **19 January 2009**, traders of Natixis ([...]), UBS ([...]) and RBS ([...], [...]) start discussing their bidding strategies and trading positions in the DBAC chatroom for an upcoming Belgian auction on 26 January 2009.<sup>375</sup> Thus, at 16:02, the UBS trader comments: 'sounds like lot people asked for olo 31s' to which the Natixis trader replies: 'nice'. The UBS trader adds: 'u mean that' 'they will get destroyed' ':-)'. The Natixis trader comments: 'the dsl28s will prob get it too', presumably referring to the 30 year Dutch bonds maturing in January 2028 ('DSL 28'). Later, the RBS trader indicates: 'bid 25m dsl37' 'screen' and the Natixis trader thanks him ('ta'). This information is typically anonymised and aggregated. When discussing a Belgian tap for the next Monday, the Natixis trader indicates that they will come cheap: 'those r gonna come cheap', which prompts the trader of UBS to suggest: 'gotta hoze em first', disclosing his idea to push the price down before the auction.
- (231) On **20 January 2009**, the traders continue the discussion in DBAC in relation to an upcoming Belgian auction.<sup>376</sup> They agree to avoid certain trades or agree to trade at levels matching their common interest and lower the price before the auction.<sup>377</sup> For instance, at 07:15, the Natixis trader asks the UBS trader to confirm whether or not the offer regarding the OLO 31s is from him: 'ol31 that you [...]?'. The UBS trader replies: 'yep' 'sorry' 'forgot 2 say'. At 07:24, the Natixis trader says: 'i joined u on the olo31s', meaning that he decided to follow the level of the offer trader of UBS.

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<sup>371</sup> On 14.01.2009 and 15.01.2009, the Natixis trader also tries to coordinate for the Spanish auction in another chatroom with another trader at another bank. On 14.01.2009, at 16:29, he asks: 'whats your plan for Spain tomorrow?', and discloses: 'i have to buy [...] of Iach i think'. The other trader discloses: 'i am aiming more 24s than 40s...90% and 10%'. On 15.01.2009, at 07:08, the other trader says 'yes... I am going to make sure they get market lower'. The Natixis trader agrees: 'me too' and adds: 'i will be leaving on screens as much as poss... I have to get around [...] of each I think'. At 09:01, the trader of Natixis suggests: 'lets check mids in Spain'. At 09:27, he says: 'i guess I pay [...]'.  
See PCHAT-0x00000000000278fe [...].

<sup>372</sup> PCHAT-0x000000000000fe99 [...][...], another Natixis trader, is silent on the chat.

<sup>373</sup> [...]

<sup>374</sup> PCHAT-0x00000000000278fe [...].

<sup>375</sup> PCHAT-0x000000000000fe99 [...]. [...] of Natixis is silent on this chat.

<sup>376</sup> PCHAT-0x000000000000fe99 [...][...] of Natixis is silent on this chat.

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

- (232) On **21 January 2009** and **22 January 2009**, traders of Natixis ([...], [...]), UBS ([...]) and RBS ([...]) continue the discussion in DBAC.<sup>378</sup> They share information on their strategy ahead of the Belgian auction.<sup>379</sup> For instance, on **22 January 2009**, at 12:23, the Natixis trader comments: *'ive been trying to buy the o131s without richening it and getitng fuk all'*. At 13:07, the RBS trader, also, discloses that he: *'bid 30 m olo31' 'below screen'*. Further, this communication also includes price checking for trades in the secondary market. For example, at 14:09, the RBS trader asks: *'where u fgot dsl/jan 28?'*. Both the Natixis ('32') and the UBS traders ('33') reply. Later that day, at 15:50, the UBS trader asks: *'wat we got olo 31s over july 28s[?]'*. The RBS traders replies: *'24 bunds bidola'*. The Natixis traders also replies: *'79 i got'* The RBS trader adds: *'80' '24 bunds bidola'*. The UBS traders is the last to reply: *'80' 'i got'*.<sup>380</sup>
- (233) Similarly, on **23 January 2009**, the traders continue the discussion on the Belgian auction in DBAC. They discuss their bidding strategies.<sup>381</sup> The traders appeared to have tried to avoid entering into trades which would benefit them individually but would run counter to the strategy of the group ahead of the auction.<sup>382</sup> For example, at 15:37, the UBS trader says: *'65' 'it's my offer'* and the Natixis trader responds: *'you are killing 23s'*. At 15:41, the UBS trader indicates: *'stopped now'*.
- (234) On **26 January 2009**, the day of the Belgian auction, again in DBAC, the traders of RBS ([...]) and UBS ([...]) discuss and align their behaviour ahead of the auction.<sup>383</sup> They exchange information on their trades for Belgian bonds in the secondary market to coordinate their bid levels for the auction taking place at 11:00. The two traders continuously check each other's bid levels and volumes until the auction closes. The RBS trader suggests putting the same bids in, but in the end the coordinated strategy does not appear to work.<sup>384</sup> They start by exchanging information on the size of the auction, the overbidding level and where the bond will trade. At 07:37, the UBS trader asks: *'how much belg u gotta try and buy' 'think it clears really' 'high'*. The RBS trader is surprised to realise that the auction is on that day: *'oh sh!t is that today?'* and he goes on to reveal: *'assuming its 500m' 'gotta get our 4 of 5%' 'so depends on whether its 4 or 5% but its not loads i guess'*. The UBS trader reckons: *'its gonna be +30 ish'* and he adds: *'no need 30 odd mm'*. He also asks: *'u reckon someone corners is' '?'*, meaning whether he thinks somebody will bid high enough to get the lion's share of the Belgian issued bonds. The RBS trader replies: *'nah'* and he assumes: *'dont think it's the time for that really' 'but i guess you never know'*. A few minutes later, at 07:44, the UBS trader replies to the assumptions of the RBS trader: *'yea tricky one'* and he reckons: *'belg very cheap vs sliders [Dutch EGB]'*. He, further, suggests: *'so wil bid up to get mine'*. He discloses his short position: *'iam short' '30mm' 'so kinda need them'*. The two traders then continue to exchange information on the bid levels and agree on an alignment. The UBS trader indicates that he would bid for 30 million divided in three bids with three different premiums namely 20, 25 and 30 basis points above the mid-price, although

<sup>378</sup> PCHAT-0x000000000000fe99 [...].[...] of Natixis is silent on these chats.

<sup>379</sup> [...]

<sup>380</sup> These figures ('79', '80') refer to the spread between the OLO31 and the German 30 year bond maturing on 4 July 2028.

<sup>381</sup> PCHAT-0x000000000000fe99 [...].

<sup>382</sup> [...]

<sup>383</sup> PCHAT-0x000000000000fe99 [...].[...] of Natixis is silent on this chat.

<sup>384</sup> [...]

he is uncertain whether this would allow him to get his desired allocation. At 09:26, the RBS trader discloses: *'so im a little higher'* and he asks: *'are you putting the bids in urself[?]'*. The UBS trader confirms: *'yip'*. The language of the RBS trader is explicit when he suggests: *'lets just put the same bids in'*. The UBS trader is quick to reveal: *'iam going +20 10' '+25 10' '+30 10'* and he assumes: *'idea' 'ive got no clue' 'how it comes' 'i think high' 'look very sharp'*. Later that day, at 10:08, the RBS trader reveals: *'i just moved and now have same as you'*, to which the UBS trader: *'ok cool'*. A few minutes later, at 10:14, the RBS trader reveals: *'offering 25m olo31s'* to which the UBS trader replies: *'nice'*. A few minutes before the auction, the two traders check each other's positions. At 10:53, the RBS trader says: *'if bids in here i would be paying 70 against a 45 mid'* and he asks for confirmation (*'sound right?'*). The UBS trader replies: *'80 IS MY HIGHEST...AGAINST THAT' '45 mid 85/6'*. The RBS trader agrees: *'yup' 'exactly'*. At 10:59, only a few seconds before the closing of the auction bidding window, the UBS trader discloses that he is *'65 TO 80'*. After the auction, the two traders are not entirely satisfied with the result and the fact that they did not receive their desired allocations. At 11:07, the RBS trader says: *'missed'*. The UBS trader, also, comments: *'75 lowest' 'got 20mm' '106.01' 'highest only 190mm' 'given'*. The RBS trader is irritated and says: *'yeah fuks me off these idiots' 'had no posy I was flat but really fuks me off'*. The UBS trader is, also, frustrated when he says: *'need 30mm' 'got 20mm' 'but got olo 44s' '26mm'*.

(235) Similar relevant contacts in DBAC or another chatroom took place on 27 January 2009, 28 January 2009, 29 January 2009, 30 January 2009, 3 February 2009, 4 February 2009, 5 February 2009, 6 February 2009, 10 February 2009, 11 February 2009 and 12 February 2009.<sup>385</sup> As set out in Annex 1 to this Decision, these contacts are further examples of the anticompetitive conduct covered in this Decision.

(236) On **13 February 2009**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...])<sup>386</sup> discuss an upcoming Italian auction in the DBAC chatroom and in another non-persistent chatroom.<sup>387</sup> In DBAC, they exchange information and coordinate on their bidding and trading strategies ahead of the auction. For instance, at 07:08, a RBS trader ([...]) comments: *'anyway we gonna try fuk itlay today?'* to which the UBS trader replies: *'yee'*. Then, the same RBS trader and the UBS trader exchange their positions and the sizes they will bid for at the auction. The RBS trader states: *'iam quite short but gonna use our auction book to tw at it got to buy 200mil'* to which the UBS trader replies: *'yup' '110mm'*. At 07:09, both traders disclose their split between the long terms BTPs auctioned on that day. At 07:20, the same RBS trader says: *'stuff it with 20 mins to go'* and the UBS trader replies: *'yup saving ammo'* [ammunition]. [...],<sup>388</sup> this means that they would hold on to a sufficient volume of bonds to sell them right before the auction cut off time and try to depress the price of the bond. Later on, [...], the traders agree to give the false impression of selling Italian bonds to increase the supply in the market and depress the price of the bonds:

<sup>385</sup> PCHAT-0x000000000000fe99 [...]; PCHAT-0x000000000002c60e (RBS-UBS-GOV) of 05.02.2009 [...].

<sup>386</sup> [...] of Natixis is silent on the chat.

<sup>387</sup> PCHAT-0x000000000000fe99 [...].

CHAT-0x40000003B70F6 [...].

<sup>388</sup> [...]

Furthermore, [...] the traders coordinated trading likely with a view to trying to lower the price ahead of an auction for Italian bonds.

*'losing some on the screen'*.<sup>389</sup> At 09:07, the UBS trader asks: *'are we gonna bosh 'them what time[?]'*. The same RBS trader confirms (*'yes'*). The UBS trader reveals: *'ive got 40mm 20s to sell'*. That RBS trader reveals: *'iam short them'* and he asks: *'but do u need any other italy?'*. The UBS trader replies: *'well we want to sell those 'to buy 21s' 'buy 21s in tap'* and the RBS trader agrees: *'ye I understand'*. At 09:11, the UBS trader reveals: *'losing some on the screen' 'now'* to which the same RBS trader replies: *'nice'*. A bit later, at 09:20, the RBS trader reveals: *'iam seeliing march 19s'*. This means that the RBS trader adopts the same approach as the UBS trader and starts selling. The UBS trader replies: *'OK' 'LOST ABOUT 30 ODD 20S'* to which that RBS trader responds: *'yes then from 9.45 spank it'*.

- (237) Similar relevant contacts in DBAC took place on **19 February 2009, 25 February 2009, 2 March 2009, 3 March 2009** and **4 March 2009**.<sup>390</sup> As set out in Annex 1 to this Decision, these contacts are further examples of the anticompetitive conduct covered in this Decision.
- (238) On **5 March 2009**, traders of Natixis ([...], [...]), RBS ([...], [...]) and UBS ([...]) discuss in DBAC an upcoming French auction.<sup>391</sup> They exchange information on the bidding strategy and the overbidding.<sup>392</sup> For instance, at 09:44, a Natixis trader ([...]) says: *'bidding 30 for 25s here'* adding a few minutes later: *'think I may pay up small on the 25s if futs dont tik lower'*. Almost at the same time on that day, in the CODS & CHIPS chatroom, at 09:40, the same Natixis trader also asks the traders of RBS ([...]) and ([...]) and UBS ([...]) and ([...]): *'what mid u got 25s now?'* and discloses to them a mid-price asking again *'119.22?'*.<sup>393</sup>
- (239) On **6 March 2009**, the traders of UBS ([...]) and RBS ([...]) agree to use the CODS & CHIPS chatroom more frequently, apparently because a Natixis trader ([...]) does not cooperate enough in the DBAC chatroom. At 09:27, a trader of RBS ([...]) says: *'hey [...] [...] lets put some flows here [...] [...] never shares anything' 'im bidding 85m dsl28' 'bid 30 custy wants 40 so trying to get an order'*. The UBS trader agrees: *'ok'* and the same RBS trader says: *'same guy that sold me the dsl37'*. A few minutes later, at 09:46, the same RBS trader asks the UBS trader: *'where u got 30/34 bunds[?]'* and the UBS trader replies: *'9.5' 'flat 30s'*.<sup>394</sup>
- (240) Similar relevant contacts in DBAC and/or CODS & CHIPS took place on 10 March 2009, 11 March 2009, 12 March 2009, 13 March 2009, 18 March 2009, 19 March 2009, 24 March 2009, 25 March 2009, 26 March 2009, 27 March 2009, 30 March 2009, 31 March 2009, 1 April 2009, 2 April 2009, 3 April 2009, 6 April 2009, 7 April 2009 and 14 April 2009, as well as in a non-persistent chatroom of 7 April 2009<sup>395</sup> as regards various EGB bonds.<sup>396</sup> These are further examples of traders attempting to influence the prevailing market price and coordinate the bidding and

<sup>389</sup> [...]

<sup>390</sup> PCHAT-0x000000000000fe99 [...].

<sup>391</sup> PCHAT-0x000000000000fe99 [...].[...] of Natixis is silent on this chat.

<sup>392</sup> [...]. The AFT issued €2.712 billion, €4.317 billion and €224 million of OAT 15s, OAT 18s and OAT25s respectively in respect of this tap auction.

<sup>393</sup> PCHAT-0x0000000000001ac2 [...].

<sup>394</sup> PCHAT-0x0000000000001ac2 [...].

<sup>395</sup> The non-persistent chatroom on 7 April 2009 is related to the same discussions on coordinating between traders for the Austrian auction that is being discussed in the DBAC chatroom on the same day.

<sup>396</sup> PCHAT-0x000000000000fe99 [...].

PCHAT-0x0000000000001ac2 [...].

CHAT-0x3000000572D12 [...].

the level of overbidding and exchange other sensitive information. [...] the object of the exchanges was to ascertain what each party's bidding strategy was for the upcoming auction(s) in order to try to secure a desired allocation of bonds from the auction(s).<sup>397</sup>

- (241) On **16 April 2009**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss in DBAC a Spanish auction on that day. They exchange information on what to advise the DMO, their bidding strategies, mid-prices, spreads and volumes, and align their bids, overbidding and volumes to secure the bonds. This communication is, also, an example of exchange of information following a conversation with a DMO which helped the participants to better align their bidding strategies. For instance, at 06:24, the Natixis trader discloses that he has made an offer: *'my offer sp24 on tv'*. This is an example of information exchanged on market positioning. In response, the UBS trader discloses his position: *'iam short 12mm'*. The Natixis trader reveals that his strategy is to *'cheapen it for tapmainly'*. At 06:53, the UBS trader asks: *'should nt be flatter down here[?]'* and a RBS trader ([...]) indicates: *'im going to flatten it'*. Later at 07:13, the same RBS trader asks the Natixis trader: *'u a pd [primary dealer][...]'?* to which the Natixis trader replies: *'yep' 'I gotta buy 100m' 'maybe small more' 'but im only short 75 so far'*. At 07:17, a RBS trader ([...]) asks: *'what we have to pay up from mid?'*. The Natixis trader replies: *'i guess the bidding will be 5-10 tiks'*. At 07:54, the Natixis trader discloses the conversation he had that day with the Spanish Tesoro *'just spoke to the Tesoro'*, in which they apparently told him that they would be *'allocating in the same way as before'*. A RBS trader ([...]) states that was *'gud info'*. The Natixis trader further explains that *'as long as the bids r at the mkt level they will get allocated' 'so there should b no problem in getting the paper u want'*. In parallel, the RBS trader ([...]) and the Natixis trader ([...]) also discuss their strategy for the auction in a separate chat. They align their volumes. At 08:03, the Natixis trader asks the RBS trader: *'what ru planning on the sp24s?' 'im gonna bid for 100-150m'* to which the RBS trader replies: *'ill bid about 100 i think u can lead me where ill do same as u'*. The Natixis trader assumes: *'def more likely to get em'* and then he adds: *'this level i think i'll b bidding like 103.05' 'unless it cheapens a little before'*. The RBS trader replies: *'ok ill bid same as u'*. At 08:07, the Natixis trader discloses: *'we get the paper at the avg px [average price]' 'so if they alloctae low enough should b ok'*.
- (242) On **16 April 2009**, an RBS trader ([...]) and a Natixis trader ([...]) discuss in a non-persistent chatroom two upcoming French (BTANs) and Spanish auctions.<sup>398</sup> Throughout the chat, the traders exchange information on their bids, mid-prices, overbidding and volumes ahead of these upcoming auctions. RBS had explained that the object of this exchange was to ascertain what each participant's bidding strategy was for the upcoming auctions, in order to try to secure a desired allocation of bonds from the auction.<sup>399</sup> For example, at 07:56, the RBS trader asks: *'hi there you bidding these btans today?'*. The Natixis trader replies in the affirmative (*'hiya'*) and he adds:

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<sup>397</sup> See the overview of anticompetitive communications in Annex 1.

[...]

[...] this conversation reveals is potential coordination between traders of auction bids, coordination between traders to move the market, potential coordination in the secondary market before an auction, exchanges of information regarding mid-prices and regarding spreads, traders disclosing potentially sensitive information and useful context regarding the chatrooms.

<sup>398</sup> CHAT-0x30000005AF70B [...].

<sup>399</sup> [...]

*'we will b bidding but wont be me doing it'*. The RBS trader, further, asks: *'what you thinking about overbidding[?]*'. The Natixis trader is quick to reply: *'we r thinking u shuld get paper at mid'* while he, also, refers, to an upcoming Spanish auction when he says: *'esp in the 5y' 'there r a lot on holls still & it's a decent clip of supply'*. He reveals: *'we [they] r gonna go for around 300m in total so nothing too spectacular'*. The RBS trader replies: *'same here 50ish the 2 11's and 200ish the 14's'*. A bit later, at 08:34, the RBS trader asks: *'where did you spot mids in this spanish at auction time[?]*'. The Natixis trader replies: *'in 10yrs 21' 'in 15yrs 80ish'*. The RBS trader thanks him (*'ok ta'*). The Natixis trader, also, suggests that *'bunds did their usual sell off so overbidding prob more now'*. After a few minutes, the RBS trader asks: *'68, 81, 32 france?'* to which the Natixis trader replies: *'we a tik lower'*. The UBS trader thanks him for this information: *'ok ta'*. The Natixis trader reveals: *'we ended up at 81 also but less int in the other two'* and he adds: *'10/11 s'*. A similar relevant content in a non-persistent chatroom takes place on the same day in relation to the same Spanish auction, between the traders of RBS ([...]) and of Natixis ([...]). In this chat, the traders are revealing their bidding strategies and bid prices for the Spanish auction of that day.<sup>400</sup>

(243) [...].<sup>401</sup>

(244) Similar relevant contacts in DBAC chatroom took place on 16 April 2009, 17 April 2009, 20 April 2009, 21 April 2009, 23 April 2009, 24 April 2009, 27 April 2009, 28 April 2009, 30 April 2009, 5 May 2009, 6 May 2009, 7 May 2009, 8 May 2009, 13 May 2009, 15 May 2009 and 18 May 2009.<sup>402</sup> As set out in Annex 1 to this Decision, these contacts are further examples of traders attempting to influence the prevailing market price and coordinate the bidding and the level of overbidding and exchange other sensitive information.<sup>403</sup> Thus, on 28 April 2009, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss in DBAC a Dutch auction.<sup>404</sup> They had already exchanged their positions for this auction before on 23 April 2009.<sup>405</sup> At the day of the auction, at 08:19, the UBS trader says: *'think ive got a seller 50mm' 'again' 'just working on something'*. The Natixis trader says: *'ok'*. Then, the UBS trader asks: *'where we got it 7 bp' '?'* to which the Natixis trader replies: *'7.75'*. The UBS trader says *'ok'*. [...] the traders monitor the auction and had concerns over the high price and limited issuance is to be expected. [...] the traders share sensitive information and thereby align their prices and volumes.<sup>406</sup> When complaining after the auction about the prices charged by the brokers, a RBS trader ([...]) says: *'yeah but don't say that we occasionally compare prices because then they (the brokers) will know.'* This shows that the traders knew that they were not supposed to exchange such information.

(245) On **20 May 2009**, traders of Natixis ([...]), RBS ([...]) and UBS ([...]) discuss in DBAC a Spanish EGB auction that will take place the next day.<sup>407</sup> They discuss a

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<sup>400</sup> CHAT-0x10000007E8043 [...].

<sup>401</sup> [...]

[...]. He was eventually removed from the CODS & CHIPS chatroom on 10 August 2009.

<sup>402</sup> PCHAT-0x000000000000fe99 [...].

<sup>403</sup> See the overview of anticompetitive communications in Annex 1.

[...]

<sup>404</sup> PCHAT-0x000000000000fe99 [...].

<sup>405</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>407</sup> PCHAT-0x000000000000fe99 [...].

strategy to depress the price in the secondary market with the aim of purchasing the EGB at a lower price at the time of the auction in the primary markets: *'hammer it down tom'*, while they also attempt to coordinate their bids: *'if we bid similar im sure we will get paper'*.<sup>408</sup> Thus, at 08:10, the Natixis trader comments: *'all these guys bididng spain issues'* and he adds: *'it's great' 'when they panic & start lifting screens i will start to sell out some of these 32s'*. The UBS trader wonders: *'what is wrong with people' '[?]'* to which the Natixis trader replies: *'you always have to save ammo [ammunition] til the day of the taps these days'*. The RBS trader reveals his plan, when he says: *'i gotta take 5-10% of this spain' 'if assume its 1.5bln thats say 125m where i kind should get' 'maybe 100m' 'so i still got some to sell' 'im short 55'*. The Natixis trader also discloses his plan to depress the price of the Spanish bonds ahead of the auction when he says: *'i think the total in both issues will be 2.5-3bln' 'im buying 75m' 'and im short 40m' 'its already offered a bit on the tv but im gonna wait with the last 35m to hammer it down tom'*. [...] given the domestic demand for the 2032s, its trader ([...]) wanted to let the demand push up the price of the 2023 and then he would start to sell the 2032s ahead of the auction at a higher price to create a short position.<sup>409</sup> He further adds: *'if we bid similar im sure we will get paper' 'they are pretty good at allocating normally in spain' 'they did fuk up one short end tap but in longs they have sold whenever the bids were ok' 'i just dont want to b long the thing after'*. The RBS trader replies: *'nope' 'i am just going to be flat' 'i got a bit burned on the spain tightening this year'*. Later that afternoon, at 13:42, the RBS trader asks the Natixis trader: *'so for tomorrow we think we gotta pay up for spain'* to which the Natixis trader responds: *'i think scaled bids back from +20 to +5 should be fine'*. The RBS trader agrees: *'yeah sounds abt right'*. In the same conversation, at 15:33, the RBS trader comments: *'now hopefully we can get the specific bond down toms'* and the Natixis trader agrees: *'yeah'*.

(246) On the day of the auction, **21 May 2009**, early in the morning in the DBAC chatroom,<sup>410</sup> the Natixis trader discloses that *'someone trying to kill 32 spain now'* to which the UBS trader responds: *'lets likk the curve then' 'kill'*. The Natixis trader confirms: *'yep'*. [...] the comment to *'kill the curve'* referred to by the DBAC traders is an attempt to depress the price of Spanish bonds in the secondary market in order to put downward pressure on the auction price.<sup>411</sup> Later on that day, from 07:31 on, the RBS trader informs the Natixis trader: *'ive been told that i dont have to bid for as much as i thought so i dont really have any to sell' 'just gotta take my 60m'* to which the Natixis trader responds: *'im going for 75m at the mom'*. The Natixis trader, then, comments: *'hopefully we can keep it cheap til then'*.

(247) Similar relevant contacts in DBAC took place on **26 May 2009, 27 May 2009, 28 May 2009** and **2 June 2009** and in separate chatroom for **28 May 2009**.<sup>412</sup> As set out in Annex 1 to this Decision, these contacts are further examples of traders attempting to influence the prevailing market price and move the market before the auction and coordinate their bidding and exchange other sensitive information.<sup>413</sup>

<sup>408</sup> [...]

<sup>409</sup> [...]

<sup>410</sup> PCHAT-0x000000000000fe99 [...].

<sup>411</sup> [...]

<sup>412</sup> PCHAT-0x000000000000fe99 [...].

PCHAT-0x10000009659AD [...].

<sup>413</sup> [...] for 27.05.2009 and 28.05.2009

- (248) On **3 June 2009**, in the DBAC chatroom, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss an upcoming German EGB auction on that day.<sup>414</sup> They exchange sensitive information on their bidding strategy (including pricing and bid sizes) and overbidding ahead of the auction in an attempt to coordinate their bids. Thus, at 06:24, an RBS trader ([...]) says: *'in all my time i can only remember one long auction getting cornered i think it will clear about plus ten to mids if u get the market lower'*. [...] its trader ([...]) did not think that any bank could corner the auction that day and that the German issue would be priced at + 10 to the mid-prices, if the UBS trader ([...]) could cheapen the bonds on the secondary market.<sup>415</sup> At 07:01, an RBS trader ([...]) discloses that he *'cant overpay for too much in auction and I am too short'*. At 07:34, the same RBS trader asks: *'what we thinking premium?' '+10 ish?'* to which the Natixis trader responds: *'no more that that now its richened'* and the UBS trader asks: *'wat mid we got in it[?]'*, which prompts all three traders to disclose their respective mid-level prices. Later in the morning, at 08:50, the UBS trader discloses he is paying *'+10' '+5' 'ave [average]'* and the Natixis trader approves: *'that should b about right i think'*. The four traders continue checking their mid-prices until the auction. Other contacts in DBAC took place on **4 June 2009** and **5 June 2009**.<sup>416</sup>
- (249) On **8 June 2009**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss in the DBAC chatroom upcoming Spanish and Portuguese bond auctions.<sup>417</sup> Throughout the chat, the traders disclose to each other their mid-prices in relation to those bond auctions.<sup>418</sup> At 06:33, the UBS trader asks the other traders what mid-price they have for Spain 37s and the Natixis trader replies he has 89.54 for 37s and 97.70 for 39s. Later that day, at 15:59, the Natixis trader asks a RBS trader ([...]) where he is bidding Portuguese bonds to which the RBS trader responds: *'i am bidding port 18 now' '101.10'*. The Natixis trader, then, shares: *'i got 100.42 mid on my system'* and the UBS trader indicates: *'100.50 mid, we got those'*. That RBS trader adjusts his price to 100.38 ('38').
- (250) On **9 June 2009**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss in DBAC an upcoming Spanish EGB auction.<sup>419</sup> They discuss their recommendations for the Spanish DMO and exchange views on the demand for the Spanish EGB in the secondary market and in relation to their own positions.<sup>420</sup> They disclose their future trading intentions which increases transparency and allows the traders to align their trading strategies. Thus, from 07:46 on, the Natixis trader informs the other traders: *'im not gonna ask for sp37s' '47' 'dont think [market] needs those'*. The UBS trader agrees: *'nope' 'agree'*. The Natixis trader reveals: *'ive got no int [interest] in bidding them right now'*. A RBS trader ([...]), also, confirms: *'im not asking for 37s'*.
- (251) A similar relevant contact in DBAC took place on **10 June 2009** when traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss their trading strategies with regard to an auction of Belgian bonds OLO44s. This chat is an example of coordinated trading between the traders vis-à-vis a specific counterparty with the aim

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414 PCHAT-0x000000000000fe99.

415 [...]

416 PCHAT-0x000000000000fe99 [...].

417 PCHAT-0x000000000000fe99 [...].

418 [...]

419 PCHAT-0x000000000000fe99 [...].

420 [...]

to protect a member of the group ([...]).<sup>421</sup> At 08:36, that RBS trader says: *'I hope [...] [possibly [...] from Tullett Prebon] lifts me at 27.5 in the olo44s so I can shout down the black hole that I have been lifted at 27.5 while i was going 27.75 with you'*. The Natixis trader replies: *'yeah but [...] is shite' 'all he did was get the buyer on tv scared away'*. The same RBS trader discloses: *'i am bidding tv try and scare the guy'*. The Natixis trader offers to help him: *'u want me to lift u in small and sxare the other guy into it?'*. The RBS trader agrees ('ok') and the Natixis trader responds: *'i just lifted [i.e. buy] u in 5m olos'*.

- (252) On **16 June 2009**, traders of RBS ([...]), UBS ([...]) and Natixis ([...]) exchange information in DBAC on an upcoming Austrian syndication.<sup>422</sup> Already early in the morning, the traders discuss market conditions and exchange views on how to price the Austrian bonds ("rags")<sup>423</sup>. For instance, at 06:10, the UBS trader asks: *'dod the rags book close last night'*. The RBS trader replies: *'no it never'*. The UBS trader, also, asks: *'u know what it up to now' 'last heard 3 bln'* to which the RBS trader is quick to reply: *'2.5 3 hearing priced this am'*. The Natixis trader asks: *'was there decent demand on it?'* while he adds: *'seemed cheaply priced'*. The RBS trader confirms: *'a bit was cheap'* and the UBS trader discloses: *'same price guidance +70 to swaps' '+55' 'to 27 bunds' '?'* which is confirmed by the RBS trader: *'yes'*. The Natixis trader comments: *'that's like +10 to rag 27s'* and the UBS trader responds: *'yup cheap' 'ish'*. From 08:44 on, the traders discuss the timing of the pricing of the syndication. The Natixis trader asks: *'when u think the pxg [pricing] will be?'*, to which the RBS trader replies: *'11.30'*. The traders discuss the timing of the syndication which is not publicly known. This allows them to either adjust their trading strategies or adjust the price in the secondary market with effect on the syndication.<sup>424</sup> At 10:26, the Natixis trader asks again: *'this rag pxg now?'* to which the RBS trader replies: *'no u will no within 5 mins ok when I use everton'*. Everton is a code word that was most commonly used to alert each other on the timing of the pricing of the syndication.<sup>425</sup> The name was chosen not to stand out and names of other Premier League football teams could be used as well.<sup>426</sup> At 10:34, the RBS trader updates: *'hearing its a little later'*. At 11:51, the RBS trader discloses in encoded language: *'short think everton are playin 1.10'* to which the Natixis trader replies: *'ok'*. At 12:13, the RBS trader discloses: *'everton dry run' 'priced'*. The Natixis and UBS traders thank him: *'ta'* and a few minutes later, the Natixis trader asks: *'what was the reoffer in this?'*, to which the UBS trader replies: *'99.786'*. At 12:35, the RBS trader asks: *'wat mid u got austria 27s[?]'* to which the Natixis trader responds: *'116.7'*.

- (253) On **19 June 2009**, the traders from RBS ([...]), UBS ([...]) and Natixis ([...]) change the name of PCHAT-0x000000000000fe99, at that time still operational under the name *'30yr kings'* into *'BIG SWINGING DICKS'*.<sup>427</sup> At 11:50, the UBS trader comments: *'I think we should have a new chat name'*. The RBS trader asks: *'whats*

<sup>421</sup> PCHAT-0x000000000000fe99 [...].

<sup>422</sup> PCHAT-0x000000000000fe99 [...].

<sup>423</sup> [...]

<sup>424</sup> See recital (33).

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

See also recitals (259), (329) and (333).

<sup>426</sup> [...] its trader ([...]) refused to make use of "Everton" as a code word and preferred to use "Chelsea". "Arsenal" was also used.

<sup>427</sup> PCHAT-0x000000000000fe99 [...].

that?'. The UBS trader replies: 'dunno' '30yr kings bit dull' 'now'. The UBS trader adds a comment: 'doing my cods' ': -D', to which the RBS trader replies: 'figured you would'. The chatroom is named DBAC in this Decision.<sup>428</sup>

- (254) The traders of RBS ([...]), UBS ([...]) and Natixis ([...]) discuss in the chatroom a French syndication for OAT41s that will take place on 23 June 2009. This communication is an example of the traders discussing the possibility of disrupting the pricing of the syndication in question. They, and RBS in particular, are frustrated that they have failed to win significant mandates as lead managers in the syndication after having been active participants in the auctions.<sup>429</sup> For example, at 07:07, the RBS trader complains: 'i worked v hard for that sh!t and on the trading side we did all that was necessary and this dick in origination cant get the job done' 'im really fuking gutted'. [...] the traders, therefore, tried to retaliate by disrupting the pricing and the execution of the French syndicated deal because they disagreed with the selection of the lead managers. In doing so, the traders used their network of contacts attempting to obtain commercially sensitive market information about the timing of the pricing of the syndication deal and agreed to buy the reference bond, the OAT38, in an attempt to increase the price in the secondary market and consequently push up the issue price of the new issue OAT41.<sup>430</sup> At 08:23, the RBS trader comments: 'think this deal is going to be a blowout though' 'i am going to cover early next week'. The Natixis trader agrees: 'im sure it will go' 'but they will def try to keep 38s v cheap' 'pxg [pricing] call must b the time to cover' 'got to 24 before your 38 tap didnt it?'. The RBS trader indicates that he is tempted to increase the price of the reference bond (OAT38) ahead of the auction if the syndication managers are trying to keep the price down before the auction: 'if they try to keep it down on screen before i am going to try and fuk them'. The Natixis trader agrees: 'me too', but the RBS trader realises that they are limited in what they can do: 'but they will have far more ammo unfort'. This suggests that the lead managers would try to keep the price of the OAT38s on the secondary market relatively low to ensure that the OAT41 would be priced at an attractive level, and consequently, could be successfully placed. The DBAC traders acknowledge that the syndicate, and especially the duration manager, would be in a better position to put pressure on the reference bond than them.<sup>431</sup> Hence, the downward pressure on the price from the lead syndicate would be stronger than the upward pressure the traders would likely exert on the market. Later that day, at 10:27, the Natixis trader still suggests buying the reference bond around the pricing call: 'you'd think wait for the pxg call and lift the fuk out of the duration mgr' and he asks: 'surely it has to be pxd off 38s no?' to which the UBS trader replies: 'yup'.
- (255) On **22 June 2009**, the RBS trader ([...]) changed the name of PCHAT-0x000000000000fe99, just renamed into "**BIG SWINGING DICKS**", again into '**IN NEED OF VACCINES**'.<sup>432</sup> The chatroom is named DBAC in this Decision. The traders of RBS ([...]), UBS ([...]) and Natixis ([...]) continue discussing their

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<sup>428</sup> See recital (83).

<sup>429</sup> [...]. The lead managers were Barclays, BNP Paribas, Crédit Suisse, HSBC Bank and Société Générale.  
<sup>430</sup> [...]

<sup>431</sup> The role of a duration manager in a syndication is to stabilise the market during the setting of the bond's issue price, by acting as a counterparty on behalf of all the syndicate members for switch orders presented by the investors (orders presented on the condition of simultaneous sale of another security at a certain minimum price).

<sup>432</sup> PCHAT-0x000000000000fe99 [...].

strategy for the upcoming French syndication. Through the use of their network of contacts (including other EGB traders who were not part of the chatroom) they attempt to find out the exact timing of the pricing of the French syndication deal.<sup>433</sup> For example, at 12:00, the Natixis trader comments: *'trick is to know when its gonna price tho'*<sup>434</sup> and he adds: *'i know a client who has an order in so will try to find out from him'*. The RBS trader mentions that he could try one of his colleagues who has worked for one of the lead managers: *'said he can try from bnp but he's positive they wont leak anything to him'*. They also discuss an Irish syndication that will take place on 23 June 2009 and where RBS is one of the lead managers.<sup>435</sup> The RBS trader may have used its position to help the UBS trader and the Natixis trader to improve their EGB allocation. When the RBS trader confirms, at 09:07, that *'ireland book open'* the UBS trader responds: *'keep us in touch [...] [...] says hed buy some small'*. At 09:12, the RBS trader confirms that the Ireland book is open and the UBS trader asks: *'can you put us in for 25mm' 'vs july 19s' 'at whatever spread it [comes]?'*. The RBS trader confirms that he will help the UBS trader and gives him a more favourable treatment as a proprietary trader, not a flow trader: *'ok trying to get [...] to see if we can do it' 'putting u in as UBS prop'* and subsequently, at 09:21, he confirms that *'[you're] in'*. Proprietary trading desks were at that time likely to be given a larger allocation than flow trading desks. This is because proprietary desks typically had longer investment horizons and as such could take positional views, potentially holding positions for many months or even longer.<sup>436</sup>

- (256) On **23 June 2009**, the day of the syndications in France and Ireland, the traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) continue their discussion in the DBAC chatroom.<sup>437</sup> They discuss, among others, when the pricing of the bonds will take place and exchange information on secondary market trading ahead of the auction.<sup>438</sup> At 06:17, the Natixis trader comments, on the French syndication: *'swpas steepening'* and discloses: *'ive steepened 1 bbp' 'im on the bid in 38s' 'CS hit me 38s'*.<sup>439</sup> The UBS trader suggests: *'iam gonna have a stab at buying some longs... if we steepen more'*. The Natixis trader reveals: *'got 39s mid at 57'* while the UBS trader, also, reveals: *'53 25/6'*. At 06:21, the Natixis trader indicates: *'im bid on 38s and 55s'* while the UBS trader confirms: *'its obviously gonna price this morning'*. The trader of Natixis agrees: *'yeah fir sure'*. At 07:19, on the Irish syndication, the first RBS trader ([...]) says: *'cool ill give u shout on ireland its called everton ok'*. The UBS trader thanks him: *'ta'*.
- (257) Back on the French syndication, the Natixis trader reveals: *'allocations are out 8.30 ldn [London] time im hearing'*. The second RBS trader ([...]) asks: *'so means pricing like 10?' 'or earlier?'*. The Natixis trader assumes: *'i would guess earlier' 'but not sure yet'*. The first RBS trader ([...]) intervenes, referring to a Dutch syndication or auction on that day: *'nlg as well wont be 9'*. The Natixis trader

<sup>433</sup> [...]

<sup>434</sup> In order to be successful in influencing the pricing of the syndication, the traders would have to know the precise timing of the syndication.

<sup>435</sup> [...]. The lead managers were RBS, Barclays Capital, BNP Paribas, Citigroup, J&E Davy, and ING Groep NV.

<sup>436</sup> [...]

<sup>437</sup> PCHAT-0x000000000000fe99 [...].

<sup>438</sup> [...]

<sup>439</sup> OAT38s are the reference bond for the EGBs issued in the French syndication. By purchasing the reference bond, the traders cover off short positions whilst the price of those EGBs was likely to be cheaper in the run up to the syndication.

assumes: *'apparently france will be the first one to price a client is telling me'* and he asks: *'u got any timing for ireland yet?'* to which that RBS trader replies: *'not yet'*. At 07:36, the UBS trader discloses the estimated timing of pricing of the French syndication, referring to the code word: *'chelsea is 10 10.30 ish'*. The Natixis trader indicates: *'hedges need to be finalised by 10am CET'*. The second RBS trader responds: *'custy said saw message saying 1030 lon[don] time pricing'*. The traders discuss their positions on the long end of the yield curve and their post-pricing strategy. The second RBS trader discloses his intention to buy back his short before the pricing and could go long if the reference bond goes cheaper.<sup>440</sup> At 08:18, the same RBS trader reveals: *'still short longs' [...]'wants some was well' 'and prop desk came down said he wants to buy some' 'i don't want to not get my longs in pre pricing' 'gotta get flat now' 'will go long if cheapnes more'*. The Natixis trader confirms he has been allocated EUR 20 million in the French syndication and discloses: *'im flat with the 20m i got in the new boys so will buy on the pxg some more'*. He asks: *'so what the talk on the irish pxg?' 'any ideas?'*. The first RBS trader clarifies: *'its after france'*. The Natixis trader asks for further information: *'and before olo?'*<sup>441</sup> At 08:36, the UBS trader asks on the French syndication: *'still no pricing[?]'* and the Natixis trader replies: *'nope'*. The second RBS trader confirms: *'nope not priced' 'prop guy asked barc [Barclays] when pricing said later this am' 'he said he doesnt really use them ever so assumes they wont give him the info though'*. At 08:48, he warns, on the French syndication: *'pricing soon'*. A few minutes later, it has priced and the Natixis trader comments: *'pxd' '91.85 they used for 38s' 'nice'*. At 10:06, when the curve is flattening, the second RBS trader starts offering the reference bond: *'we a little flatter? im offering some 38s'*. The Natixis trader confirms: *'i think so...04 mid 39s'* and the RBS trader notes: *'same'*. The UBS trader uses this information for his own pricing of the long end of the yield curve and adds: *'i will flatten then'*. At 10:17, the Natixis trader asks, on the Irish syndication *'still not seen this irish come thru' 'has it pxd yet?'*. The UBS trader comments: *'dont start that again'*. The first RBS trader informs: *'best gues[s] at moment is everton play at midday'*. Half an hour later, at 10:48, he announces: *'everton 12.45'*. The Natixis and UBS traders thank him for this information: *'ta' 'k'*. At 10:56, he updates: *'12.15'* and asks the UBS trader: *'[...] can u keep [...]'*<sup>442</sup> *involved with everton please[?]'* to which the UBS trader confirms: *'yip' '12.15 told him'*. At 11:22, the UBS trader asks: *'everton' '??'*. A few minutes later, the RBS trader replies and apologises for having forgotten to inform immediately: *'sorry guys yes'*.

- (258) Similar relevant contacts in DBAC took place **on 26 June 2009, 2 July 2009 and 3 July 2009**.<sup>443</sup> These are further examples of traders attempting to influence the prevailing market price, coordinate the bidding ahead of the auction and exchange other sensitive information.<sup>444</sup>
- (259) On **7 July 2009**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss an Italian syndication for BTP25s in the DBAC chatroom.<sup>445</sup> They exchange information on the timing of the pricing of the bond. The traders coordinated their

<sup>440</sup> See also recital (33) regarding the pricing of the syndication.

<sup>441</sup> The Belgian syndication will eventually only take place on 30.06.2009.

<sup>442</sup> [...] at BGC.

<sup>443</sup> PCHAT-0x000000000000fe99 [...].

<sup>444</sup> See the overview of anticompetitive communications in Annex 1.

[...].

<sup>445</sup> PCHAT-0x000000000000fe99 [...].

action once a code word was used to sell BTP23s just ahead of the pricing to depress the price of the BTP23s on the secondary market, thereby influencing the pricing of the new issue BTP25s<sup>446</sup>. At 06:12, the UBS trader states: *'i reckon Italy cud price today'* and a RBS trader ([...]) replies: *'yes think Italy will price today'*. Later in the morning, at 09:54, the Natixis trader asks the other traders: *'when is this btp25 gonna price?'* and at 10:06 he suggests that the RBS trader uses his contact with the duration manager<sup>447</sup> to find out: *'sg duration mgr for this new btp'*. That trader of RBS agrees: *'yes I shud have gud idea when its priced and its not swapped'*. By disclosing that the Italian syndication has not been swapped, the trader reveals that the price of the bond is less supported post-syndication and thus more vulnerable to pricing pressure. The traders attempt to depress the price of the reference bond (BTP23s) ahead of the auction, in order to also lower the price of the BTP25s in the syndication. The UBS trader notes at 10:58 that BTP23s are being sold: *'23s getting hit'*. The same RBS trader informs the syndicated bond is too expensive because of being priced well above the mid: *'u know its coming at 20 over means the juice has gone a bit'*. The UBS trader agrees: *'yup'* and adds: *'and 5.5bln' 'are offered flat'*. The Natixis trader agrees: *'yup'*. At 11:03, that RBS trader discloses he will try to push prices of the BTP23s lower to have an impact on the pricing of the BTP25s: *'iam gonna lean on 23s'* shortly after, the Natixis trader indicates that: *'pxg getting it lower a bit early'*. The traders then use their network of connections (other EGB traders who are not part of the chatroom) to find out the timing of the pricing of the Italian syndication and share it with the other traders. At 11:13, when the UBS trader asks: *'is this the pricing[?]'*, the Natixis trader replies: *'dunno'* and the RBS trader informs: *'no allocations just come out'*, suggesting that the allocations have been disclosed but not the pricing which would happen later in the day. At 11:51, he informs the other traders that he will use the code word *'everton'* to alert the traders as to when the pricing would happen: *'everton the code word this afternoon'*. He adds: *'not sure but everton maybe playing v soon'*. The traders of UBS and Natixis thank the RBS trader. When the same RBS trader asks: *'any mumble'*, the other RBS trader ([...]) comments: *'everton!!!' 'everton sucks' 'am i talking abt the team or the code no one knows'* to which the Natixis trader replies: *'we never know what u talking bout'*. At 12:00, the first RBS trader ([...]) reveals: *'defo next 30 mins'* and at 12:08, the other RBS trader confirms: *'pricing soon'*. At 12:19, the UBS trader asks: *'is it priced[?]'* to which a RBS trader ([...]) replies: *'dunno' 'chelsea' 'spurs'*. The first RBS trader ([...]) comments: *'not sure'*. The other RBS trader ([...]) jokingly adds: *'arsenal'*. At 12:19, the UBS trader thinks that the price of the Italian bond is '58' and that it is *'trading down'* (that is, getting cheaper). The Natixis trader asks if pricing is: *'close'*. That RBS trader comments: *'itlians being funny'*. The UBS trader says: *'its now' '50 traded'*. A few seconds later, at 12:24, the same RBS trader announces: *'everton'* and the other RBS trader ([...]) confirms: *'everton'* letting the other traders know that the syndication is pricing. At 12:25, a RBS trader ([...]) says: *'done'*. At 12:29, he adds that the price is '53' to which the Natixis trader replies: *'nice'*. At 12:53, the UBS trader comments: *'Italian treasury had their bum slapped there'*, suggesting that the Italian DMO sold the bonds cheap and that traders who bought these bonds did well.

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<sup>446</sup>

[...]

<sup>447</sup>

The duration manager acts as a counterparty on behalf of all the syndicate members for orders presented by the investors.

- (260) Similar relevant contacts in DBAC took place on **8 July 2009**, **21 July 2009** and **22 July 2009**.<sup>448</sup> These are further examples of traders attempting to coordinate the bidding ahead of an auction and exchange other sensitive information.<sup>449</sup>
- (261) On **3 August 2009**, traders of RBS ([...], [...]), UBS ([...]) and Natixis ([...]) discuss their secondary trading in the DBAC chatroom<sup>450</sup>. Thus, at 06:53, the Natixis trader protects the other traders in the chatroom when asking them if they are fine with his intention to pull (that is withdraw) a bid: *'does that fuka nyone?' 'shud I pull?'*. The RBS trader ([...]) does not mind in view of his own position: *'longs been better bid in general past week or so' 'flattened like 15bps u left right?' 'no suits'*. The Natixis trader says: *'ok' 'glad to help'*. Throughout the chat, the traders discuss their secondary market bids, offers and mid-prices for various EGB. At 08:56, a RBS trader ([...]) reveals: *'me 31/34' '31/39' 'in [...] [...] – broker'*.<sup>451</sup> The Natixis trader replies: *'not heard it yet' 'still not heard it' 'u can hear a pin drop here' 'it's like evryone has gone on hols'*. The UBS trader reveals his bid for Italian bonds: *'bid 7 mm 39 btp' '08' 'nowt'*. The same RBS trader confirms: *'same bid screen'*. At 09:10, the UBS trader suggests to make the trade at mid-price: *'lets all print at mids'*. The Natixis trader agrees: *'i think u should'*. Later, from 13:29 on, the traders share secondary-market bids and offer prices for many different bonds. They discuss how their bids and offers are for the same French client. For example, at 13:32, the Natixis trader reveals: *'bidding olo44 here now' '16m'*. A RBS trader ([...]) comments: *'french seller here'*. The UBS trader adds: *'bid 98... nothing'*. The Natixis trader also reveals: *'same guy here' '94 i bid' 'oat29s now' '13m'*. The UBS trader follows: *'06 bid'* and the Natixis trader further reveals: *'0' '4'*. The UBS trader comments that everything is traded at mid-price: *'everything is just being printed at mids'* to which the Natixis trader suggests: *'let em [them]'*. Starting from 14:44, the other traders inform the Natixis trader, who has been away for a few weeks, that they chat more about yields now rather than prices because it is *'just easier w spread so dont have to watch futures references'* to which the Natixis trader replies: *'yeah' 'I understand'*. The UBS trader adds: *'it helped to make loads of dosh'* [money].<sup>452</sup>
- (262) On **6 August 2009**, traders of RBS ([...]), UBS ([...]) and Natixis ([...]) discuss in DBAC their trading and bidding strategies for various EGB.<sup>453</sup> They check their mids and spreads.<sup>454</sup> For example, at 11:21, the RBS trader asks: *'where we got long now[?]'* to which the UBS trader replies: *'75.3'* and the Natixis trader also replies: *'75.75'*. A few minutes later, they discuss Italian bonds and at 11:38, the UBS trader comments: *'strange we the only ones who like it flatter' 'everyone else wants to steepen it'* and the RBS trader agrees: *'yup :-)'*. They also discuss their spread pricing for Austrian bonds. The same RBS trader says: *'37' 'austria looks bid no?'* The UBS trader replies: *'38 but iam too wide'*, indicating that the spread level is too wide, meaning that the corresponding price level is too low. The trader of RBS replies: *'38' '?!?' 'i had 36 thought i was too wide!'*

448 PCHAT-0x000000000000fe99 [...].

449 See the overview of anticompetitive communications in Annex 1.

450 PCHAT-0x000000000000fe99 [...].

451 A broker at Tullett Prebon.

452 Dosh is slang for money.

453 PCHAT-0x000000000000fe99 [...].

454 [...]

- (263) Also on **6 August 2009**, the Natixis trader ([...]) sends his resignation letter to Natixis.<sup>455</sup> His gardening leave starts on 17 August 2009 and his contract ends on 17 October 2009. His access to the chatroom for Natixis will be closed on 16 November 2009.<sup>456</sup>
- (264) On **10 August 2009**, [...] (Bank of America) is removed from the CODS & CHIPS chatroom since he had left Bank of America on [...].<sup>457</sup>
- (265) Similar relevant contacts between traders of RBS ([...], [...]) and UBS ([...]) took place on **12 August 2009**, **11 September 2009**, **22 September 2009**, and **28 September 2009** in DBAC.<sup>458</sup> On **12 August 2009**, the RBS and UBS traders exchange information on their bidding strategy for an upcoming German auction. On **11 September 2009**, a RBS trader and the UBS trader coordinate their strategies with respect to a counterparty. On **22 September 2009**, RBS traders and UBS trader ([...]) disclose their bid levels ahead of a Dutch auction and overbid levels and volumes ahead of an Italian auction. On **28 September 2009**, a RBS trader ([...]) and a UBS trader ([...]) exchange information on their bidding and overbidding levels ahead of a Belgian auction and on their secondary market trading.<sup>459</sup>
- (266) On **24 September 2009**, the DBAC traders also change the name of PCHAT-0x000000000000fe99, at that time operational under the name ‘*IN NEED OF VACCINES*’, into ‘*CODS & CHIPS*’. This means that as from that moment both persistent chatrooms PCHAT-0x0000000000001ac2 and PCHAT-0x000000000000fe99 operated under the same name. Most discussions take place in PCHAT-0x000000000000fe99 or through instant messages.
- (267) On **5 October 2009**, traders of RBS ([...], [...]) and UBS ([...]) discuss in DBAC, then operational under the name CODS & CHIPS, an Irish syndication for the next day and exchange sensitive information.<sup>460</sup> The RBS trader, acting as a lead manager in relation to the syndication, is using that position to improve the chances of UBS of obtaining their fill of EGB during the allocation process by conspiring to disguise the true nature of the orders being placed by UBS.<sup>461</sup> In reply to a question from UBS, a RBS trader ([...]) confirms that he is a lead manager for the ‘*new 15 yr Ireland*’. With respect to the price of the reference bond for the Irish syndication, he suggests: ‘*we gotta keep it low*’. At 13:56, the UBS trader asks the other RBS trader ([...]) if he could get him some of the new Irish EGB being syndicated. The RBS trader confirms that he can try to get some of the syndicated bonds for UBS: ‘*i can try what u wanna do*’.
- (268) On **6 October 2009**, the traders of RBS ([...], [...]) and UBS ([...]) continue in DBAC, then operational under the name CODS & CHIPS, their discussion on the Irish syndication of that day.<sup>462</sup> They discuss pricing and alert each other on the timing of the pricing of the syndication using the code word “*everton*”.<sup>463</sup> At 13:53,

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455 [...]

456 [...]

457 [...].

458 PCHAT-0x000000000000fe99 [...].

459 See the overview of anticompetitive communications in Annex 1 [...].

460 PCHAT-0x000000000000fe99 [...].

461 [...]

See also the similar conduct explained in the chats of 22.06.2009 and 21.09.2010.

462 PCHAT-0x000000000000fe99 [...].

463 [...]. See also recitals (33) and (527).

the UBS trader asks whether there is any news *'any paddy mumble'*. In reply, a RBS trader ([...]) cryptically discloses that the syndication will be priced soon: *'oh but [...] [...] saying everton playing in next half an hour'*. The UBS trader thanks him (*'ta'*). At 14:18, the UBS trader discloses: *'traded 2.6 small 38/41s'*. Later, at 15:12, the RBS trader announces: *'pxd'* and the UBS trader thanks him once more: *'ta'*.

- (269) Earlier that day, they also discuss the price to be offered in an Austrian auction that takes place at 09:00 on the same day. Ahead of the auction, the traders share their mid-prices and overbidding levels. At 06:56, the UBS trader asks if RBS is buying Austrian bonds *'any rag 26s'* and a RBS trader ([...]) replies: *'50'*. The UBS trader comments: *'how silly u reckon 'ave last time was +13' '+28 hightest'* and the same RBS trader replies: *'15'*. The UBS trader inquires about the mid-price and the RBS trader discloses: *'26'*. Later, at 08:08, the UBS trader suggests: *'lets get our mid right in this shite'*. A RBS trader ([...]) replies he is at *'37 mid'* and the UBS trader replies he is at *'32'*. The RBS trader asks the UBS trader what he is overpaying and the UBS trader replies: *'+20 20mm' '+15 30mm' '+10 25mm'*. At 08:21, the UBS trader asks whether *'these rags look fair value here'* to which a RBS trader ([...]) replies: *'yeah think they shitty and will get put away' 'just want to cover my short'*. The UBS trader discloses: *'i feel like creaminmg them'*. At 08:44, the UBS trader suggests: *'lets agree mids in 5 mins'* and a RBS trader ([...]) agrees: *'ok'*. A few minutes later, they share their mid-prices. At 08:54, the UBS trader indicates: *'501 my highest u' '?'* and the same RBS trader replies: *'with 50/51 55 my highest' '+20'*. The UBS trader says: *'same now'* while the same RBS trader comments: *'if we miss this is ridiculous'*. From 09:00 on, the UBS trader shares all of his final bids.
- (270) A similar contact took place on **7 October 2009** in DBAC, then operational under the name CODS & CHIPS, where the traders of RBS and UBS discuss the tenors they intend to request from the Italian DMO ahead of the issuance.<sup>464</sup> As set out in Annex 1 to this Decision, this contact is a further example of the anticompetitive conduct covered in this Decision.
- (271) On **16 October 2009**, traders of RBS ([...]) and UBS ([...]) discuss in DBAC, then operational under the name CODS & CHIPS, French and Dutch EGB<sup>465</sup>. They coordinate to protect another member of the group, exchange information regarding mid-prices and spreads; and align their bidding strategies.<sup>466</sup> For instance, at 08:17, the RBS trader tells the UBS trader to refrain from hitting French OAT21s on screens: *'keep to urself' 'dont touch yet' 'but just bid 300m oat21s.'* The UBS trader says *'[o]k'* and asks what the RBS trader bid, to which the RBS trader replies: *'21 with 10/1'* but someone else bought them at a higher price: *'now they seem bid' 'guy that git hot [got hit] prob bidding them up.'* About 30 minutes later, the RBS trader complains that he never managed to buy back the 21s which he is short of: *'sold fuking 12s and 10s against those 21s' 'never got em back.'* The UBS trader asks if he wants him to destroy the 21s : *'u want me to smash them : - )'*. A few minutes later, the RBS trader tells the UBS trader he can now start trading the 21s on screen (the bond he told the UBS trader *'not to touch'* at 08:17): *'you can hit 21s now if you like i think its been long enough.'* They also exchange their mid-prices: at 13:09 for EGB maturing in 2041 and half an hour later again for EGB maturing in 2040. At 14:00, the RBS trader ([...]) invites the Natixis trader ([...]) to join the DBAC chatroom

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<sup>464</sup> PCHAT-0x000000000000fe99 [...].

<sup>465</sup> PCHAT-0x000000000000fe99 [...].

<sup>466</sup> [...]

again, then operational under the name CODS & CHIPS. He was on gardening leave since 17 August 2009 and his contract with Natixis ends the next day, on 17 October 2009. He will soon start trading again, this time for WestLB.<sup>467</sup> The RBS trader ([...]) informs him that: ‘*cods & chips the name of mine and [...] shop we going to open*’ ‘*its cods and chips*’ ‘*because we were doing our cods*’. The WestLB trader ([...]) jokingly asks: ‘*why dont u try and make some money then?*’ ‘:-)’. The UBS trader ([...]) adds: ‘*cods is the new fashion*’.

- (272) Monday, **19 October 2009**, is the first working day for the new WestLB trader ([...]). He has received access to the DBAC chatroom already on 16 October 2009<sup>468</sup> and on 19 October 2009 receives access also to the CODS & CHIPS chatroom.<sup>469</sup> He continues to chat with the other traders in DBAC, then operational under the name CODS & CHIPS, already on the next day, 20 October 2009 and witnesses the discussions on secondary market trading between the traders of RBS ([...], [...]) and UBS ([...]).<sup>470</sup> For instance, when the trader of UBS discloses at 11:27 that he is offering 30mm 37 bunds at a price of 93, the RBS trader replies that he is doing the same but at a price of 94. Such information allows the traders to align their positions and prices.
- (273) On **21 October 2009**, traders of RBS ([...], [...]), UBS ([...]) and WestLB ([...]) discuss in the DBAC chatroom, then operational under the name CODS & CHIPS, an Italian syndication which is pricing on that day. RBS was a lead manager on this syndication. At 07:08, the WestLB trader asks RBS to alert the others when the bond is pricing: ‘*can u ring the bell [?]*’. Such information, if exchanged on time, provides the recipients with a short but significant advantage over competitors who do not yet have this information.<sup>471</sup> At 07:55, the UBS trader asks: ‘*are they pricing this [Italian] btp*’ and a RBS trader ([...]) tells them: ‘*not yet*’ and that it will be between 10:30 and 11:00. Later at 10:52, the RBS trader informs the other traders: ‘*italy priced*’.<sup>472</sup> They also keep each other informed on what they are doing on the secondary market, including exchanging information on their volumes and mid-prices.
- (274) A similar relevant contact in DBAC, then operational under the name CODS & CHIPS, took place on **4 November 2009** as regards various bonds, including German.<sup>473</sup> As set out in Annex 1 to this Decision, this contact is a further example of the anticompetitive conduct covered in this Decision.
- (275) On **5 November 2009**, traders of UBS ([...], [...]) and RBS ([...], [...]) discuss in a non-persistent chatroom their auction strategy ahead of a French EGB auction on that day.<sup>474</sup> The traders disclose their mid-prices, overbidding levels and volumes ahead of that auction.<sup>475</sup> Thus, at 09:11, a RBS trader ([...]) asks: ‘*who doing 16’s*’. A UBS trader ([...]) replies: ‘*[...] [[...]]*’ and he asks: ‘*s[w]hich one u doing?*’. That RBS trader replies: ‘*16’s and 17’s*’ and he asks that UBS trader: ‘*can you invite [...] on*

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<sup>467</sup> See recital (263). His access to DBAC on behalf of Natixis is closed on 16.11.2009.

<sup>468</sup> Recital (271).

<sup>469</sup> See Table 3 in recital (89).

<sup>470</sup> PCHAT-0x000000000000fe99 [...].

<sup>471</sup> See recitals (33) and (527).

<sup>472</sup> PCHAT-0x000000000000fe99, [...]. [...], as a lead manager, representatives from RBS’ trading desk may be present on the pricing call.

<sup>473</sup> PCHAT-0x000000000000fe99 [...].

<sup>474</sup> Instant Bloomberg CHAT-0x4000000B3FCEF [...].

<sup>475</sup> [...]

*this chat[?]*. Ten minutes later, he asks the UBS trader concerned ([...]): *'what you thinking of over bidding[?]*'. At 09:26, after also having been invited into the chat, the other RBS trader ([...]) asks him: *'why do u only ever chat at auctions[?]*'. That UBS trader replies: *'too shy'*. The first RBS trader ([...]) reminds him: *'its good to talk'*. At 09:27, a RBS trader ([...]) shares: *'iam paying plus 200 for 250ml'* and a UBS trader ([...]) discloses: *'going for 200mm 19s' 'plus 200 should do' 'I try plus 4-5'*. The same RBS trader speculates: *'my thoughts are they gonna tap again in dec and oct 19 may be there again so iam paying plus 2-3 ish not for very many at all'*. The other RBS trader ([...]) says: *'think plus 5 the 16's and 17's'*. The other UBS trader ([...]) agrees: *'yeah, plus 5 should work'*. Ahead of the auction, at 09:32, a UBS trader ([...]) tells the group that he will only go +2 for 17s while a RBS trader ([...]) shares he has bid 101.10. The other RBS trader ([...]) discloses: *'63 and 74 for my 2 right now'*. They continue to update each other on their bids. A UBS trader ([...]) reveals he is *'03/03/05 [in] 19s'*, while a RBS trader ([...]) discloses he is *'03'*, and the same UBS trader reveals he is *'04-6'*. This discussion continues, and a few minutes before the closing of the auction bidding window, at 09:53, the same UBS trader reveals he is *'now 03'* while the same RBS trader replies: *'ye agreed'*. At 09:58, the same RBS trader comments: *'we all played it well we are all great and deserve 3 mil each'*.

- (276) On **6 November 2009**, traders of RBS ([...], [...]), UBS ([...]) and WestLB ([...]) discuss secondary market trading in the DBAC chatroom, then operational under the name CODS & CHIPS.<sup>476</sup> They remind each other to keep their chat contacts quiet because a trader from a French bank might have become aware of it.<sup>477</sup> In particular, at 08:22, the UBS trader says: *'he know bout us chats' 'so we keep it a bit qui[e]t'*. [...] *this communication provides useful context about the relations between the traders.*
- (277) Similar relevant contacts between the traders of RBS ([...], [...]), UBS ([...]) and WestLB ([...]) in DBAC, then operational under the name CODS & CHIPS took place on **5 November 2009, 13 November 2009, 30 November 2009, 3 December 2009, 4 December 2009 7 January 2010** and **13 January 2010**, as well as in two non-persistent chatroom on **30 December 2009** and **13 January 2010** as regards various EGB bonds.<sup>478</sup> These contacts are further examples of the traders discussing their bidding strategies and sharing information on their mid-prices, volumes and submitted bids and overbidding ahead of EGB auctions.<sup>479</sup> Thus, for instance, the object of the communication of **30 December 2009** was to ascertain what each participant's bidding strategy was for the forthcoming auction, in order to try to secure a desired allocation of bonds from the auction. The traders were also discussing price movements in the secondary market ahead of the auction. The disclosure of each dealer's trading strategy to competitors informs their trading strategy. For the communications of **3, 4 and 30 December 2009**, and **7 and 13 January 2010**, the traders coordinated their auction bids, discussed their positions

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<sup>476</sup> PCHAT-0x000000000000fe99 [...].

<sup>477</sup> [...]

<sup>478</sup> PCHAT-0x000000000000fe99 [...].

CHAT-0x2000000DA3553 [...].

CHAT-0x4000000D3FF53 [...].

<sup>479</sup> See the overview of anticompetitive communications in Annex 1.

[...]

ahead of an auction and exchanged information on their mid-prices and other sensitive information.

- (278) On **13 January 2010**, traders of RBS ([...]) and WestLB ([...]) exchange in a non-persistent chatroom sensitive information on the volume and value of their bids and the overbidding for an upcoming German auction.<sup>480</sup> The communication of that day is another example of traders exchanging information on their auction bids. The object of this contact was to ascertain each party's bidding strategy for the upcoming auction.<sup>481</sup> For instance, at 08:41, the WestLB trader says: *'just had a chat with [anonymous] on the 156s' 'seems no real demand form anyone and so shouldnt be a particularly exciting auction'* to which the RBS trader discloses his position: *'good' 'i want 400m' 'gonna pay plus a couple'*. The WestLB trader discloses his position as well: *'im taking 200m' 'will pay +1 and +2' 'i will show a bid at mid just in case'*. Closer to the auction, at 09:45, the RBS trader updates: *'i go 400m at price 4 over'* and the WestLB trader replies: *'ok' 'good luck'*. The RBS trader eventually concludes: *'23 bid here'* to which the WestLB trader replies: *'19 for me' '20 highest in the end'*.
- (279) On the same day, and the next day, **14 January 2010**, other traders of RBS ([...]) and [...]), UBS ([...]) and WestLB ([...]) continued their coordination in DBAC, then operational under the name CODS & CHIPS.<sup>482</sup> As set out in Annex 1 to this Decision, these contacts are further examples of these traders exchanging information on the mid-prices, volumes, auction bids and level of overbidding ahead of an Italian auction and trying to protect each other.<sup>483</sup>
- (280) On **25 January 2010**, traders of RBS ([...], [...]), UBS ([...]) and WestLB ([...]) are in contact with each other in DBAC, then operational under the name CODS & CHIPS.<sup>484</sup> They discuss their positions for a German auction, exchange bid levels and possible overbidding and discuss their bidding strategies, including possibilities for steepening or flattening the curve. Throughout the communication they discuss secondary market trading for Belgian, Dutch, German, Greek, Irish and Italian EGB, disclosing their mid-prices, trading positions, strategy for specific counterparties and trades recently executed.<sup>485</sup> At 07:36, a RBS trader ([...]) notes that there is a: *'Germany auction'* which the UBS trader confirms is on: *'wednesday'*. They participants in the chatroom exchange their expectations and possible strategy for the auction. When the RBS trader asks if: *'we going to steepen or flatten into it?'*, that is if he should buy or sell, lower or raise the price of the bond ahead of the auction, the UBS trader asks the RBS trader how he is positioned and the latter confirms that he is: *'short and short some front ends outright'*. The UBS trader says he does not have a strong view, but feels: *'we to steep really'*. The RBS trader indicates: *'want to get it TOO steep by wed so will perform when we wactually get it'*. The UBS trader agrees: *'that would actually be very nice' 'so cant see that happening'*. The WestLB trader adds that the market will: *'trade tad lower and curve flatten like a banshee more likely'*. The UBS trader notes that they will probably end up: *'short into it'* (holding a small position in the bond) *'long afterwards'* (have many bonds after the auction)

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480 CHAT-0x4000000D3FF53 [...].

481 See the overview of anticompetitive communications in Annex 1.  
[...]

482 PCHAT-0x000000000000fe99 [...].

483 [...]

484 PCHAT-0x000000000000fe99 [...].

485 [...]

*'and steepens like a knut'* (see the price of the bond drop). A bit later, the RBS trader asks: *'where we got curve?'* *'88.5?'* and the UBS trader confirms: *'bang on'*. The RBS trader then suggests to raise the price of the bond: *'dick on first thing trying to flatten it'*. In the communication, they also discuss secondary market trading in various countries, exchanging trading positions and information on specific counterparties, including price fixing, and traders disclosing their current positions (for example *'how u positioned'* *'short and short some front ends outright'*; *'this guy want 35mm 33s'* *'you want to trade at 12'* *'do half each'* *'?'* *'if you want we can do that to clean up'* *'don tt hionk this guys gonna move'* *'shall we try 11.75'* *'ok and if nothiong we'll just hit it'*).

- (281) On **3 February 2010**, the traders of RBS ([...], [...]), UBS ([...]) and WestLB ([...]) discuss an upcoming German auction in DBAC, then operational under the name CODS & CHIPS.<sup>486</sup> They also discuss secondary trading for various EGB. They exchange information on their auction bids, volumes, mid-prices, counterparties, trading positions and strategies.<sup>487</sup>
- (282) Simultaneously, on **3 February 2010**, another trader of RBS ([...]) discusses in a non-persistent chatroom with the WestLB trader ([...]) their bidding strategy ahead of this upcoming German auction.<sup>488</sup> They discussed their approaches in the lead up to the auction and checked their bidding volumes and premium levels.<sup>489</sup> This sharing of information between competitors on their trading and bidding strategies allowed them to align or alter their trading and bidding strategies, should they wish to do so. At 08:15, the WestLB trader asks the RBS trader: *'What r u thinking on OB156s this morning?'* adding *'300m we r going for'* *'mkt level may make overbidding a little more aggressive for a few players but I dont see most over paying too much on this one'*. The RBS trader replies: *'ok mate, i will take 500m with a price, havent thought about over bidding yet'*. They continue exchanging information on their overbidding levels and bidding strategies for the German EGB. At 08:23, the RBS trader informs: *'carry worth 1.8 cents'*. The WestLB trader shares: *'sec last time overbidding at 4c'* *'think +3 could be enough this time...I go 4 cents 2 carry 2 overbidding'*. The RBS trader says: *'I go 4 cents 2 carry 2 overbidding'*. The WestLB trader replies: *'im gonna go some at avg and then +2 to + 4 i think'* *'scaling the bids'*. The RBS trader says: *'all one price we can decide the price'* *'but if you go for tail as well worth doing save some money'* to which the WestLB trader replies: *'kinda depends on how well we manage to get the hedge away'*. Closer to the auction, they update each other. At 09:35, the RBS trader says: *'still4 over mids'*. The WestLB trader confirms: *'yep'* *'bond cheapened slightly so makes sense'*. The RBS trader says: *'yep'* *'91 right here'* and the WestLB trader says: *'yep'* *'same'* *'will be bidding for total 400m now'*. The RBS trader says: *'me 500m'* *'90 bid atm#'* and the WestLB trader discloses: *'i will do 150m at the avg'* *'and rest at one price'* *'90 vs 10/11'*. At 10:03, after the auction, they congratulate each other on the results. The trader of WestLB says: *'well done everybody'*. The RBS trader confirms: *'indeed apart from me trying to go from 100.88 to 188.87 for 500m'* *'ended up paying 1 cent too much'*.

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<sup>486</sup> PCHAT-0x000000000000fe99 [...].

<sup>487</sup> [...]

<sup>488</sup> CHAT-Ox10000014A4747 [...].

<sup>489</sup> [...]

- (283) Similar relevant contacts in DBAC, then operational under the name CODS & CHIPS between the traders of RBS ([...], [...]), UBS ([...]) and WestLB ([...]) took place on **4 February 2010** and **9 February 2010**.<sup>490</sup> A relevant contact in a non-persistent chatroom between the traders of RBS ([...]) and of UBS ([...]) took place on **4 February 2010**.<sup>491</sup> In these contacts, there is coordination when the traders checked their volumes, mid-prices, bids and level of overbidding ahead of an auction and exchanged information on their mid-prices. They discussed the outcome of that auction and exchanged information on secondary market trading.<sup>492</sup>
- (284) On **15 February 2010**, traders of RBS ([...]) and UBS ([...]) engage in a conversation in DBAC, then operational under the name CODS & CHIPS, about coordinated action in relation to a meeting with the Belgian DMO.<sup>493</sup> They exchange information about the Belgian auction and share the information they have given to the DMO, to align their positions.<sup>494</sup> At 09:51, the UBS trader asks: *'when is Belgium conf call'* [conference call). The RBS trader replies it is at: '3' but later corrects this to: '3:30'. They share and coordinate some of the tenors they plan to request from the Belgian DMO to match with their position. At 10:02, UBS trader says: *'wat u need asking for'*. The RBS trader says: *'ten years'* and the UBS trader says: *'we longs'*. The RBS trader agrees: *'ok ill ask for them too'*. The UBS trader says: *'cud do with olo48s as well'*. The RBS trader jokes: *'[...] cud not'* but asks: *'u calling in for olos ?'*. The UBS trader confirms: *'yee' 'iam in' ' [...] doing it' 'he luvs it'*. The RBS trader says: *'ill take the pis listen in'* and the UBS trader says: *'ok' 'olo 48s in' 'i reckon in the longer end'*.
- (285) On **16 February 2010**, RBS ([...]) and UBS ([...]) discuss in DBAC, then operational under the name CODS & CHIPS, an upcoming Irish EGB auction. The WestLB trader ([...]) and another trader of RBS ([...]) are also present in the chatroom but do not provide input concerning the discussion on the Irish bonds.<sup>495</sup> They discuss their bidding strategy for the upcoming auction in order to secure a desired allocation of bonds from the auction.<sup>496</sup> For instance, at 07:49, the UBS trader inquires if they can: *'cheapen Ireland or is it done'*, to which the RBS trader discloses that he is: *'small but I am not playing'*. The UBS trader asks: *'what mid u got them'* to which the RBS trader confirms: *'fig'* ('fig' or 'figure' is a price at .00 that does not require specification behind the digit) as his mid-price. At 08:43, the RBS trader asks: *'u giving the auction bond cheap to clients at auction?'*, with the UBS trader replying: *'discount of 5'*. Later in the morning, closer to the auction, they continue disclosing their mid-prices for the Irish bond auction. At 09:30, the UBS trader asks: *'wot mid these irish'*. The RBS trader replies: *'96'*. The UBS trader discloses: *'98 41/2' 'got to be low[e]r...88 44/5'*. RBS: *'75 at 543' '85 at 43' 'fuk em iam bidding at market' 'my offer'*. UBS: *'MINE OCT' 'wat mid' '76 49/50'*. RBS: *'just been lifted at 86 on screen'*. UBS: *'k' '95' '90' '85'*. RBS: *'80-90 iam paying*

<sup>490</sup> PCHAT-0x000000000000fe99 [...].

<sup>491</sup> PCHAT-0x000000000002c60e (RBS-UBS-GOV) [...].

<sup>492</sup> See the overview of anticompetitive communications in Annex 1. [...]

<sup>493</sup> PCHAT-0x000000000000fe99 [...]. The WestLB trader ([...]) is present but only engages in the conversation to a limited extent at a later stage.

<sup>494</sup> [...] the traders appeared to discuss the issuance recommendations they will provide to the Belgian DMO and appear to coordinate.

<sup>495</sup> PCHAT-0x000000000000fe99 [...].

<sup>496</sup> [...]

for 50' '80 for 25 90 or 25' 'change iam buying 50 mil at one price'. UBS: 'K' '80 85 90'. RBS: '87'. UBS: '78 85 90' '75' 'SO TOP 2 THE DSAME ISH'. At 10:01, right after the auction had closed, they discuss the auction results which had been delayed because: 'someone bid for oct20s instead of april20s'. The RBS trader notes: 'something fishy' had happened and the UBS trader asks: 'wat u mean' 'not covered'. The RBS trader replies: 'i think so' '.97.96'. The UBS trader says: 'that's dumb'. From 10:56 they reveal their results. The UBS trader asks: 'did you mis it as well' and the RBS trader ([...]) confirms he did not get an allocation: 'ah yes missed'. Later, from 11:28, they discuss an increase in the price of Irish bonds following the auction with the UBS trader noting: 'did nt think wed miss that'.

- (286) Other contacts in DBAC, at that time operational under the name CODS & CHIPS, are reported for **22 February 2010** and **11 March 2010** as regards Belgian OLOs and Italian BTPs<sup>497</sup>. These contacts are further examples of traders exchanging and aligning their positions on upcoming auctions.<sup>498</sup> On 22 February 2010 the traders checked their volumes, bids and level of overbidding ahead of an upcoming Belgian auction, and discussed the outcome of the auction. On 11 March 2010, the traders exchanged information about their strategies and positions ahead of an Italian auction the next day.
- (287) On **14 April 2010**, traders of RBS ([...]), UBS ([...]) and WestLB ([...]) exchange information in DBAC, at that time operational under the name CODS & CHIPS, on upcoming Italian, German and Portuguese auctions.<sup>499</sup> There was coordination when the traders exchanged their predictions and trading strategies on the overbidding levels and volumes ahead of the Italian auction. They also exchanged information on the secondary trading, including on volumes and the curve.<sup>500</sup> The participants exchanged mid-prices and discussed selling the bonds and the steps they could take in light of expected market movements. Thus, at 06:37, the UBS trader discloses that he has an: 'order for 50mm so far, its 2 yrds' '?'. The RBS trader corrects him that the auction is for 2.5 yards (billions) and says: 'max u can buy is 125'. The UBS trader can only buy 120, and the two discuss how the last offering cleared five to six cents from the mid-points. From 07:24, the RBS trader informs the UBS trader that he needs: '50 before auction I need 175 at auction now'. The UBS trader reveals that he is short in Italian bonds and short on the market generally, while the RBS trader is: 'short all this shit but long market ha'. At 07:46, they change the discussion to the Portuguese auction and the trader of UBS asks: 'wot we over bidding for the poo' and the RBS trader replies: '10'. They also discuss trading in the secondary market ahead of the auction in order to cheapen the Portuguese EGB. At 07:53, the RBS trader reveals that: 'iam selling Portugal' and asks the UBS trader what curve he has. The latter tells him 82.7 and he replies that he has 82.9. The UBS trader shares that he has 40mm 'ammo' if he does not get any more orders, indicating that he has sufficient volume of bonds to hold on before the auction and depress the price of the bond. The RBS trader boasts that he: 'just twatted soc gen and paribas in Portugal twice'. Later, at 08:51, the traders of RBS, UBS and WestLB exchange information on overbidding ahead of Italian and Belgian auctions as well as discussing the

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<sup>497</sup> PCHAT-0x000000000000fe99 [...].

<sup>498</sup> See the overview of anticompetitive communications in Annex 1. [...]

<sup>499</sup> PCHAT-0x000000000000fe99 [...].

<sup>500</sup> [...]

outcome of the auction including prices and volumes filled.<sup>501</sup> The WestLB trader says: *'bks at 4bln for new olo I hear'*. The RBS trader asks UBS: *'[...] wat u overpaying for olo' 'ob 157'*. The UBS trader discloses: *'100.24' '92/3 BOBL' '25 NOW'*.<sup>502</sup> The RBS trader says: *'ta 26' 'paying plus 30 for my italy'*. The UBS trader says: *'106.90' '106.88' 'thats enough'* and the RBS trader agrees: *'ye agreed' '97 i paid'*. The UBS trader says: *'68' 'low'* and the RBS trader replies: *'ye not great' 'i got 150' 'i need 25 but prob get that non comp [non-competitive bid]'*.

- (288) A similar relevant contact took place on **16 April 2010** in DBAC, where traders of RBS ([...]), UBS ([...]) and WestLB ([...]) once again discuss secondary market trading for the Portuguese EGB. They also exchange mid-prices for French and Greek EGB.<sup>503</sup>
- (289) On **21 April 2010**, traders of RBS ([...]), UBS ([...]) and WestLB ([...]) discuss in DBAC, at that time still operational under the name CODS & CHIPS, an upcoming German EGB auction.<sup>504</sup> They exchange information on their bidding strategy ahead of the auction. Throughout the chat, the traders disclose to each other volumes and premium levels.<sup>505</sup> They exchange non-public information on prices, positions, strategy and trades to ascertain each other's bidding strategy for the forthcoming German bond auctions. For instance, from 06:20, the UBS trader asks: *'how many germans u buying'* to which the RBS trader responds: *'180ish'* for 150 million. The WestLB trader says that they are: *'going for 50-75ish'*. Later, at 06:50, the WestLB trader asks: *'what we thinking for overpremium on this long boy today'* and the UBS trader replies: *'+10'*. The WestLB trader continues: *'some chimp pays more'* but: *'avg prob still around +8-10'*. At 08:23, the UBS trader asks: *'wat we over paying then from mid'* and the WestLB trader indicates he has several bids ranging from mid-price upwards: *'got some in at avg and scaling from +12 to +8 to try to catch the lows'*. The RBS trader discloses: *'15'*. They also exchange their mid-prices. When at 08:53 the RBS trader asks: *'what we paying'*, the UBS trader replies: *'we have 30' 'had 15 mid'*. The RBS trader then shares: *'that's wat ive bid 30'*. The UBS trader continues: *'31 now'* and the RBS trader replies: *'29 now' '30 now'*. At 08:54, the UBS trader updates: *'15 mid is the right mid' 'we just got more non comps'*. At 08:58, the RBS trader asks: *'can i check big figure'* to which the UBS trader says: *'116'*. At 08:59, just before the auction bidding window closes, the UBS trader says: *'31 we stayed'*.
- (290) Similar relevant contacts in DBAC, at that time operational under the name CODS & CHIPS, took place on **28 April 2010, 18 May 2010, 28 June 2010, 1 July 2010, 21 July 2010** and **28 July 2010**.<sup>506</sup> These contacts are further examples of traders of RBS, UBS and sometimes WestLB exchanging information on their mid-prices, bid levels, overbidding, trading positions and volumes ahead of EGB auctions, trying to secure the allocation of EGB at the auction, and cheapening EGB on the secondary market before the auction and exchanging sensitive information when trading EGB on the secondary market.<sup>507</sup> On **28 April 2010** and **18 May 2010**, there was

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<sup>501</sup> The anticompetitive character of the communication is explained by [...].

<sup>502</sup> Bobl: see Table 1.

<sup>503</sup> PCHAT-0x000000000000fe99 [...].

See the overview of anticompetitive communications in Annex 1.

<sup>504</sup> PCHAT-0x000000000000fe99 [...].

<sup>505</sup> [...]

<sup>506</sup> PCHAT-0x000000000000fe99 [...].

<sup>507</sup> See the overview of anticompetitive communications in Annex 1.

coordination when the traders shared information on a new issuance ahead of an auction, checked their mid-prices, overbidding and bid levels ahead of an auction and shared information about a competitive bid submitted to a client. On **28 June 2010** and **1 July 2010** there was coordination when the traders checked their mid-prices, overbidding and bid levels ahead of the auction and discussed the outcome of the auction including prices filled. They discussed cheapening the bonds on the secondary market ahead of the auction and secure the allocation of bonds by exchanging information on their bidding strategy. On **21 July 2010** and **28 July 2010** the traders again exchanged information on their bidding strategy, including on overbidding and volumes, trying to secure the allocation of bonds.

- (291) On **13 August 2010**, traders of RBS ([...]), UBS ([...]) and WestLB ([...]) discuss in DBAC, at that time operational under the name CODS & CHIPS, an upcoming Italian auction.<sup>508</sup> The traders exchange information on volumes ahead of an auction, discuss and coordinate their bids, and try to secure the allocation of EGB.<sup>509</sup> At 07:21, the WestLB trader asks the others when is the Italian auction: *'what time btps?'* and the UBS trader informs: *'10 ldn'* and asks: *'how u placed [...] btps'*. The RBS trader replies: *'i am flat' 'and i guess just gotta buy 25m pre auction and i will be flat coming out'*. A bit later, the traders disclose to each other their estimates of bidding levels: *'how high you bidding to get?'*. At 08:24, the UBS trader says he is buying 120 million at the auction and the RBS trader says: *'yup cool same, i gotta buy 30m pre auction if cares'*. The traders of RBS and UBS continue discussing to trade the pre-auction 30 million together but the UBS trader eventually decides to keep his bonds. Later on, at 09:32, the RBS trader says he wanted to come out flat but: *'GOT MY LOWER BIDS NOW I AM LONG'*, and that he: *'had order 150' 'was going to buy 125 so bought 25m pre auction to fill custy 150 come out flat' 'then i got 150 in auction and filled custy so i gotta keep the 25 i bought earlier'*. From 09:39, the UBS trader discloses that he: *'got 120mm long' 'but 18mm' 'but short btp overall'*.
- (292) Later in the afternoon they also exchange information, including mid-prices, and protect each other in relation to a specific counterparty that is willing to buy Dutch EGB on the secondary market. At 14:35, the UBS trader asks: *'wat mid u got dsl' '75' '?'* to which the RBS trader asks: *'37s?'* and confirms that he also has 75 as the mid. The UBS trader confirms that it is 37s and the trader of RBS tells him that his sales colleagues think there is a potential buyer. The UBS trader confirms: *'sounds like it' 'gonna bid them'*. A bit later, the traders also coordinate what offer to show him for 28s. At 14:46, the RBS trader shares that he: *'just offered 60m dsl28 to same guy'* and the UBS trader replies: *'iam bidding it up mate dont lose em'*. The trader of RBS agrees: *'yeah I offered well high'* and says he showed at: *'30' 'didnt even mant [mean] to lose them there'*.
- (293) A similar relevant contact between traders of RBS ([...]) and UBS ([...]) in DBAC, at that time operational under the name CODS & CHIPS, took place on **24 August 2010** as regards various bonds.<sup>510</sup> This contact is another example of a communication where the traders discuss throughout the communication their mid-

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508 [...] PCHAT-0x000000000000fe99 [...].

509 [...]

510 PCHAT-0x000000000000fe99 [...].

prices, trading positions, secondary-market bids and offers and recent trading and coordinate to try to move the market.<sup>511</sup>

- (294) On **9 September 2010**, a trader of RBS ([...]) adds another colleague ([...]) to the DBAC chatroom, at that time still operational under the name CODS & CHIPS.<sup>512</sup> At 14:39, he asks the other members in the chatroom: *'you guys mind if I put [...] on this chat?'*. The UBS trader ([...]) reacts: *'course not' [...]* *'who.?'*. The RBS trader explains: *'he's a very honest guy' [...]* *'he's the guy working w me on longs'*. The UBS trader agrees: *'yea add him on'*. The new trader is added and the RBS trader explains to him: *'[...] these are a couple guys in the market that work on 30yrs' 'we just try to help each other when we can'*. The new member says: *'hi, chrs for the invite'*. At the request of the UBS trader, the name of the chatroom is changed at 15:02: *'we need a new header' 'really guys' 'don't we cods and chips for ages' 'gotta think of an idea first' 'yup' 'dbac' 'there you go'*.
- (295) A similar relevant contact between traders of RBS ([...]), UBS ([...]) and WestLB ([...]) in DBAC took place on **10 September 2010**.<sup>513</sup> Throughout the chat, they discuss their trading positions, secondary-market bids and offers, pricing and recent trading for various EGB. At times, they coordinate their bids and try to move the market.<sup>514</sup>
- (296) Similar relevant contacts between traders of RBS ([...] and [...]), UBS ([...]) and WestLB ([...]) in DBAC took place on **27 September 2010** and **6 October 2010** as regards various bonds, including Austrian, Belgian and Italian.<sup>515</sup> These are further examples of communications where the traders exchange information on their bids ahead of the forthcoming auction, including on mid-prices and their actions on the secondary market.<sup>516</sup>
- (297) On **7 October 2010**, traders of RBS ([...],[...]), UBS ([...]) and WestLB ([...]) discuss in the DBAC chatroom an upcoming French auction.<sup>517</sup> This communication is an example of the traders trying to secure the desired allocation of bonds by exchanging information on their bids, positions and strategy ahead of the auction.<sup>518</sup> They disclose to each other their intended bid levels, mid-prices and volumes in the run up to the auction. For instance, at 06:27, the UBS trader says: *'so looking at [an overbid in the region of] that +12 +14'* and the RBS trader ([...]) joins in: *'how many you looking for?' 'im short 100m' 'might go for 200m'*. The UBS trader discloses that he is also short and that he will go for: *'prob 150 200'*, adding: *'so if we sort of near each other'*. The RBS trader replies *'defo 150 here most likely 200'*. The UBS trader then asks the RBS trader what he thinks of overbidding: *'+12 +14 gets it'* and the RBS trader agrees: *'should do' 'i mean i think they do 4-5 10s, 2-3 26s and <1 bln 29s'* [I think they will auction 4-5 billion for the 10yr bond, 2-3 billion for the bond maturing in 2026 and less than 1 billion for the bond maturing in

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<sup>511</sup> See the overview of anticompetitive communications in Annex 1. [...]

<sup>512</sup> PCHAT-0x000000000000fe99 [...].

<sup>513</sup> PCHAT-0x000000000000fe99 [...].

<sup>514</sup> See the overview of anticompetitive communications in Annex 1. [...]

<sup>515</sup> PCHAT-0x000000000000fe99 [...].

<sup>516</sup> See the overview of anticompetitive communications in Annex 1. [...]

<sup>517</sup> PCHAT-0x000000000000fe99 [...].

<sup>518</sup> [...]

2029]. The UBS trader then shares *'i am putting low bid in for 25mm 29s'*. A bit later, at 06:41, the UBS trader suggests that both UBS and RBS should account for a volume that could influence the outcome of the auction: *'if we 350 to 400mm should have a influence'*. Throughout the chat, the participants disclose their mid-prices and discuss the outcome of the auction. At 08:17, the other trader of RBS ([...]) says: *'hi for the 10yrs were thinking 6 cents overbidding, what you guys thinking pls?'*. The UBS trader replies: *'+ 6+7' 'yes' '26 28 mid 79/80' 'just goto hit at 20'*. The first trader of RBS ([...]) adds: *'these 29s might come a bit high no?'*. The UBS trader answers: *'yes small line' 'wat mid 26s now' '20 76/7' 'OR THAT 2 HIGH'*. The RBS trader says: *'that sounds at right got 18 here'*. The UBS trader discloses: *'70-71 12' 'WHAT MID [...]' '10 70-71'*. The RBS trader replies: *'13' 'bid 20' 'u?'*. The UBS trader says: *'20 22' 's[hould] be ok'*. After the auction, the RBS trader ([...]) concludes: *'low prints' 'well done everyone' 'got 29s at 53 for my order as well' 'bnp 600m 29s' 'no one else wanted them' 'looking at grib' 'that is sh!t' 'oh just realized they only filled him in 600 of an 800 order'*.

(298) On **13 October 2010**, traders of RBS ([...]) and UBS ([...]) exchange in DBAC<sup>519</sup>, among other things, information on their intended trading strategies and volumes in the run up to an Italian auction for the next day.<sup>520</sup> The WestLB trader ([...]) does not actively take part in the discussions on that day but he notes at one point (06:21) *'well done everybody'*. The participants disclose to each other their positions and strategies. At 14:52, the RBS trader ([...]) announces: *'i am going to be bidding these Italy tomorrow'*. The UBS trader confirms and asks for clarification: *'same' 'bidding them up u mean' 'or bidding them'*. The RBS trader clarifies: *'bidding em up'*. The UBS trader agrees: *'yea same' 'snow'*. The RBS trader is happy they work together: *'we will create bidding frenzy!'* and the UBS trader confirms: *'on them' 'yup'*.

(299) On **14 October 2010**, the day of the Italian auction, the traders of RBS ([...], [...]), UBS ([...]) and WestLB ([...]) exchange in DBAC<sup>521</sup> further information on their submitted bids and overbidding and discuss the outcome of the auction.<sup>522</sup> At 07:00, a RBS trader ([...]) discloses: *'i got orders last night' 'i will be short unless i buy before'*. The UBS trader asks: *'i ll call' 'is that u' '1mm'* and the RBS trader confirms: *'yup'*. The UBS trader discloses: *'my bid at 45' 'and in 25s' '55'*. The RBS trader says: *'i'm not the only guy bidding for what is worth'*. The UBS trader agrees: *'iam there as well' 'just got hit in 20mm slider [Dutch EGB] 42s'*. The RBS trader offers: *'can take some v bund 40s if that suits'*, but the UBS trader declines: *'actually was shoer 37s so ok'*. After the auction, the traders comment on how they performed at the auction. At 10:18, the RBS trader says: *'am outright short italy now in backbook'* and the UBS trader comments: *'someone must of bid very high' 'i gues with off tye runs it don't count against' 'you' 'say can you buy bigger size?'*. The RBS trader answers: *'i think cant buy bigger' 'we did 80 and 50'*. The UBS trader says: *'maybe its the over bidding don t matter'*. The RBS trader adds: *'and even overbid high for 60 and then lower for 20 in the 80m bid' 'thats why i was surprized you missed' 'someone must have bid gfor more'*. The UBS trader concludes: *'yup' 'but I had 40 mid' 'was lifting 40s going into it'*.

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<sup>519</sup> PCHAT-0x000000000000fe99 [...]. Another RBS trader ([...]) is also in the chat.

<sup>520</sup> [...]

<sup>521</sup> PCHAT-0x000000000000fe99 [...],[...] remains silent in this chat.

<sup>522</sup> [...]

- (300) On **26 October 2010**, between 14:49 and 15:01, the traders of RBS ([...]), UBS ([...]) and WestLB ([...]) discuss strategies to flatten the curve.<sup>523</sup> Before, at 06:50, the DBAC traders also discuss whether they should allow into their chatroom the former RBS trader ([...]) who has recently changed to another bank and has completed his garden leave.<sup>524</sup> Taking into account that his new employer did not yet have an EGB desk and he was unable to trade<sup>525</sup>, the DBAC traders see no real need to add him in DBAC as they can give him information via the other CODS & CHIPS chatroom: *'figured no real reason to add [...] here' 'as he was never on/ wont even have a trading system til march or so/ just wanted a bit of color so will put some stuff on other chat as well'*. The former RBS trader is then added to the CODS & CHIPS chatroom (PCHAT-0x0000000000001ac2)<sup>526</sup> that soon after changed name into '6 SAUSAGES 2 EGGS' (on 28 October 2010).
- (301) On **2 November 2010**, traders of RBS ([...], [...]), UBS ([...]) and WestLB ([...]) discuss in the DBAC chatroom EGB trading in Finland, Austria, Germany, and Spain throughout the day.<sup>527</sup> They discuss secondary trading and at times the traders exchange sensitive information.<sup>528</sup> The communication reveals for instance that RBS attempts to 'pull' (withdraw) an offer for a German bond to do UBS a favour. At 10:09, the UBS trader says: *'bund' 'not much else going through'*. The RBS trader ([...]) adds: *'going to be bidding some longs' 'in belly' '31s' 'my offer'*. The UBS trader says: *'FUK iam long those' 'many'*. The RBS trader offers: *'oh shit' 'sotty I will pull my offer' '50m'*. The UBS trader says: *'bid em afterwards'*.
- (302) On **4 November 2010**, traders of RBS ([...]), UBS ([...]) discuss in the DBAC chatroom bidding strategies ahead of a French EGB auction (OAT) with various maturities, including 23s, 55s and 60s.<sup>529</sup> The WestLB trader ([...]) is present in the chat but does not provide input in the discussion regarding the French bond. Throughout the chat, the participants discuss their bids and overbidding levels.<sup>530</sup> For instance, the UBS trader asks what the level for the previous French EGB auction (OAT23) was: *'how far the last 23s come up'*. He then adds that the right bid level for the auction is +12 + 14: *'think + 12 + 14' 'gonna just buy 50mm'*. The RBS trader replies: *'bidding abt 50 longs here' 'assorted' [...]*<sup>531</sup> *'bidding same as you for 23s' 'what u guys doing for the 60s?'*. The UBS trader discloses that for the French auction OAT60s: *'15 + 20 or that 2 much'*. The RBS trader equally discloses: *'15 + 20 or that 2 much same' 'top bid maybe a bit higher' 'but think risk this thing tails'*. The UBS trader asks for the mid-price for OAT23s in the secondary market: *'what mid 23s' '78 79/8'*. The RBS trader discloses: *'76 72/3' 'we too high tho' 'would guess 70ish' '?'*. The UBS trader discloses in return: *'86' '66'*. The RBS trader asks for the mid-price for OAT60s: *'where u got 60s?' 'and agree the 23s'*. The UBS trader discloses: *'65'*. Closer to the auction, at 09:48, the UBS trader updates his bid levels for OAT23s: *'77 78 MY BID 23S...78/9'*. After the auction, they give each other feedback. The RBS trader says: *'fuk worried abt these 60s'*. The UBS trader

<sup>523</sup> [...]

<sup>524</sup> PCHAT-0x000000000000fe99 [...].

<sup>525</sup> See in this respect, the chat of 10 of December 2010, PCHAT-0x0000000000001ac2 [...].

<sup>526</sup> PCHAT-0x0000000000001ac2 [...].

<sup>527</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>529</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>531</sup> [...], RBS employee.

asks: *'what u bid'* (for OAT60s) and the RBS trader reveals: *'116 & 115.85' 'u?'*. The UBS trader says: *'87 top' 'wat about 23s'*. The RBS trader says: *'85'* (for OAT23s). The UBS trader comments: *'u guys bid up'*. The RBS trader agrees: *'[...] did that' 'for 60s yeah i wanted to make sure i got risk in'*. The UBS trader comments: *'75 and 75' 'gave a lot as well' 'ouch'*. The RBS trader concludes: *'stupid fuking trade took me long 600 lots from 76 just got risk in now'*, indicating he has a long position in bonds that he needs to sell. The WestLB trader comments: *'shite'*.

- (303) Similar relevant contacts between traders of RBS ([...]) and [...]), UBS ([...]) and WestLB ([...]) in DBAC took place on **17 November 2010** and **30 November 2010** as regards various bonds with different maturities.<sup>532</sup> These are further examples of communications where the traders exchange sensitive information, including mid-prices and spreads, when trading EGB on the secondary market, in relation to specific counterparties and to protect each other.<sup>533</sup>
- (304) On **2 December 2010**, traders of RBS ([...]), UBS ([...]) and WestLB ([...]) exchange information in the DBAC chatroom.<sup>534</sup> There is coordination ahead of a Spanish auction, also on the secondary market, when the traders check their mid-prices, overbidding, volumes, submitted bids and discuss the outcome of the auction.<sup>535</sup> For instance, at 09:13, the WestLB trader says: *'spain 3yrs have rallied 40bp in last 2 days into this supply' 'everyone will take the supply and if trichet doesnt say somehting periph bullish its gonna be horrible this afternoon'*. The RBS trader discloses: *'lifted 25 spain on tv' 'kind of happy to lose em what we thinking overbidding in these 25s?'*. The UBS trader adds: *'iam going + 14 for 25mm' '58/9 wat mid we got'*. The WestLB trader asks: *'not being silly but why do u guys want to over bid?' 'lift the screens and buy nowt in the taps' 'native i know'*. The RBS trader explains: *'my mid is like offer side of screen' 'just below'*. The traders do not hesitate to coordinate their bids ahead of the auction. The UBS trader asks: *'46/7 what u got'*. The RBS trader discloses and asks: *'got 80 x 49' 'u?'*. The UBS trader replies: *'70'*. The RBS trader comments: *'i seem igh' 'prob just going to go 10 cents above screen' 'if i get them i get them if not not too bothered' 'going for 50m now'*. The UBS trader discloses: *'gonna bid 73' '72' '70'*. Afterwards, the RBS trader says: *'paid 59 in end'*. The UBS trader discloses: *'66' '55 64 ave'*. The RBS trader asks: *'where u have mid going in?'*. The UBS trader reveals: *'i used 50'*. The RBS trader asks: *'50 mid?'*. The UBS trader says: *'but think it was 2 high'*. The RBS trader acknowledges: *'yeah i had low 40s'* and the trader of UBS confirms: *'yup i was 2 high...but strong' 'tap' '44 or 46' 'i guess was right mid'*. The RBS trader concludes: *'we got it at least' 'so thats ok'*. The UBS trader reveals: *'used 48' 'in the end'*. The RBS trader comments: *'served a fair amount of 25s'* and the UBS trader explains: *'run out of time to put loer bid'*.
- (305) A similar relevant contact took place on **6 January 2011** in DBAC.<sup>536</sup> The traders of RBS and UBS exchange information on mid-prices, volumes, bids and overbidding

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<sup>532</sup> PCHAT-0x000000000000fe99 [...].

<sup>533</sup> See the overview of anticompetitive communications in Annex 1. [...]

<sup>534</sup> PCHAT-0x000000000000fe99 [...].

<sup>535</sup> [...]

<sup>536</sup> PCHAT-0x000000000000fe99 [...].

ahead of a Belgian OLOs auction, as well as discussing the outcome of the auction.<sup>537</sup>

- (306) On **17 January 2011**, the CODS & CHIPS chatroom, then named ‘6 SAUSAGES 2 EGGS’, is renamed to ‘6 SAUSAGES’.<sup>538</sup>
- (307) On **18 January 2011**, a trader of Nomura ([...]), who was at RBS and in DBAC and CODS & CHIPS before, receives renewed access to both chatrooms. All day, traders of RBS ([...]), UBS ([...] and [...]), WestLB ([...]) and Nomura ([...] – after being added) exchange sensitive information in DBAC and CODS & CHIPS.<sup>539</sup> They discuss various topics, including trading positions, mid-prices and curves and the chatrooms are used interchangeably. [...] the traders exchanged potentially sensitive information while this communication provides useful context regarding specific permanent chatrooms and the relationship among the traders.<sup>540</sup> For instance, at 08:17 the traders discuss in CODS & CHIPS an upcoming Belgium syndication for which RBS has been appointed duration manager.<sup>541</sup> Later, at 13:59, the WestLB trader asks again, now in DBAC, about the Belgian syndication earlier discussed in CODS & CHIPS: *‘this belg gonna be price later today right?’* which is confirmed by the RBS trader: *‘but wont be anytime soon’*. At 15:23 the WestLB trader asks again, this time in CODS & CHIPS, when the Belgian syndication is likely to price<sup>542</sup>: *‘any news on when belg prices?’*, and the RBS trader confirms that: *‘allocations not even out will be shortly’*. At 15:27 the UBS trader ([...]) informs the others: *‘allocations out... pricing just after’*. When the WestLB trader asks again, at 16:12: *‘any time slooted for the Belgium pxx yet?’* (this time in DBAC), the RBS trader ([...]) confirms that it has: *‘priced’* and apologises for the delay as he was: *‘off desk’*. Another example of the interchangeability between the chatrooms is the discussion between 14:28 and 14:31 in DBAC where the WestLB trader agrees with the UBS trader to give a trade to a certain broker. Subsequently, at 14:41, the UBS trader asks the WestLB trader, this time in CODS & CHIPS, if he has given that trade to that broker. The exchanges of that day in CODS & CHIPS and DBAC also contain relevant explanations on the context of the participation to the various chatrooms. The existence of two chatrooms is not kept a secret for the participants and it is acknowledged that participation depends on the reciprocal exchange of sensitive information that can assist the traders in their trading strategies. For instance, at 14:25, in CODS & CHIPS, the UBS trader ([...]) mentions that: [...], namely the former RBS trader ([...]) who has moved to Nomura is active again on Bloomberg and asks the RBS trader ([...]) if he is going to invite him to CODS & CHIPS. The RBS trader replies: *‘ok’* and invites the Nomura trader at 14:28 into CODS & CHIPS. Since the Nomura trader used to be a member of DBAC as well, he asks whether the traders still have another chatroom: *‘dont we have a separate one form the septics [the Americans]<sup>543</sup>? at least we see some flow :-)’*. The UBS trader confirms *‘we got a secret one’*. They then continue to joke back-and-forth for several

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<sup>537</sup> See the overview of anticompetitive communications in Annex 1.  
[...]

<sup>538</sup> See Table 3 in recital (89).

<sup>539</sup> PCHAT-0x0000000000001ac2 [...].

PCHAT-0x000000000000fe99 [...].

<sup>540</sup> The relevance of these contacts is explained by [...].

<sup>541</sup> For the role of the duration manager, see recitals (254) and (259).

<sup>542</sup> See recitals (33), (527) and (528).

<sup>543</sup> [...]: ‘septics’ is slang for Americans (“septic tanks”, i.e. “Yanks”).

minutes and the discussion is continued in DBAC. At 14:44, the UBS trader asks in DBAC: *'what chat we gonna use for trades this 1?'* to which the WestLB trader responds: *'prob easier'*. This leads the RBS trader to also add the Nomura trader to the DBAC chatroom at 14:48. A few minutes later, the UBS trader writes: *'bidding 25mm july 28s'*. The Nomura trader replies: *'fuk me even we saw that'* and the WestLB trader adds: *'i just got hit in 20m jan 20s from nomura [Nomura] on bbg [Bloomberg]'*. The RBS trader writes: *'so then make yourself useful and put it on the chat' 'you not on for free' '6 sausage chat is for freeloaders'*. They continue to joke on this statement whereby the UBS trader confirms: *'gossip chat 6 sausages'* (at this time the CODS & CHIPS chatroom had the name *'6 SAUSAGES'*).

- (308) On **25 January 2011**, traders of RBS ([...], [...]), UBS ([...]), WestLB ([...]) and Nomura ([...]) comment in the DBAC chatroom and discuss their positions, secondary-market pricing, bids, and recent trading in Austrian, French, German, Dutch, and Spanish EGB.<sup>544</sup> For instance, starting at 08:30, the WestLB trader informs the others about his bid: *'my bid jul39s in [...]' 'im looking for 5m only' [...]* [broker at Tullett Prebon,] *hit me at 85 at the same time someone lifted 89 on btec [BrokerTec, a broker] in 39s' 'doh'*. The RBS trader ([...]) replies: *'move curve to 52 fuk knows'*, meaning he adjusted his prices on the German 10 year and 30 year bonds so that the yield spread between the two bonds is equal to 0.52%. The WestLB trader confirms that level and discloses his strategy of not going short on the 30 year German bonds. He also comments on the spread between the German 2040 and 2042 bonds: *'got 52 also' 'feels like it should be steeper' 'but i aint gonna short 30yrs ahead of a 2bl tap' 'think thats why 42/40s also stuck at 3.5'*. The Nomura trader adds jokingly: *'all scared [...] going to buy em all'*. At 11:20, the WestLB trader reports: *'my bid jan 30s and jul 39s in [...]*, disclosing that the bid prices at Tullett Prebon are his. The Nomura trader then compares his pricing of a series of German bonds with the WestLB trader. He first asks: *'wat u got 5-10 on day [based on your pricing, how did the yield spread between the German 5 year and 10 year evolve today]?' to which the WestLB trader replies: '-0.5bp'. The Nomura trader informs that he actually has that spread 'steeper' [the spread derived from his prices increased], but the WestLB trader prices both bonds differently: 'not on where i fixed it last night' to which the Nomura trader replies: 'ok cool just checking systems'. The WestLB trader asks: 'u have + instead of -?' 'or do u have a Japanese keyboard' 'that could b tricky' and the Nomura trader replies: 'jap board' and asks '10-30 1 bp steeper [based on my pricing, the yield spread between the German 10 year and 30 year increased by 1bp. Does this make sense to you]?', again checking his own pricing with the help of the WestLB trader without any intention to trade. The WestLB trader reveals: *'0.8 i got' 'but im high in the cash'*. The Nomura trader inquires: *'2-10 2 flatter last question [based on my pricing, the yield spread between the German 2 year and 10 year decreased by 2bp. Do you have the same decrease?]', to which the WestLB trader replies: '1.5'*.<sup>545</sup>*
- (309) On **26 January 2011**, traders of RBS ([...]), UBS ([...]), WestLB ([...]) and Nomura ([...]) discuss in the DBAC chatroom.<sup>546</sup> They exchange information about their bidding strategies, including disclosure of mid-prices, overbidding and volumes

<sup>544</sup> PCHAT-0x000000000000fe99 [...].

<sup>545</sup> [...] in this communication there is potential coordination between traders of auction bids, exchanges of information regarding mid-prices between traders and traders disclosing potentially sensitive information.

<sup>546</sup> PCHAT-0x000000000000fe99 [...].

ahead of a (possibly) German auction. [...] the object of this exchange was to ascertain what each party's bidding strategy was for the upcoming auction, in order to try to secure a desired allocation of bonds from the auction.<sup>547</sup> For instance, from 07:16, the UBS trader and WestLB trader begin sharing their views on the best strategy and likely outcomes for that day's auction. The UBS trader announces that: *'the big day has arrived'*. The WestLB trader immediately suggests to coordinate: *'so' 'what do we think' 'eonia fixings very high again'*. In reply, the UBS trader reveals his idea: *'to be honest think i want to be short longs...coming out of' 'it' 'my only worry' 'is someone gets large order' 'and we get squeezed for few days'*. The WestLB trader reveals his strategy: *'only way to protect against it is bid at the average'*, which is confirmed by the UBS trader: *'yup'*. The WestLB trader gives his view: *'think in terms of allocations worst case in a large order is 50% today' 'but with no order could get 100% easily and watch it tank' 'and u have no control over the price either'*. The UBS trader confirms: *'no tricky I'*. The WestLB trader then continues: *'guess we wait and see how 30yr opens up but feels to me the safest way to play this auction is to take the whole thing' ':-D'*. The Nomura trader gives support: *'go for it make or break year'* and the UBS trader refers to its bid placed in the secondary market: *'bid 25 mm july 28s'*. The WestLB trader informs that: *'the LTRO [Long Term Refinancing Operation<sup>548</sup>] comes out 15 mins after the tap' 'curve could move sharply after that too'*. The Nomura trader says: *'we just seen that seller in jul 28'*, to which the WestLB trader replies: *'that's a shite bond'*. The Nomura trader inquires: *'do u get more ranking for bidding longs?'* and the RBS trader confirms: *'yeah'*. The UBS trader asks: *'we ve got the seller of 28s ranked as a spiv<sup>549</sup>'* and his question is answered by Nomura: *'yep'*. The RBS trader reveals: *'should've kept that short in those btp31 yday'* and the Nomura trader asks *'is it a bit obvious just sell the market around 10-20 for auction?'* to which the WestLB trader answers: *'mkt feels very lacklustre today so prob not'*.

- (310) Still concerning the same auction, from 09:18, the traders in the chatroom exchange first their intended bid prices (by expressing first their mid-prices and second the planned level of overbidding) and then their intended volumes. The RBS trader asks: *'what we thinking abt bidding if if were here?'*. The WestLB trader replies: *'i got 90 mid here' 'would bid 14-15'*. The RBS trader confirms: *'same'* and the trader of West LB adds: *'and then at avg'*. The UBS trader concludes: *'so +5' 'ish' 'we got on orders' 'so far'*. The RBS trader says: *'I got one small order'*. The traders exchange their volumes: UBS: *'think we going for 130mm' 'ish'*; RBS: *'going to 85-100...just 5%'*; WestLB: *'50m ish here'*. The Nomura trader adds: *'naughtish here firm'* informing the others that Nomura is not planning on bidding at the relevant auction. From 09:53, the participants check their volumes and bid levels right up until two minutes before the auction closes. The UBS trader says: *'we got 130 mm non comp 84 bid price' 'for small' 'will lower'*. The WestLB trader adds: *'50 non comp...78 for 10'*. The UBS trader updates: *'78 same now'* and the RBS trader states: *'70 mid' 'am i low'*. The WestLB trader updates: *'74'*. The Nomura trader wishes them: *'good luck'*. The WestLB trader states: *'76 and avg i went'*. The UBS trader asks: *'74 mid' '?' 'agreed'* and the RBS trader confirms: *'yes 74 mid'*, for which the UBS trader

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<sup>547</sup> [...]

<sup>548</sup> The long term refinancing operation (LTRO) is a cheap loan scheme for European banks that was announced by the European Central Bank (ECB) in a bid to help ease the eurozone crisis.

<sup>549</sup> See footnote 124.

thanks him: *'ta'*. Immediately thereafter, they discuss the results of the auction, which appear unsatisfactory. The Nomura trader calls it a: *'shit auction'*.

- (311) On **2 February 2011**, the CODS & CHIPS chatroom is renamed several times and eventually named CODS & CHIPS again.<sup>550</sup>
- (312) On **3 February 2011**, traders of RBS ([...], [...]), UBS ([...]), WestLB ([...]) and Nomura ([...]) discuss an upcoming French auction in the DBAC chatroom.<sup>551</sup> They exchange information on mid-prices, overbidding, bids and volumes ahead of an auction, as well as discussing the results.<sup>552</sup> For instance, at 09:16, the UBS trader asks the other traders what mid they have for the OAT 23s on auction that day: *'what mid 23 france chaps' '49 81.2'*. The traders of WestLB, Nomura and RBS ([...]) immediately reply: *'45': '48': '43'* respectively. The Nomura trader then inquires on the level of overbidding: *'wat do u have to overpay for oat'*. The UBS trader replies with an estimate of: *'+ 8 >?'* (above the mid), whilst one trader of RBS ([...]) does not know yet: *'dunno' 'one sec'*. Another trader of RBS ([...]) provides his estimation based on past experience: *'not sure, normally when france widens into auction gotta bid 12yrs 10-15 cents higher, though last time the 26s were 3 cents, though no concession and they issued more than expected'*. The Nomura trader is grateful for this information: *'ta'*. Closer to the auction, at 09:41 and 09:42, the UBS trader updates the others of its bidding intentions: *'with 4 mid' 'iam probally gonna bid 56 for 100' '23s' '44'*, and the RBS trader ([...]) considers this a safe bid: *'yeah think that should be a safe bid here'*. From 09:46 until 09:50, the traders reveal their intended bidding levels, UBS: *'56 at the moment'*, Nomura: *'54 here' '52'* and RBS: *'53'* and at 09:59 the UBS trader concludes: *'54' 'final' 'nicely grouped we was'*.
- (313) On **11 February 2011**, at 16:29, in the CODS & CHIPS chatroom, a trader of RBS ([...]) copies from the DBAC chatroom a conversation he had there with the WestLB trader ([...]) and shares it with the other CODS & CHIPS traders.<sup>553</sup>
- (314) On **14 February 2011**, traders of RBS ([...]), UBS ([...]), Nomura ([...]) and WestLB ([...]) discuss in DBAC the Italian auction for 5 year and 30 year maturities of that day.<sup>554</sup> Before the auction, the traders coordinate their auction bids and check their mid-prices.<sup>555</sup> Thus, at 08:03, the RBS trader inquires: *'any thoughts on the italy auction?'*. The Nomura trader replies: *'just always goes ok doesnt it wont cheapen up i dont think before' 'that said btps trade cheaper'*. The UBS trader adds: *'whats ur guys think about the 5 yrs' 'btps'*<sup>556</sup>. The RBS trader has: *'no idea'*, but the Nomura trader states that: *'he thinks its cheap with the bonds about it'*, for which view the UBS trader says: *'ok thanks'*. The discussion continues on the overbidding. The RBS trader inquires: *'how much u thinking about over bidding on the 40s? 25*

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<sup>550</sup> See Table 3 in recital (89).

<sup>551</sup> PCHAT-0x000000000000fe99 [...].

<sup>552</sup> [...] the traders exchanged information on mid-prices, overbidding, bid-prices and volumes ahead of an auction as well as discussing the outcome of the auction. [...] the object of the exchange was to ascertain what each party's bidding strategy was for the forthcoming auction, in order to try to secure a desired allocation of bonds from the auction.

<sup>553</sup> PCHAT-0x0000000000001ac2 [...].

In that conversation, the WestLB trader ([...]) complained about ICAP: *'10:03:24 [...]: such stupid diks 10:06:58 [...]: who? 10:07:09 icap'*.

<sup>554</sup> PCHAT-0x000000000000fe99 [...].[...] of RBS also participates, but only enters the chatrooms at 17:22.

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

<sup>556</sup> For BTPS, see Table 1 in recital (5).

*cents?*'. The UBS trader replies: *'yes' 'bang on can uu ask ur 5 yr guys what they over bidding'*. The Nomura trader informs: *'10'*, for which the UBS trader is grateful: *'ta'*. The RBS trader confirms: *'yeah think around the same here, their not 100% sure yet'* *'[...], [...] what u guys over bidding on these longs pls'*. The WestLB trader informs: *'we r not involved'*. The traders of UBS indicates: *'25'* and the Nomura trader indicates: *'22 they saying'*. The RBS trader is content: *'cheers'*. The UBS trader updates: *'26 was our top bid' 'and 59 in 5 yrs'*. The trader or RBS says *'we bid 25'*. All day long, they also discuss the trading of various EGB on the secondary market. They exchange trading positions, secondary-market bids and offers, and recent trading. Thus, at 11:17, the UBS trader asks: *'04 81zx' 'what mid we got july 28s'*. The RBS trader replies: *'98' 'GFI [a broker] got 96/02 x81'* and the UBS trader confirms: *'yup it s my offer' 'solfd thwm [sold them] at 97 Six'*. The RBS trader acknowledges: *'yeah thats about mid'*. When the WestLB trader asks: *'why is the mkt rallying today?' 'any ideas?' 'it is v dull'*, the RBS trader tells him that it is because: *'this irish mumble, though that came out a while ago' 'small swapped issuance this pm'*. The WestLB trader acknowledges: *'ah guess that makes sense'*. The exchange of views continues. The RBS trader says: *'tho reckon we just ranging, selling some here to buy 34, gap from friday'*. The WestLB trader comments: *'volumes r pathetic' 'cant get anything done in the bookies either'*. The Nomura trader asks *'whats getting swapped'* and the WestLB trader concludes: *'all useless'*.

- (315) In the afternoon, the discussion relates to the trading of a French bond on the secondary market. At 13:01, the RBS trader informs: *'bidding 10m of the frtr<sup>557</sup> 10/32 with GFI at 05 x 79' 'dealt at 10'* (the RBS trader put an anonymous bid price of 05 on the GFI broker screen to buy 10 million of a French EGB maturing in 2032 when the bund futures taken as reference was trading at 79. The bond eventually traded at a price of 10). The UBS trader thanks him for the information: *'ta'*. Later in the afternoon, at 15:04, the trader of RBS asks the others if they have: *'any thoughts on the curve?'*. The UBS trader informs: *'got flattening bias'* and the Nomura trader adds: *'think might go bit steeper and then flatten hard to be honest once supply gone'*. The RBS trader is grateful for these views: *'chrs'*. The UBS trader discloses his position: *'bid 40mm july 28s'*, for which the WestLB trader thanks him: *'ta'*. The RBS trader asks: *'where u got the curve? 55.25 sound ok'* and the UBS trader gives him the requested information: *'55.5'*.
- (316) On **17 February 2011**, traders of RBS ([...]), UBS ([...]) and Nomura ([...]) discuss in the DBAC chatroom their overbidding levels for Spanish bonds.<sup>558</sup> They coordinate their auction bids and check their mid-prices.<sup>559</sup> At 07:50 the RBS trader asks: *'what we thinking about overbidding on this spain?'* and the UBS trader replies: *'we not primary' 'not sure how they come'*. The Nomura trader adds: *'we normally do a bp appearently here from the mid'* and the RBS trader confirms: *'cheers, we are thinking he same, 15-20 cents'*. Later, in the afternoon, they check their mids for a German EGB on the secondary market. At 16:44, the RBS trader asks: *'Where u got your mid on the jul 28s dbr?'*. The RBS trader gives him this information: *'113.08'* and the Nomura trader adds: *'21#'*. The RBS trader is content: *'great thanks, prices crashed, offering 12m'*.

<sup>557</sup> For FRTR, see Table 1 in recital (5).

<sup>558</sup> PCHAT-0x000000000000fe99 [...].

The trader of WestLB ([...]) has access but is not actively participating in this discussion on a Spanish bond.

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

- (317) On **25 February 2011**, traders of RBS ([...]), UBS ([...]), Nomura ([...]) and WestLB ([...]) discuss in the DBAC chatroom an upcoming Italian auction maturing in 2021.<sup>560</sup> The participants disclose their overbidding levels.<sup>561</sup> Later, at 09:19, the UBS trader asks: ‘[...] *how much over bidding in the 10 yr btps u guys*’ and the Nomura trader replies: ‘*2bps*’. Later, at 10:30, the WestLB trader says: ‘*26s*’ and the UBS trader states: ‘*7 cents over*’ ‘*had 26 midd in 21s*’ ‘*so we got no longs again*’.
- (318) On **28 February 2011**, traders of UBS ([...]), Nomura ([...]) and RBS ([...]) discuss in the DBAC chatroom a Belgian auction that will take place at 11:00.<sup>562</sup> Before, at 10:45, the UBS trader inquires its competitors on their level of overbidding: ‘*what u over bidding in 10 yrs*’. The Nomura trader discloses: ‘*15*’. At 10:46, the UBS trader asks again: ‘*ta wat u overbidding 10s* [...]’, to which the RBS trader replies: ‘*think like the same 15 area*’. The UBS trader discloses: ‘*ok we a bit lower*’.<sup>563</sup>
- (319) On **3 March 2011**, there was an auction for French EGB. As from 07:44, traders of UBS ([...]), RBS ([...]), Nomura ([...]) and WestLB ([...]) exchange their views on the auction in DBAC.<sup>564</sup> The Nomura trader recommends: ‘*do yourself as favour buy it beforehand its going to tighten they will be in buying it today*’, to which the UBS trader replies: ‘*iam not short france*’ ‘*gonna see if get any orders*’ ‘*down here*’. The Nomura trader reminds him that there is a: ‘*danger clients buy it before*’. The WestLB trader adds that: ‘*jan21 s trading quite high on basis v early in size*’ ‘*someone lost paper to asia no doubt*’. The RBS trader then informs that he: ‘*offered 20 29s france*’, for which the WestLB trader thanks him: ‘*ta*’. A bit later, the UBS trader asks RBS: ‘*what u over paying 26s* [...]’ to which the RBS trader replies that he is: ‘*not really going fior 26s*’ ‘*seen no demand*’ ‘*seen more demand in 10s etc*’. The UBS trader confirms: ‘*last 2 been pretty poor*’ ‘*in 15 yrs*’. The WestLB trader adds: ‘*offered 100m 10/20s vs 4/20 oats*’. A bit later, the UBS trader asks: ‘*what u reckon 26s clear*’ ‘*near the offer*’. The RBS trader replies that he: ‘*cant see much higher*’. The Nomura trader discloses: ‘*we going plus 5 for those I hear*’. That leads the UBS trader to ask: ‘*what mid we got*’ and he discloses his own mid-price: ‘*26s 61 59/60*’. The RBS trader informs that: ‘*we close to offer*’ and the Nomura trader informs that the market is heading downwards: ‘*by the way everyone bearish*<sup>565</sup> ‘*round here now*’. Eventually, the UBS trader reports that he: ‘*got 100mm*’ ‘*missed the other by a thick*’. The WestLB trader comments: ‘*good shout* [...]’.
- (320) On **5 April 2011**, traders of UBS ([...], [...]), RBS ([...]), Nomura ([...]), WestLB ([...]) and [...] discuss a German tap (schatz tap) in the CODS & CHIPS chatroom.<sup>566</sup> Throughout, they discuss trading positions, secondary market bids and offers, pricing, mid-prices and recent trading.<sup>567</sup> Thus, at 13:24, one trader says: ‘*i think schatz might squeeze into thursday but then you wanna be short for the press conference*’ and the WestLB trader replies that there is a German tap the next day: ‘*we get schatz tap tom[orrow] also*’. Upon the recommendation ‘*defo squeeze then*’,

<sup>560</sup> PCHAT-0x000000000000fe99 [...].

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

<sup>562</sup> PCHAT-0x000000000000fe99 [...]. The trader of WestLB ([...]) is a participant, but does not take part in the discussions.

<sup>563</sup> [...]

<sup>564</sup> PCHAT-0x000000000000fe99 [...].

<sup>565</sup> A trader is bearish if he thinks the market is experiencing a downward trend and will try to profit from this decline. To take a bearish position, traders usually short sell.

<sup>566</sup> PCHAT-0x0000000000001ac2 [...].

<sup>567</sup> [...]

the WestLB trader confirms: *'yep'*. The RBS trader says he: *'offered 50m oct 23s'* and asks: *'where were you offer those' '92/3'*. The UBS trader says: *'44'*, to which the RBS trader says he: *'offered 42'*. The UBS trader agrees: *'seems fair'*. Later, starting at 15:28, the group discusses recent offers for French and German bonds and exchange their views on the strategy to follow. The UBS trader ([...]) comments that as the French bonds were sold at a low price, the market got short because of high demand: *'EVERYONE SELL FRANCE TO CHEAP GOT FEELING IT SQUEEZES INTO SUPPLY'*, indicating that traders who are short will buy back their bonds at auction and push the price up (*'squeeze into supply'*)<sup>568</sup> to which the Nomura trader replies: *'no way sell france buy finland or austria or olos take a look at that'*.

- (321) On **6 April 2011**, between 09:36 and 09:39, the Nomura trader ([...]) asks in the CODS & CHIPS chatroom if anyone in the group has a document reporting on the demand for the next French auction of 7 April 2011: *'anyone got the grid from who wants what at this next French auction?'*. The trader of RBS ([...]) claims that he: *'actually asked [...] for it yday but he doesnt have where he wrote it anymore'*. The UBS trader ([...]) recollects that: *'no one asked for 23s' 'as far as i know'*. The WestLB trader ([...]) clarifies that: *'they dont give a grid out but everyone writes it down at the meetings'*. The Nomura trader apparently was not at that meeting and presses again: *'u havent got one though have u who wants what'* to which the UBS trader replies: *'nope'*.<sup>569</sup>
- (322) The next day, on **7 April 2011**, between 06:38 and 09:55, RBS ([...]), UBS ([...], [...]), WestLB ([...]), Nomura ([...]) and [...] (another bank) discuss a French auction of OATs in the CODS & CHIPS chatroom.<sup>570</sup> The communication is another example of traders discussing their auction bids, including overbidding.<sup>571</sup> For instance, at 07:07, the RBS trader inquires: *'what we thinking overbidding?'*. The UBS trader replies: *'well last 26s came high' 'after' 'the first 2 only like 6 cents' '23s no idea'*. The Nomura trader asks more specific: *'what do we overbid for oats 10 years'*. [...] discloses his information on the auction: *'I send you my grid for france'*. The Nomura trader thanks him and gives his idea of the overbidding: *'ta...I guess about 6 cents'*. Throughout the communication and until the auction closes, the traders exchange price and volume information. At 07:24, the UBS trader informs: *'france getting bid up into it' 'must be an auction'*. The UBS trader ([...]) replies: *'must be an auction'*. The WestLB trader adds: *'curve steepening up tho' 'easy these longs'*. The UBS trader ([...]) asks: *'what we think we over bidding in 23s and 26s' '[...] [...]' 'what we think' 'all lines' 'if we close' 'should help'*. The trader of Nomura replies: *'8-12 my lads saying'*. At 08:22, the UBS trader ([...]) informs: *'26s I think iam going +8 +10'*. The RBS trader confirms: *'yeah same' 'just one bid though'*. The RBS trader asks: *'paying 93.02 here' 'you?' 'for 26s'*, to which the Nomura trader replies: *'I I think'*. After the auction, they give feedback. At 09:17, the trader of RBS asks: *'anyone get anything?'* The UBS trader replies: *'I never moved my bids down' 'got 100' '26s'* to which the RBS trader comments: *'nice'*.
- (323) On **11 April 2011**, various traders, including from RBS ([...]), UBS ([...] and [...]), Nomura ([...]), and [...] (another bank), discuss in the CODS & CHIPS chatroom

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<sup>568</sup> See also footnote 301.

<sup>569</sup> PCHAT-0x0000000000001ac2 [...]. See also recital (669)-(670)

<sup>570</sup> PCHAT-0x0000000000001ac2 [...].

<sup>571</sup> [...]

what they see on their screens and exchange their views.<sup>572</sup> This information on screen is typically anonymised and aggregated. At 12:57, when the Nomura trader ([...]) asks: *'do u hit with that client [...] so hard'*, the UBS trader ([...]) replies: *'sold the 38s yes' 'also lost some 37s' 'got a feeling we flatten' 'into taps'*. The Nomura trader confirms: *'well I do too but there will be sellers'* and leads the UBS trader to give his views: *'everytime I loke longs it' 'steepens' 'like' 'so maybe u right' 'iam long longs just 25 mil' 'yee got 50mm butlike france 26 and 29s' 'vs 10s' 'rather than ultras' 'btps doing well' 'seen nothing on buyers' 'got btps buy buyers' 'like that'*. A bit later the UBS trader asks: *'where u gita iyt market'*. The Nomura trader answers: *'3.4'*, to which the UBS trader replies: *'shown give 3.1'*.<sup>573</sup>

(324) On **12 April 2011**, the same traders continue the discussion and update each other on their position for an upcoming Dutch auction.<sup>574</sup> At 07:33, the RBS trader inquires: *'anyone bidding for Holland here'*. In reply, a UBS trader ([...]) informs that he is: *'not primary'*. The Nomura trader is also not bidding: *'no'*, but asks the RBS trader to inform him: *'can u let us know first price please[...]*'. The same UBS trader asks if this information is public: *'is there a pag[h]e to see'*, but the RBS trader is *'not sure'*. A bit later, at 08:02, the UBS trader asks: *'is the price set'* and the Nomura trader adds: *'whats the price?'*. The RBS trader informs them: *'95.15'*.

(325) On **13 April 2011**, traders of RBS ([...]), UBS ([...] and [...]), WestLB ([...]), Nomura ([...]) and [...] (another bank) discuss a German tap in the CODS & CHIPS chatroom.<sup>575</sup> They coordinate on the bidding and check their mid-prices. The auction took place at 11:00 and an auction for longer-term bonds occurred the same day. As from 07:56, the traders exchange initial views on where the auction for German bonds maturing in 2042 will clear.<sup>576</sup> At 08:30, the UBS trader asks: *'anyone got any orders'* and the RBS trader replies: *'yes' '10m.'* The UBS trader shares that he has *'same small'* and asks other traders what they think the level of overbidding will be: *'what u reckon +8 +10,'* to which the WestLB trader indicates that he does not have any, and the RBS trader responds: *'prob going to do +12 and +6'*. A few minutes later, the RBS trader asks: *'mid like 73 here?'*. The WestLB trader replies: *'75 i have,'* and the UBS trader responds: *'75 28/9' 'i am bidding from mid,'* and the Nomura trader adds: *'75 v29'*. The UBS trader later clarifies: *'not offer' '+8 +10' 'and no cmp'* to which the RBS trader replies: *'same'*. The RBS trader confirms: *'same' 'it will tail anyways'*. Starting at 08:54, they appear to discuss that auction. The UBS trader says: *'90 88'*. The RBS trader replies: *'w 30/31 got 90/92'*. The UBS trader responds: *'924' '33/4'* and the Nomura trader adds: *'88x33'*, meaning that he will bid 88 cents for the bonds maturing in 2033. The RBS trader notes that he has: *'same as [...]*' and the WestLB trader shares that he is: *'putting a small bid in at avg'*. After the auction, at 09:01, the participants discuss what they bid in the auction and what the average and lowest bids were. The Nomura trader discloses: *'i bid 92 for 50 for me,'* and the WestLB trader replies: *'86 lowest'*. At 09:05 the WestLB trader confirms: *'92 avg prx [average price]'*. About an hour later, they continue discussing trading on the secondary market and they disclose their mids and trades. For example, at 10:06, the RBS trader says someone just paid too high for German

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<sup>572</sup> PCHAT-0x0000000000001ac2 [...].

<sup>573</sup> [...]

<sup>574</sup> PCHAT-0x0000000000001ac2 [...].

<sup>575</sup> PCHAT-0x0000000000001ac2 [...].

<sup>576</sup> [...]

bonds. The Nomura trader asks: *'u front run him<sup>577</sup> then?'* and the RBS trader replies: *'not front run, back run' 'trade already don'*. The UBS trader writes: *'A'* and the RBS trader says: *'yeah.'* *'you got them'* and the UBS trader says: *'yee'*. The RBS trader agrees to pull the offer so that UBS benefits from it and get the trade: *'oh i will pull offer'* and the UBS trader thanks him. The RBS offer was already picked up though as he apologises to the UBS trader: *'oh sorry'* to which the UBS trader replies: *'no worries'* and the Nomura trader adds: *'no worries [...] does it to u all the time'*. The WestLB trader comments: *'u dont meant that [...]'*. The RBS trader later asks about other traders' bids in the secondary market: *'what u pay?'*. The UBS trader replies: *'mid' '75'*. The RBS trader responds: *'no' '? 75?'*. The [other bank] trader comments: *'who needs enemies right!'* and the RBS trader expresses surprise: *'fuk i missed by loads'*. The UBS trader replies: *'yea mid'*.<sup>578</sup>

- (326) On **20 April 2011**, [...] is removed from CODS & CHIPS.<sup>579</sup> He leaves his employment on 13 May 2011 for Nomura and will receive renewed access to the CODS & CHIPS chatroom on 1 June 2011.<sup>580</sup>
- (327) On **3 May 2011**, traders of RBS ([...]), UBS ([...]) and Nomura ([...]) discuss in the CODS & CHIPS chatroom an auction for Austrian bonds maturing in 2026.<sup>581</sup> The traders exchange views on their auction bids.<sup>582</sup> The auction takes place at 09:00. As from 08:16, the participants disclose their overbidding levels. The RBS trader inquires: *'what we thinking overbidding for these 26s?'*. The Nomura trader replies: *'that's my bid at 82' '20 cents for 26 s?'*. The UBS trader confirms that this: *'sounds about right'* and the RBS trader confirms: *'yeah'*. About thirty minutes later the RBS trader says that he missed by one cent, and the trader of UBS replies that he got: *'10mm'*.<sup>583</sup>
- (328) On **5 May 2011**, traders of Nomura ([...]), RBS ([...]) and UBS ([...]) discuss Spanish and/or French EGB in the CODS & CHIPS chatroom.<sup>584</sup> In the run up to the auction, there are various instances in which they request and offer advice as to what they should overbid for different maturities and align their bids. Throughout the chat, the traders discuss their trading positions, secondary market bids and offers, pricing and recent trading in various bonds.<sup>585</sup> For instance, at 07:22, the UBS trader inquires: *'what we over paying for 26s' '8-10' 'or more'*. The Nomura trader replies: *'10 is what they saying iam plus 8 for the ten years'*. The UBS trader responds: *'ok' 'longs trade shite do you reckon not many 32s more 26s?'*. The RBS trader acknowledges: *'feels it'*. The UBS trader suggests: *'maybe 8' 'gets some 26s' 'as well'*, to which the RBS trader replies: *'yeah think that's about right' 'I don't want to miss'*. The UBS trader adds: *'yeah I am short 100'* and the RBS trader informs: *'short abt 80'*. The UBS trader reveals *'think iam gona go +12 +10' 'last one came rather high'*. The RBS trader responds: *'I'm thinking there isn't as much demand this time around' 'but I'm thinking people nervous abt last time'*. The traders of UBS and Nomura agree. A bit later, at 08:04, the UBS trader again inquires:

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<sup>577</sup> Front-running is placing orders before filling customer orders.

<sup>578</sup> See also recitals (677)-(679).

<sup>579</sup> [...]

<sup>580</sup> See Tables 3 and 4 in recitals (89) and (92). See also recital (331).

<sup>581</sup> PCHAT-0x0000000000001ac2 [...].

<sup>582</sup> [...]

<sup>583</sup> See also recitals (681)-(682).

<sup>584</sup> PCHAT-0x0000000000001ac2 [...].

<sup>585</sup> [...]

'17/18 11 mid 26s' '?'. The Nomura trader replies: '12' and the UBS trader thanks him: 'ta'. The RBS trader updates: '11' and the UBS trader says: 'what we think + 10' 'or + 12'. The Nomura trader confirms '12'. At 08:42, the discussion is again about the overbidding. The Nomura trader asks: 'what u guys overpaying in ten years'. The UBS trader says '7'. The Nomura trader explains: 'ye iam a bit higher missed last one' 'well if we get them that worked well'. The UBS trader updates: '20 18 17' 'my bids in 26s'. The RBS trader adds: '20 bid'. At 08:57, the UBS trader asks RBS: 'what u do in 26s [...]'. The RBS trader replies: '20' 'and what you guts pay 32s?'. The Nomura trader adds: '30'. The UBS trader says: '13 low' '17 ave' 'did less 26s and more 32s' 'strange eh'. Afterwards, they discuss what appears to have been a successful auction. The RBS trader comments: 'man that auction came right where we wanted it around that .10 level'. The Nomura trader agrees: 'was perfect fuking made some money for a change'. The UBS trader comments: 'was bang on' 'dun me cods yesterday'.<sup>586</sup>

(329) On **18 May 2011**, traders of UBS ([...] and [...]), Nomura ([...]), and WestLB ([...]) exchange information in the CODS & CHIPS chatroom on the timing of a syndication.<sup>587</sup> They keep each other informed on the moment of pricing of the syndication.<sup>588</sup> One trader of UBS ([...]) inquires at 14:53: 'has the call started yet'. The Nomura trader replies: 'not that I know of' 'hearing 4.15'. The UBS trader thanks him and the Nomura trader asks: 'will the pricing have any effect'. The WestLB trader says: 'I think unlikely much on this one'. Then, the Nomura trader says: 'same' 'doing it now' and the other trader of UBS ([...]) gives the code word: 'everton'.

(330) On **1 June 2011**, traders of RBS ([...]), UBS ([...] and [...]), Nomura ([...] and [...]) and WestLB ([...]) exchange information in CODS & CHIPS.<sup>589</sup> The traders discuss their bidding strategy, including the overbidding and mid-prices for an upcoming French auction that takes place at 08:50.<sup>590</sup> After an initial check by UBS whether RBS is participating in the auction and discussion of the previous action for equivalent bonds, the participants exchange their intentions on overbidding on 21s and 23s, and then check each other's mid-prices on 23s and 21s in the run-up to the auction. At 06:23, the UBS ([...]) trader inquires: 'you doing the 23s today [...]'. The RBS ([...]) trader replies: 'yeah will be taking 50m or so'. The UBS trader asks: 'what did the last 1 clear', to which the RBS trader replies: 'dunno'. The UBS trader says: '8-10' 'I guess' 'seems too much for france' [...] 'what we thinking over bidding' '23s' '+8 +10'. The Nomura trader ([...]) informs: '8 on ten year'. The UBS trader confirms: 'ok I am going +8 +10 on 23s' '50mm a piece' 'at the moment'. The RBS trader asks: 'where we got these mid at the moment?' 'I have just below the offer but haven't been watching'. The UBS trader replies: '92' '1/2' 'my offer on t.v.'. The Nomura trader asks: 'wat mid cash have u new 21s' '77?'. The RBS trader replies: '.742'. The Nomura trader says: 'ok ta'. The UBS trader asks: 'u think we gotta bid more than + 10 for 23s'. The Nomura trader indicates the amount of the issue: 'there will only be 1.5 [billion] 23 s?', to which the UBS trader responds: '1.5 to 2 iguess' 'wwhat u over bidding [...] 23s'. The RBS trader replies:

<sup>586</sup> See also recital (684).

<sup>587</sup> PCHAT-0x0000000000001ac2 [...].

<sup>588</sup> See also recitals (33) and (252) for explanation on the timing of pricing of syndications and the use of the code word Everton.

<sup>589</sup> PCHAT-0x0000000000001ac2 [...].

<sup>590</sup> [...]

'will do 10 cents one clip I think' '75m' and the UBS trader comes back: 'iam thinking 2 bids +9 +11' 'so same'. The RBS trader asks: 'what we got mid' 'got 97 here but seem high' and the UBS trader replies: '97 4/5', to which the RBS trader says: 'oh ok' and the UBS trader adds: 'but does look high'. The Nomura trader informs: '96'. The UBS trader says: 'i just hit the 96 bid' '96 4/5' 'iam going at the moment'. The Nomura trader recommends: 'get bunds down to 94'. The RBS trader asks: 'can someone add [...] [[...] - Nomura] to the chat?'. His colleague at Nomura argues: 'hes the police now'. The UBS trader continues: '95 6/7...mid 23s'. The RBS trader says: 'offer side' 'of screen'. The Nomura trader says: '98'. From 08:42 until right before the auction, the traders of RBS and UBS exchange their bidding intentions in real time, informing each other of any change in the status of their bids and mid-prices. The Nomura trader is present on the communication throughout this time and reveals his mid to the others. The UBS trader reveals: '08 and 06' 'iam at the mom'. The RBS trader fills in: '08 bid here' and the UBS trader updates: '6 -8'. The RBS trader says 'yeah havent changed yet' 'will keep it there'. After the auction, the traders discuss the result, acknowledging that they generally got what they wanted. The UBS trader reveals: 'i went 7-9' and the RBS trader says he: 'kept 08' 'think thats ok' 'both of us'. The UBS trader confirms: 'yes' 'what mid you have 98' 'or 99'. The RBS trader ([...]) replies '98' and the UBS trader ([...]) confirms: 'yup same'. The Nomura trader ([...]) adds 'we had 98'. The UBS trader says: '04...07 ave'. The Nomura trader says: 'u see ten year someone bidding for 4 yards got 2', which is confirmed by the RBS trader: 'yup'. The UBS trader comments: 'france flying' and the other trader of UBS ([...]) asks: 'Didn't that happen the last time someone bought 2 billion?'. The Nomura trader concludes: 'yes...u all get what u wanted' and the traders of RBS and UBS ([...]) confirm: 'yeah': 'yup.'<sup>591</sup>

- (331) Later that day, **1 June 2011**, Nomura ([...]), is added back to the CODS & CHIPS chatroom.<sup>592</sup> At 10:39, the RBS trader ([...]) asks: 'who is administrator can you add [...] to the chat?'. Another trader of Nomura ([...]) replies: 'its like adding [...]'. The RBS trader responds: 'ok he asking me to be on just to chat but up to you'. A trader of UBS ([...]) explains: '[...] you created the chat' 'button is by the title' 'oh you worried about poacher/gamekeeper'. The RBS trader asks: 'my edit room button seem to have disappeared' 'but its up to [...] anyways' 'if he has an issue we cant add'. The UBS trader agrees: 'Tru'. The Nomura trader has no objection to adding his colleague: 'iam joking u nob' and at 11:35, the new trader of Nomura ([...]) is added to the chatroom and comments: 'NOW MY LIFE IN COMPLETE AGAIN' and promises that: 'anything said on this chat stays with me'. The trader from WestLB ([...]) announces on that day that he will no longer be active in the chatroom for WestLB: 'as from Friday [3 June 2011] I (w)ont be on here for a bit'. [...].<sup>593</sup> [...].<sup>594</sup> [...].<sup>595</sup>
- (332) On **10 June 2011**, another trader from RBS ([...]) is given access to CODS & CHIPS, in addition to DBAC.<sup>596</sup>

<sup>591</sup> See also recital (688).

<sup>592</sup> PCHAT-0x0000000000001ac2 [...].

<sup>593</sup> Recital (339).

<sup>594</sup> Recital (334).

<sup>595</sup> [...]

<sup>596</sup> PCHAT-0x0000000000001ac2 [...].

- (333) On **22 June 2011**, a trader of RBS ([...]) reveals in CODS & CHIPS the timing of a syndication. At 12:30, he informs: *'everton' 'call now' 'not swapped'*.<sup>597</sup> The Nomura trader ([...]) asks: *'the 5 year'* and the RBS trader confirms.<sup>598</sup>
- (334) On **24 June 2011**, traders of RBS ([...]), WestLB ([...]) and Nomura ([...]) discuss in CODS & CHIPS.<sup>599</sup> The WestLB trader is on leave but he still has access to the chatroom and continues to participate. They exchange forward looking sensitive information for their trading of EGB on the secondary market, checked their mid-prices and tried to move the market.<sup>600</sup> For instance, at 11:37, the Nomura trader asks: *'where bunds at 4.15?'*.<sup>601</sup> The WestLB trader replies: *'127.25'* and the Nomura trader confirms: *'iam with ya'*. A bit later, the Nomura trader suggests: *'lets sell oats?'*. The RBS trader declines because he does not hold enough of the French OAT bonds: *'I am short already'* and the WestLB trader declines as well: *'same here staying that way want to sell more'*. The RBS trader suggest him to: *'do it sloppily'*. The Nomura trader responds that: *'I havent the firepower here was relying on u big boys'*. The RBS trader reacts: *'there did some holland for you'*. The Nomura trader says: *'iam long them' ':('*, leading the RBS trader to react: *'oops'*.
- (335) On **7 July 2011**, there was an auction in France at 08:50. Traders of RBS ([...] and [...]), UBS ([...] and [...]) and Nomura ([...] and [...]) exchanged sensitive information in CODS & CHIPS.<sup>602</sup> They coordinated on the level of overbidding for the auction bids and exchanged sensitive information on their trade of EGB on the secondary market.<sup>603</sup>
- (336) On **8 July 2011**, the RBS trader ([...]) announces in DBAC to the traders of WestLB ([...]), UBS ([...]) and another trader of RBS ([...]) that *'i think it might be time to retire this chat' 'goodbye all' 'RIP DBAC'*.<sup>604</sup> He subsequently leaves the chatroom on 11 July 2011.<sup>605</sup>
- (337) On **20 July 2011**, traders of UBS ([...] and [...]), RBS ([...]) and Nomura ([...]) discuss in CODS & CHIPS a German auction maturing on that day at 09:00.<sup>606</sup> The traders coordinated auction bids.<sup>607</sup> At 07:44, the UBS trader starts inquiring: *'what we overbidding'*. The RBS trader replies: *'I'll pay maybe 10 cents or so but yes don't think it comes that high', 'think at market or tail', 'maybe I do+10 for 50 and +2 for 50'*. A bit later, the UBS trader equally inquires about the curve: *'any thoughts curve'*. The Nomura trader replies: *'steeper next move in rates is down'*. The UBS trader thanks him and adds: *'iam on holds as toms so wanna be flat'*. The RBS trader asks: *'rates is down ie higher bund?'*. The UBS trader confirms: *'yup'* and the RBS trader clarifies: *'yeah hoping get to like 127.50 on announcement buy some calls'*. The UBS trader also checks the mid-price: *'wat mid we got' '77/8' '61'*. The Nomura

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<sup>597</sup> See also recitals (33) and (252) for explanation on the timing of pricing of syndications and the use of the code word Everton.

<sup>598</sup> PCHAT-0x0000000000001ac2 [...].

<sup>599</sup> PCHAT-0x0000000000001ac2 [...].

<sup>600</sup> [...]

<sup>601</sup> [...]. [...], the traders attempted to move the market and check mid-prices.

<sup>602</sup> PCHAT-0x0000000000001ac2 [...].

<sup>603</sup> [...]

See also recital (694).

<sup>604</sup> PCHAT-0x000000000000fe99 [...].

<sup>605</sup> See Table 3 in recital (89).

<sup>606</sup> PCHAT-0x0000000000001ac2 [...]

<sup>607</sup> [...]

trader replies: '66' '63 sorry', for which information the UBS trader thanks him. The RBS trader apologises: 'sorry I missed when you were checking mids'. After the auction, they exchange feedback. The Nomura trader asks: 'was that a good auction?' the UBS trader replies: 'non event' 'I think' 'had 55 mid' 'low 57' 'ave 65'. The discussion subsequently slips into secondary trading.

- (338) On **22 August 2011**, traders of Nomura ([...]), UBS ([...]) and RBS ([...]) exchange in CODS & CHIPS sensitive information, including with respect to the overbidding for a Belgian auction.<sup>608</sup> They exchange information on mid-prices, bids, volumes ahead of an auction and discuss the result.<sup>609</sup> The object of these exchanges was to ascertain what each participant's bidding strategy was for the forthcoming auction, in order to try to secure a desired allocation of bonds from the auctions. For instance, at 09:07, the RBS trader asks if: 'anyone doing belgium today'. The Nomura trader replies: 'yes 61 and longs', and the UBS trader says: 'nope'. A bit later, at 09:37, the RBS trader asks: 'what we think overbidding like 20 cents in longs?' and the UBS trader confirms: '15-20', 'yes'.<sup>610</sup>
- (339) [...] the WestLB trader ([...]) officially leaves the bank. The next day, on 1 September 2011, he starts working at UniCredit.
- (340) On **6 September 2011**, traders of RBS ([...], [...]), UBS ([...], [...]) and Nomura ([...]) discuss in CODS & CHIPS an upcoming EGB auction in Austria.<sup>611</sup> They exchange information on mid-prices and overbidding ahead of the auction and ascertained what each participant's bidding strategy was for the forthcoming auction.<sup>612</sup> For instance, at 07:37, the RBS trader asks: 'anyone here doing austria?'. The traders of Nomura and UBS both respond that they will be participating. The UBS trader asks: 'what we over bidding for 37s' '20 cents?'. The RBS trader confirms that is about right based on previous actions. The RBS trader then checks what the mid is, and the UBS trader replies: '44 we got 89/90'.<sup>613</sup>
- (341) The trader of WestLB ([...]) now works for UniCredit.<sup>614</sup> He enters the chat, still using his WestLB Bloomberg account, but he does not actively participate in the discussion.<sup>615</sup> Soon after, on **9 September 2011**, he is given renewed access to CODS & CHIPS under his new UniCredit Bloomberg account. His WestLB accounts in DBAC and CODS & CHIPS are eventually closed on 6 October 2011.<sup>616</sup>
- (342) On **26 September 2011**, traders of Nomura ([...], [...]), RBS ([...] and [...]), UBS ([...]) and UniCredit ([...]) discuss in CODS & CHIPS their overbidding and mid-prices for a Belgian EGB auction.<sup>617</sup> They coordinate their auction bids check their mid-prices.<sup>618</sup> The auction closed at 10:00. At 07:12, the UniCredit trader inquires: 'what do we think for Belgium today?'. Closer to the auction, at 08:51, the RBS

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<sup>608</sup> PCHAT-0x0000000000001ac2 [...].

<sup>609</sup> [...] there was potential coordination between traders of auction bids.

<sup>610</sup> See also recital (697).

<sup>611</sup> PCHAT-0x0000000000001ac2 [...].

<sup>612</sup> [...]

<sup>613</sup> See also recital (700).

<sup>614</sup> Recital (339).

<sup>615</sup> [...]

<sup>616</sup> See Table 3 in recital (89).

<sup>617</sup> PCHAT-0x0000000000001ac2 [...].

<sup>618</sup> [...]

trader inquires again: *'how much you thinking about overbidding in the Belgium longs?'*. The Nomura trader replies: *'about 15 cents ten years'*. The RBS trader says: *'41s im thinking 25-30 and 28s 22ish'*. The other trader of Nomura ([...]) checks the mid: *'where mids on longs?'*. The UniCredit trader replies: *'i got 99.15'*. The Nomura trader ([...]) thanks him: *'ta' 'olo 64@s'*. The UniCredit trader updates: *'104.90'*. The Nomura trader thanks him again: *'ta'* and the UniCredit trader concludes: *'belg is a nice cheap primary dealership'*. Throughout the chat, they also check mid-prices for other EGB on the secondary market. For instance, at 08:28, the UniCredit trader asks: *'where do u have rag37 to dbr37 at the moment? 59.75?'* The RBS trader ([...]) replies that he has 59.5 and the UniCredit trader thanks him for that information.<sup>619</sup>

- (343) On **28 September 2011**, traders of RBS ([...] and [...]), UBS ([...]), Nomura ([...] and [...]) and UniCredit ([...]) discuss trading in CODS & CHIPS.<sup>620</sup> Throughout the chat, the traders disclose sensitive information and attempt to move the market by influencing the prevailing market price on German EGB following some news headlines on Greece.<sup>621</sup> At 05:46, the UBS trader says *'ft [Financial Times] headline'*, to which the UniCredit trader replies: *'hiya' 'yep' 'Greece' 'all this sort of stuff totally ignored by euro bond mkts but the dow came 150pts off on it'*, commenting on the fact that EGB have not reacted yet on the (presumably bad) news on Greece while the dow (a US equity index) did decrease significantly. The UniCredit trader then inquires: *'you see an opening call on bunds yet?'*, asking whether other traders have seen any indication on how the price of German EGB (bunds) will open<sup>622</sup>. The UBS trader replies and gives his current indicative price: *'my bloke said 05 ?'*. The UniCredit trader agrees and discloses his (lower) pricing: *'makes sense I think' 'I had 00 ish'*. The UBS trader suggests that this last price is too low: *'w should go higher' 'no ?'* and the UniCredit trader agrees *'yeah I think'*.<sup>623</sup>
- (344) On **4 October 2011**, traders of RBS ([...], [...]), UBS ([...]), Nomura ([...]) and UniCredit ([...]) discuss in CODS & CHIPS an upcoming auction for Austrian EGB.<sup>624</sup> They explore if there is room for coordination.<sup>625</sup> At 07:00, the UniCredit trader inquires: *'who has to do rag37s today?'*. The UBS trader is not in: *'not me'*. The UniCredit trader comments: *'lucky you :-) i don't either but surprised no one is whacking it down' 'seems someone actually supporting rag37s on the tv'*. The RBS trader ([...]) asks: *'how big is total austrian auction?'*; the UniCredit trader explains: *'1.1 bln total' 'prob 500 max in 37s'*. The RBS trader asks: *'you guys pd's'* (primary dealers). The UniCredit trader informs he is not a primary dealer for this auction, but the RBS trader confirms that RBS is a primary dealer for this auction.<sup>626</sup>
- (345) On **12 October 2011**, traders of RBS ([...]), UBS ([...]), Nomura ([...]) and UniCredit ([...]) exchange information in the CODS & CHIPS chatroom on their

<sup>619</sup> See also recital (703).

<sup>620</sup> PCHAT-0x0000000000001ac2 [...].

<sup>621</sup> [...]

<sup>622</sup> The evolution of German EGB is particularly relevant in this case, as the bad news about the financial situation in Greece will probably trigger investors to rush into 'safe heavens', that is assets that are considered safe and price resilient in case of market stress. German bonds are typical safe heavens among EGB. Their price might therefore move significantly upwards on that day.

<sup>623</sup> See also recital (705).

<sup>624</sup> PCHAT-0x0000000000001ac2 [...].

<sup>625</sup> [...]

<sup>626</sup> See also recital (707).

bids for a German tap before the auction window closes.<sup>627</sup> The traders coordinate their auction bids.<sup>628</sup> Thus, at 08:57, the Nomura trader inquires: *'what overpaying?'*. The traders of UBS and UniCredit disclose they are bidding small at an average price: *'im just bidding small at avg' 'same here I think'*. The Nomura trader discloses his overbid: *'plus 25 then'* and the RBS trader indicates that he has placed staggered bids: *'I am paying +25 for part and + 15' 'think it comes cheaper'*. As a reaction, the UniCredit trader aligns and discloses: *'ive put a few low bids in in case it clears lows'*. The Nomura trader still asks: *'whats plus 25 from mid?'* and wishes them: *'good luck'*. After the auction, the UniCredit trader discloses: *'mid 108.58 I had'*. The UBS trader discloses: *'we had 65' '50 low 70 avg' 'poo'*. The RBS trader admits: *'I overpaid big' 'I don't give a shit I wasn't going to miss'*. The Nomura trader congratulates him: *'well done'*.<sup>629</sup>

- (346) On **19 October 2011**, traders of RBS ([...], [...]), UBS ([...]), Nomura ([...], [...]) and UniCredit ([...]) discuss in the CODS & CHIPS chatroom their offering for a Dutch EGB maturing in 2042.<sup>630</sup> The traders protect each other and check their mid-prices.<sup>631</sup> Thus, at 08:11, the UniCredit trader discloses that: *'my bid dsl 42s for 5m in ICAP'*. The RBS trader discloses that his offer appears on the same broker screen and that the UniCredit trader should not match his bid with the RBS trader's offer in order to trade: *'ok its my offer on tv dont lift it!'*[don't buy it]. The UniCredit trader refrains from lifting the RBS bid, thereby helping the RBS trader get a better bid, as the RBS trader is not really interested in selling his small position. The UniCredit trader laughs and says it is a: *'shite offer'*. A bit later, he asks the RBS trader if his offer is still there. The RBS trader confirms and the UniCredit trader admits: *'ok' 'was tempted to lift u just then'*.<sup>632</sup>
- (347) On **2 November 2011**, traders from RBS ([...]), UBS ([...]) Nomura ([...], [...]) and UniCredit ([...]) communicate in CODS and CHIPS on an upcoming German auction and on trading for other EGB.<sup>633</sup> They coordinate their auction bids and attempt to move the market.<sup>634</sup> They exchange information, for instance on curves: *'what we got the curve to start,' '99 ?' '99' '2' [...]' 'yeah 99.5 curve tho guess with sell off' and trading positions' 'buying both btp spain' 'im scrappy long 34s and it's a royal dog' 'bid 15m 42s'*. At some stage, at 10:07, commenting upon the German tap earlier that morning, a trader of Nomura ([...]) says he wants: *'no more overbidding in germany'*, to which another trader of Nomura ([...]) adds: *'or france tomorrow'*. The UniCredit trader ([...]) comments: *'till next time'* and the Nomura trader ([...]) replies: *'agree, lets get all these numbers down' 'makes me look like I doing a rally good job'*. The UniCredit trader laughs.<sup>635</sup>
- (348) On **3 November 2011**, traders of RBS ([...]), UBS ([...]), Nomura ([...] and [...]) and UniCredit ([...]) discuss in CODS & CHIPS bidding strategy for an upcoming French bond auction with a 15 year maturity.<sup>636</sup> They coordinate their auction

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<sup>627</sup> PCHAT-0x0000000000001ac2 [...].

<sup>628</sup> [...]

<sup>629</sup> See also recital (709).

<sup>630</sup> PCHAT-0x0000000000001ac2 [...],[...] and [...] remain silent in this chat.

<sup>631</sup> [...]

<sup>632</sup> See also recital (711).

<sup>633</sup> PCHAT-0x0000000000001ac2 [...].

<sup>634</sup> [...]

<sup>635</sup> See also recital (713).

<sup>636</sup> PCHAT-0x0000000000001ac2 [...].

bids.<sup>637</sup> When the UBS trader asks the others at 08:53: *'what we are overbidding' '15 yrs' 'today'*, the answer from the traders of UniCredit ([...]) and Nomura (both [...] and [...]) *'0'* suggests that they want to bid flat. The UBS trader asks them to confirm: *'is that whay yer bidding flat' '0'*. The RBS trader ([...]) replies: *'we re thinking like 8-12 cents'* and Nomura ([...]) comments: *'i don't think these things should be discussed'*.<sup>638</sup>

- (349) On **28 November 2011**, traders of UBS ([...]), Nomura ([...], [...]) and UniCredit ([...]) discuss in CODS & CHIPS an auction for Belgian EGB (OLO) on that day.<sup>639</sup> They exchanged information on the spreads the chat is also relevant for contextual purposes, marking the end of participation of the traders of RBS.<sup>640</sup> Thus, at 08:57, the UBS trader asks the others if they have thoughts on the auction: *'what u think belg'*. The UniCredit trader says he has: *'no clue on belg soz' 'offered 15m dbr42s also'*. The UBS trader discloses he is: *'gonna bid + 22 +20 +18' 'for 10 yrs'*. The UniCredit trader wishes him: *'good luck in the olos'*. The UBS trader updates: *'11'* and the Nomura trader indicates he may not bid in that auction.
- (350) Later, at 11:49, the RBS trader ([...]) enters the chatroom and informs the other participants that following the receipt of competition law training, the RBS participants can no longer participate in such communications, and that they are also made subject to an internal ban on the use of such chats/instant messaging. RBS ([...]): *'yo guys' 'I am going to have to exit this chat' 'or we will have to change the way we chat on it' 'ie no flows etc'*. The UBS trader thinks the RBS trader is making a joke: *':-D' 'seen none'* and the UniCredit trader is surprised: *'whyzat?'*. The RBS trader confirms: *'nah serious'* and the UniCredit trader still cannot believe: *'u mean u r not allowed to put flows on it?'*. The RBS trader clarifies: *'just got out of some meeting and I can't be on it in it's current form was told' 'no me specifically' 'just in general'*. The UniCredit trader understands that this must be: *'com[p]liance or something?'*. The RBS trader confirms: *'yup' [...]' has removed [...] from this room'*. The UniCredit trader suggests to circumvent the instructions: *'maybe we can talk on weds what the right proper way to do it is'*. The Nomura trader adds: *'I think you can talk about markets but defo not clients and flows of a recent nature should not be on here I think'*. The RBS trader confirms: *'yes'*. The UniCredit trader says: *'ok'* and the Nomura trader concludes: *'we can talk about markets and cares'*.<sup>641</sup>
- (351) On **29 November 2011**, two traders of RBS ([...] and [...]) are discussing the compliance training they have received the day before. They are aware that they will have to change their behaviour.<sup>642</sup> At 08:06, one trader ([...]) asks: *'how was the mkt abuse thing?'* and the other trader ([...]) responds: *'scary' 'if they wanted they could have everyone on the floor done' 'all convos have w other banks etc' 'no no' 'even seemingly innocent ones'*. The first trader asks if he can alert other traders when he sees a seller: *'do cant say oh I saw a seller?'* and the other says: *'nope'*. After exchanging their views on this approach and why it is being taken, the first trader

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637 [...]

638 See also recital (715).

639 PCHAT-0x0000000000001ac2 [...].

640 [...]

641 See also recital (717).

642 PCHAT-0x4000000C52FEE [...].

comments: *'know all banks probably do similar'* and the other trader confirms: *'everybody does it'*.<sup>643</sup>

- (352) On **14 December 2011**, traders of Nomura ([...]), UBS ([...]) and UniCredit ([...]) chat in CODS & CHIPS.<sup>644</sup> When the RBS trader ([...]) enters the chatroom at 07.06 he views the history and confirms: *'yo boys' 'i'm going to leave this chat' 'for compliance reasons etc' 'i'll chat with you in a bit!'* and exits the chatroom. As he was the administrator, the others immediately discuss how to continue. The UniCredit trader asks: *'ok mate' 'who is admin of it?'*. The UBS trader suggests: *'make a new I'* and the UniCredit trader agrees: *'think we have to' '[...] [[...]] was the only admin wasn't he?'* The Nomura trader suggests: *'call it ex cod and chips' 'gimme a sec' 'I will set it up'*. The UBS trader agrees: *'ok'*. The UniCredit trader asks: *'how the hell do u add people?'* *'I cant see a button for it anymore'*. The Nomura trader has: *'no idea'* and the UBS trader says: *'no sure'*. They also worry about RBS reasons for leaving the chatroom. The UniCredit trader asks: *'so has anyone found out from [...] why he had to leave?'* *'I thought not putting flows on was ok for him'*. The Nomura trader says: *'well u know 4 guys got booted for sharing info so that's reason I think'*. The UBS trader suggests: *'just keep it to our axes and thoughts?'*. The UniCredit trader reacts surprised: *'ah ok' 'i didn't know that'*. The UBS trader adds: *'can't see much wrong with that'*. The UniCredit trader confirms: *'no harm in discussing what we think and axes'*. The Nomura trader agrees: *'no I agree we never have given up names and should not or flows'*.<sup>645</sup> The RBS trader ([...]) and the UniCredit trader ([...]) also discuss bilaterally.<sup>646</sup> The UniCredit trader asks: *'you got new rules that mean you aren't able to be in any chats or just group ones?'*. The RBS trader clarifies: *'We just had some market abuse training and they don't want us speaking with any direct competitors about anything work related' 'undort even though we don't really talk about stuff anymore they want us off all chats like that'*.
- (353) [...], the UniCredit trader ([...]) informs the other traders in CODS & CHIPS that [...]<sup>647</sup> [...].
- (354) [...], the UniCredit trader ([...]) is officially informed [...].<sup>648</sup>
- (355) [...], the UniCredit trader ([...]) [...] has access to CODS & CHIPS and comments [...] about [...].<sup>649</sup> [...] <sup>650</sup> The traders of Nomura ([...]) and UBS ([...]) still discuss some EGB in CODS & CHIPS but the discussions become more general in tone focusing mainly on the secondary market. For instance, at 16:01, the UBS trader asks: *'got any olo 65?'*. The Nomura trader confirms: *'I have but need other olos that client who lifted u I think did some other stuff too'*. A bit later, at 16:24, the Nomura trader asks: *'i want to sell olo 61 vs ol 65' 'out of interest where wud u pay for olo 65s' 'I got them 98 mid'* to which the UBS trader replies: *'94 mid' 'I got lifted'(..) 'iam flat now'*. The Nomura trader also asks: *'wud u pay 00? for 20?'*.

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643 [...]

644 PCHAT-0x0000000000001ac2 [...].

645 [...]

646 CHAT-fs:4EE85FE5028C017E [...].

647 PCHAT 0x0000000000001ac2 [...].

648 [...]

649 PCHAT-0x0000000000001ac2 [...].

650 [...]

- (356) The discussions between UBS and Nomura gradually fade out in 2012. DBAC was closed on **6 March 2012**.<sup>651</sup> On **28 March 2012** the Nomura trader ([...]) concluded in CODS & CHIPS to UBS ([...]): *'all that hard work and only u and i left'* to which the UBS trader replied: *'indeed getting less and less'*.<sup>652</sup> CODS & CHIPS was eventually closed on **29 November 2013**.<sup>653</sup>

## 5. LEGAL ASSESSMENT

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

- (357) 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.
- (358) Article 53(1) of the EEA Agreement is modelled on Article 101(1) of the Treaty.<sup>654</sup> References in this Decision to Article 101 of the Treaty therefore apply also to Article 53 of the EEA Agreement.

#### 5.1.1. Agreements and concerted practices

##### 5.1.1.1. Principles

- (359) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements between undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the internal market.
- (360) 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. The agreement 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.<sup>655</sup>
- (361) The concept of an agreement would apply to the inchoate understandings and to partial or conditional agreements forming part of the bargaining process which lead

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<sup>651</sup> [...]

<sup>652</sup> PCHAT-0x0000000000001ac2 [...].

<sup>653</sup> [...]

<sup>654</sup> 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 of Justice and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See Recitals 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement and Case E-1/94 of 16 December 1994, paragraphs 32-35.

<sup>655</sup> See Judgment of the Court of First Instance of 20 March 2002, *HFB v Commission*, T-9/99 ECLI:EU:T:2002:70, paragraphs 199-200; Judgment of the Court of Justice of 21 September 2006, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, C-105/04 P, ECLI:EU:C:2006:592, paragraphs 94-100, 110-113.

to definitive agreements. An agreement may arise not only from an isolated act but also from a series of acts or from a course of conduct.<sup>656</sup>

- (362) 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. It is well established in the case-law of the Court of Justice of the European Union 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.<sup>657</sup> In this regard, agreements may be entered into expressly or tacitly.
- (363) If, for instance, an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed. The case law also supports that ‘*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anticompetitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings*’.<sup>658</sup> Such distancing should take the form of an announcement by the company, for example, that it would take no further part in the meetings and therefore did not wish to be invited to them. In that regard, where an undertaking tacitly approves an unlawful initiative, without publicly distancing itself from the content of that initiative or reporting it to the administrative authorities, the effect of its behaviour is to encourage the continuation of the infringement and to compromise its discovery. It thereby engages in a passive form of participation in the infringement, which is therefore capable of rendering that undertaking liable in the context of a single agreement.<sup>659</sup>
- (364) Moreover, the notion of publicly distancing oneself as a means of excluding liability must be interpreted narrowly. In order to disassociate itself effectively from anticompetitive discussions, it is for the undertaking concerned to indicate to its

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<sup>656</sup> Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92P, ECLI:EU:C:1999:356, paragraph 81.

<sup>657</sup> Judgment of the Court of First Instance of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. and others 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, ECLI:EU:T:1999:80, paragraph 715.

<sup>658</sup> See Judgment of the General Court of 14 May 1998, *Sarriò v Commission*, T-334/94, ECLI:EU:T:1998:97, paragraph 118. See Judgment of the General Court of 6 April 1995, *Tréfileurope Sales v Commission*, T-141/89, ECLI:EU:T:1995:62, paragraph 85; Judgment of the General Court of 17 December 1991, *Hercules Chemicals v Commission*, T-7/89, ECLI:EU:T:1991:75, paragraph 232; and Judgment of the General Court of 15 March 2000, *Cimenteries CBR and others v Commission*, Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, ECLI:EU:T:2000:77, paragraph 1389.

<sup>659</sup> Judgment of the Court of First Instance of 8 July 2008, *AC-Treuhand v Commission*, T-99/04, ECLI:EU:T:2008:256, paragraph 130; Judgment of the Court of Justice of 25 January 2007, *Sumitomo Metal Industries, and Nippon Steel v Commission*, Joined Cases C-403/04 P and C-405/04 P, ECLI:EU:C:2007:52, paragraphs 47 and 48; Judgment of the Court of 21 January 2016, *Eturas and Others v Commission*, C-74/14, ECLI:EU:C:2016:42, paragraph 28; Judgment of the Court of First Instance of 5 December 2006, *Westfalen Gassen Nederland v Commission*; T-303/02, ECLI:EU:T:2006:374, paragraphs 103 and 124 and Judgment of the General Court of 2 February 2012, *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals v Commission*, T-83/08, ECLI:EU:T:2012:48, paragraph 53.

competitors that it does not in any way wish to be regarded as a member of the cartel and to participate in anticompetitive meetings. In any event, silence by an operator in a meeting during which an unlawful anticompetitive discussion takes place cannot be regarded as an expression of firm and unambiguous disapproval.<sup>660</sup>

- (365) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of ‘*concerted practices*’ and ‘*agreements between undertakings*’, but the object of this distinction is only to bring within the prohibition of Article 101(1) and Article 53(1) of the EEA Agreement also the forms of co-ordination between undertakings by which they knowingly substitute the risks of competition by practical cooperation, without the coordination having reached the stage where an agreement properly so-called has been concluded.<sup>661</sup>
- (366) The criteria of coordination and cooperation laid down by the case-law of the Court of Justice of the European Union, 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 he 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 whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.<sup>662</sup>
- (367) Thus, conduct may fall under Article 101(1) of the Treaty as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices, which facilitate the co-ordination of their commercial behaviour.<sup>663</sup> 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.
- (368) Although in terms of Article 101(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and a causal connection between the two, it may be presumed as regards the exchange of information, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular

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<sup>660</sup> Case T-303/02, *Westfalen Gassen Nederland*, paragraphs 103 and 124 and Case T-83/08, *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals*, paragraph 53.

<sup>661</sup> Judgment of the Court of Justice of 14 July 1972, *Imperial Chemical Industries v Commission*, C-48/69, ECLI:EU:C:1972:70, paragraph 64.

<sup>662</sup> Judgment of the Court of Justice of 16 December 1975, *Suiker Unie and others v Commission*, Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, ECLI:EU:C:1975:174, paragraph 1663.

<sup>663</sup> See also Case T-7/89, *Hercules Chemicals*, paragraph 256.

basis and over a long period. Such a concerted practice is caught by Article 101(1) of the Treaty even in the absence of anticompetitive effects on the market.<sup>664</sup>

- (369) A situation where only one undertaking discloses strategic information to its competitor(s) who accept(s) it can also constitute a concerted practice.<sup>665</sup> When one undertaking alone reveals to its competitors strategic information concerning its future commercial policy, that reduces strategic uncertainty as to the future operation of the market for all the competitors involved and increases the risk of limiting competition and of collusive behaviour.<sup>666</sup> For example, mere attendance at a meeting where a company discloses its pricing plans to its competitors is likely to be caught by Article 101(1) of the Treaty, even in the absence of an explicit agreement to raise prices. When a company receives strategic data from a competitor, it will be presumed to have accepted the information and adapted its market conduct accordingly unless it responds with a clear statement that it does not wish to receive such data.<sup>667</sup>
- (370) 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, even without an explicit agreement on coordination. Exchange of information about intentions concerning future conduct is the most likely means to enable companies to reach such a common understanding.<sup>668</sup>
- (371) Moreover, it is established case-law that the exchange, between undertakings, in pursuance of a conduct falling under Article 101 (1) of the Treaty, of information concerning their respective deliveries, which not only covers deliveries already made but is intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that article.<sup>669</sup>
- (372) 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 another anticompetitive arrangement, in particular when the circulation of price information limited to the members of an anticompetitive cartel has the effect of

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<sup>664</sup> See also Judgment of the Court of Justice of 8 July 1999, *P Hüls v Commission*, C-199/92, ECLI:EU:C:1999:358, paragraphs 158-166; Judgment of the General Court of 10 November 2017, *Icap plc and Others v Commission*, T-180/15, ECLI:EU:T:2017:795, paragraphs 56-57.

<sup>665</sup> See, for example Case T-25/95, *Cimenteries CBR*, paragraph 1849.

<sup>666</sup> Commission Guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements, OJ C11, 14.1.2011, p. 1, point 62 as well as the Opinion of Advocate General Kokott in Case C-8/08, *T-Mobile Netherlands*, ECLI:EU:C:2009:110, paragraph 54. See also Case T-25/95, *Cimenteries CBR*, paragraph 1849.

<sup>667</sup> Case C-199/92 P, *Hüls*, paragraph 162; Case C-49/92 P, *Anic Partecipazioni*, paragraph 121; see also Commission Guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements, OJ C11, 14.1.2011, p. 1, point 62.

<sup>668</sup> Commission Guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements, point 66.

<sup>669</sup> See, in this sense, Judgments of the Court of 6 April 1995, *Société Métallurgique de Normandie v Commission*, *Trefilunion v Commission* and *Société des treillis et panneaux soudés v Commission*, T-147/89, T-148/89 and T-151/89, respectively, ECLI:EU:T:1995:67, paragraph 72.

increasing transparency on a market where competition is already much reduced and of facilitating control of compliance with the cartel by its members.<sup>670</sup>

- (373) 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 alleged behaviour as exclusively agreements or concerted practice, 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 be analytically artificial to sub-divide into several forms of infringement what is clearly a continuing common strategy having one and the same overall objective. A cartel may therefore be an agreement and a concerted practice at the same time.<sup>671</sup>
- (374) In this regard, in its PVC II judgment<sup>672</sup>, the Court of First Instance 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’.
- (375) An agreement for the purposes of Article 101(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term ‘*agreement*’ can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuit of the same common purpose. As mentioned<sup>673</sup> and as the Court of Justice has pointed out, it follows from the express terms of Article 101(1) of the Treaty that an agreement may consist not only in an isolated act but also in a series of acts or a course of conduct.

#### 5.1.1.2. Application in this case

- (376) The facts described in Section 4 of this Decision demonstrate that various EGB traders employed by the banks communicated with each other in persistent chatrooms and instant messages.
- (377) Through this network of collusive contacts and constant exchanges of information within a circle of trust, the banks involved informed each other of their positions, prices and strategies and this allowed them to identify, align and coordinate their bidding and trading conduct on the primary and/or secondary markets and at times to coordinate prices and/or volumes of EGB issued and traded. By sharing commercially sensitive information, they created opportunities to coordinate their

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<sup>670</sup> Judgment of the Court of Justice of 7 January 2004, *Aalborg Portland et al. v Commission*, Joined cases C-204/00 P and others, ECLI:EU:C:2004:6, paragraph 281.

<sup>671</sup> Case T-7/89, *Hercules Chemicals*, paragraph 264. See also Case T-305/94, *Limburgse Vinyl Maatschappij*, paragraph 696.

<sup>672</sup> Case T-305/94, *Limburgse Vinyl Maatschappij*, paragraph 696.

<sup>673</sup> Recital (361).

conduct with respect to auctions, syndications and trading of EGB. As one trader explained to a colleague that was added to the contacts: *'these are a couple of guys in the market that work on 30yrs ... we just try to help each other when we can'* (underlining added).<sup>674</sup>

- (378) Access to the chatrooms was based on an expectation that the participants would disclose commercially sensitive information with other competitors within a trusted group of traders.<sup>675</sup> The aim was to increase market transparency among themselves and to reduce the uncertainties regarding the issuing and/or trading of EGB, knowingly substituting the risks of competition by practical cooperation to the benefit of all members and to the detriment of other market participants, banks, their customers or DMOs.<sup>676</sup> These exchanges enabled them to identify and pursue opportunities for coordination with each other in appropriate constellations. This was illustrated by the exclusive character of the chatrooms and the working names given to them, that is DBAC and CODS & CHIPS.<sup>677</sup>
- (379) As can be seen in Section 4, there were numerous instances where the traders exchanged views with each other on their current and future bidding or trading strategy for EGB. This becomes apparent from wording such as, for example: *'wat we over bidding for the Italy' 'gonna go higher form my 35' '3%' 'wat we paying wops ?' '+13' '+14 for me 4%'*<sup>678</sup>, *'What are we thinking for the austria? We are +16 for about 70m'*<sup>679</sup>, *'and try to collude and squeeze it'*<sup>680</sup>, *'so i am going to lean on curve' 'ok i think w gotta try and steepen it' 'i think we will have 2 bash some' 'ok i was going to top that but i wont'*<sup>681</sup>, *'im just going to bash them' 'asking if u can bash the 3yr down as well?'*<sup>682</sup>, *'need to push it cheaper cos it will prob trade like a dog after' 'shall we try get it down...yeah lets steepen this'*<sup>683</sup>, *'what u got and what u bidding' '/ my mid is high' '86 53/54' 'i'll [c]heapen it 86 iam going high for my short' '+12 +14 from mid'*<sup>684</sup>, *'gonna steepen then'*<sup>685</sup>, *'how many we gotta buy' 'we are going for 100'*<sup>686</sup>, *'we are thinking of just doing 23's and no 19's'*<sup>687</sup>, *'anyone out there bidding for the olo 3 year auction this morning?'*<sup>688</sup>, *'we going to be a bp flatter' 'lets flatten the curve'*<sup>689</sup>, *'we going to squeeze this france'*<sup>690</sup>, *'I am going to cheapen stuff [...]'*<sup>691</sup>, *'so we going to try and flatten this sh!t now?' 'I am going to cheapen...'*<sup>692</sup>, *'i want to try and lean on it tom'*<sup>693</sup>, *'im going to have to bash it'*<sup>694</sup>, *'I*

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<sup>674</sup> Recital (294).

<sup>675</sup> See for instance recitals (140), (142), (145) and (294).

<sup>676</sup> See the description of the market, and in particular recitals (24), (25), (28), (33), (40), (41), (43), (44) and (50).

<sup>677</sup> Recitals (81)-(83).

<sup>678</sup> Recital (106).

<sup>679</sup> Recital (110).

<sup>680</sup> Recital (120).

<sup>681</sup> Recital (121).

<sup>682</sup> Recital (122).

<sup>683</sup> Recital (124).

<sup>684</sup> Recital (127).

<sup>685</sup> Recital (136).

<sup>686</sup> Recital (143).

<sup>687</sup> Recital (151).

<sup>688</sup> Recital (155).

<sup>689</sup> Recital (188).

<sup>690</sup> Recital (191).

<sup>691</sup> Recital (196).

<sup>692</sup> Recital (198).

*am going to cheapen*<sup>695</sup>, *'I am going to make sure they get marked lower*<sup>696</sup>, *'im going to flatten it*<sup>697</sup>, *'lets likk the curve then*<sup>698</sup>, *'iam gonna lean on 23s*<sup>699</sup>.

- (380) The information exchanged allowed them to compare, align and coordinate their strategies with respect to the primary and/or secondary market. This is reflected in statements such as: *'same*', *'agree*'. For instance: *'we are doing the same coming out long, and hope the dbr will be [...] into the tap at the end of month*<sup>700</sup>, *'agree we should be a bit steepers*<sup>701</sup>, *'what overbidding do we think in olo 10y?' 'and5y' '+8 +10' 'iam gonna go*<sup>702</sup>, *'wat we gotta pay up for these 25 [...]' 'I was thinking around 4 above mid*<sup>703</sup>, *'french buyer' 'showed 75' 'offered 25m pgb 21*<sup>704</sup>, *'ill bid same sort of level if he comes*<sup>705</sup>, *'thinking the same' 'in overbidding*<sup>706</sup>, *'what we bidding' '?' '10 cents here*<sup>707</sup>, *'What you thinking for the 15yr's today*<sup>708</sup>, *'what we doing in belg then? 3?? 3 cents?*<sup>709</sup>, *'i will show same'*<sup>710</sup>, *'I will wait for 15min then start lifting screens*<sup>711</sup>, *'lets do that*<sup>712</sup>, *'let's just put the same bids in*<sup>713</sup>, *'if we bid similar im sure we will get paper*<sup>714</sup>, *i am just going to be flat*<sup>715</sup>, *'im going for 75m...*<sup>716</sup>, *'lets agree mids in 5 min' 'lets get our mid right in this shite*<sup>717</sup>, *'300m we r going for' 'all one price we can decide the price*<sup>718</sup>, *'i am going to be bidding these Italy tomorrow*<sup>719</sup>, *'iam going + 14*<sup>720</sup>, *'think we going for 130mm*<sup>721</sup>, *'I think iam going +8 +10*<sup>722</sup>, *'ok I am going +8 +10*<sup>723</sup>, as well as from the wording: *'we*

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693	Recital (202).
694	Recital (228).
695	Recital (226).
696	Recital (229).
697	Recital (241).
698	Recital (246).
699	Recital (259).
700	Recital (116).
701	Recital (121).
702	Recital (124).
703	Recital (127).
704	Recital (129).
705	Recital (131).
706	Recital (139).
707	Recital (146).
708	Recital (151).
709	Recital (155).
710	Recitals (200) and (215).
711	Recital (226).
712	Recital (228).
713	Recital (234).
714	Recital (245).
715	Recital (245).
716	Recital (246).
717	Recital (269).
718	Recital (282).
719	Recital (298).
720	Recital (304).
721	Recital (310).
722	Recital (322).
723	Recital (330).

*going to steepen or flatten into it?*<sup>724</sup>, *'yes want to kill france dont we'*<sup>725</sup>, *'lets [ki]ll the curve then'*<sup>726</sup>.

- (381) The traders helped each other and tried to ensure that individual actions did not harm the strategy of a competitor or the common interest of the competitors involved. This is reflected in statements such as: *'[...] - at 75 at 9.55 as you wantd'*<sup>727</sup>, *'I got hit on telly earlier...so just offering it back'* *'im helpful like that for you guys'*<sup>728</sup>, *'just need to keep it low for 25 more minutes!!'* *'please'* *'I would feel better if we traded 125.00 italy wont tighten'*<sup>729</sup>, *'does that fuka nyone?'* *'should I pull?'*<sup>730</sup>, *'we just try to help each other when we can'*<sup>731</sup>, *'ok its my offer on tv dont lift it!'*<sup>732</sup>.
- (382) At times, the communications between the traders included various exchanges of sensitive information and attempts at coordination in respect of one or several EGB, either in the context of an upcoming auction, a syndication or on the secondary market. These instances were not identical but they show patterns of conduct in the relevant period. For analytical purposes the Commission identifies four categories or stages of interrelated conduct, which are intertwined and partially overlapping:<sup>733</sup>
- (1) attempts to influence the prevailing market price on the secondary market in function of the conduct on the primary market;
  - (2) attempts to coordinate the bidding on the primary market;
  - (3) attempts to coordinate the level of overbidding on the primary market;
  - (4) other exchanges of sensitive information, including on (i) pricing elements, positions and/or volumes and strategies for specific counterparties related to individual trades of EGB on the secondary market; (ii) individual recommendations given to a DMO; and (iii) the timing of pricing of syndicates.
- (383) By coordinating their conduct, the banks knowingly substituted practical cooperation between them for the risk of competition, operating together and protecting each other from competition. Through the actions of their respective traders, the banks revealed their joint intention to coordinate their competitive conduct on the primary and secondary markets for EGB, attempting to obtain the volumes desired at the EGB auctions at a more favourable price, and/or help each other in their trading activities on the secondary market, including in view of their conduct on the primary market to the detriment of counterparties and their customers that were not part of these exchanges. The actions in these categories explicitly or implicitly resulted in the conclusion of agreements and/or the adoption of concerted practices between the

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<sup>724</sup> Recital (280).

<sup>725</sup> Recital (202).

<sup>726</sup> Recital (246).

<sup>727</sup> Recital (106).

<sup>728</sup> Recital (197).

<sup>729</sup> Recital (226).

<sup>730</sup> Recital (261).

<sup>731</sup> Recital (294).

<sup>732</sup> Recital (346).

<sup>733</sup> See Section 5.1.3.2., recitals (495)-(531).

parties within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.<sup>734</sup>

#### 5.1.1.3. Arguments of the parties

##### *Character of persistent chatrooms*

- (384) As explained, persistent chatrooms are closed continuous meetings or clubs in which the members communicate through messages that are accessible to the group.<sup>735</sup> None of the parties denies having participated in the contacts described. However, parties that have not cooperated with the Commission investigation under the leniency programme deny that their membership of a persistent chatroom amounted to participation in anticompetitive agreements and/or concerted practices.
- (385) Some banks claim that membership of a persistent chatroom does not prove that the participant must have been aware of the agreements and concerted practices that have taken place in that chatroom. Bank of America, for instance, argues that traders automatically receive access to various persistent chatrooms every morning when logging in to Bloomberg and that the Commission failed to produce evidence that they actually read into the content of these communications.<sup>736</sup> Many banks play down the importance of these chatrooms, arguing that their trader participated for mere social purposes, did not effectively contribute to the discussions, that these discussions were not sensitive and that their trader did not seek to benefit from any information.<sup>737</sup>
- (386) As explained in recital (80), the participants of a persistent chatroom had access to the full content of that chatroom. They could enter and leave the chatroom whenever they wanted, sometimes several times a day, and could follow up on all communications of all participants, live or retroactively. Persistent chatrooms are transparent means of communication, allowing the participants to be aware of all discussions that take place within them. All participants that are regularly present during the discussions are aware of the nature and purpose of the chatroom concerned. Their personal contribution to the conversations demonstrates their participation, but they may also follow conversations of the other participants and read them live or at a later stage, when re-entering the chatroom. The traders shared their information (including intentions or queries) within the closed group of chatroom participants so that the other participants would be informed and could eventually follow up, and on the expectation that the competitors participating in the chatroom would not use that information against them.
- (387) Undertakings are only liable for the conduct their traders were aware of or they should have reasonably foreseen and were prepared to take the risk.<sup>738</sup> It has been established that most traders engaging the liability of the addressees of this Decision had access to, and frequently accessed, the DBAC and/or CODS & CHIPS chatroom(s) and therefore, they were fully aware of the conduct planned or put into effect in that/those chatroom(s), to the extent they existed at the relevant time. This concerns [...] (successively employed by ABN-AMRO, Natixis, WestLB and

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<sup>734</sup> See also recital (93).

<sup>735</sup> Recital (80).

<sup>736</sup> [...]

<sup>737</sup> [...]

<sup>738</sup> See recitals (425) - (445). Also for awareness of conduct in other chatrooms or instant messages outside DBAC and CODS & CHIPS.

UniCredit), [...] (successively employed by RBS and Nomura), and [...] (employed by ABN-AMRO, RBS and later by Nomura).<sup>739</sup> Those traders also participated in other parallel chatrooms and contacts (mostly bilateral) at different stages of their individual involvement in the infringement. As such, they also knew or should have reasonably foreseen that those chatrooms and contacts could be held by the other participating traders and were prepared to take the risk.<sup>740</sup> In contrast, Bank of America only had access to CODS & CHIPS and there is no indication that the Bank of America trader was aware or should reasonably have foreseen the existence of anticompetitive conduct between the other parties to CODS & CHIPS in the DBAC persistent chatroom and/or in other contact in which that trader was not participating.

- (388) Some parties<sup>741</sup> claim that the individual information shared by their trader in these contacts was not sensitive. They argue that the chatrooms were used for innocent market colour or that much of the information exchanged was already in the public domain or was general in nature and not price sensitive. Bank of America argues that there is no evidence that other members of CODS & CHIPS interacted on a social basis in the same way as DBAC traders.<sup>742</sup> Some of the banks further contend that the exchanges, or at least those to which their trader actively contributed, amount to simple observations which any market observer could make.<sup>743</sup> According to these banks, in view of the volatility of financial markets, the information is relevant for a short period only. The older the information, the less likely it is that the traders are still retroactively following up on the discussions.
- (389) All traders concerned participated regularly and actively in the chatroom(s) of which they were a member.<sup>744</sup> They understood the nature and purpose of the chatroom(s). By only focussing their own respective trader's disclosures, the parties neglect or underestimate the intrinsically collusive character of these persistent chatrooms. As mentioned, the traders had access to the whole of the discussions<sup>745</sup> and often their contacts demonstrate that they took an interest in them.<sup>746</sup> Furthermore, the fact that some traders had to be (and were) readmitted into the chatrooms after changing jobs because their information and participation was considered useful (or because the re-admitted trader considered the exchanges useful) demonstrates that the information exchanged within these chatrooms was valuable and was not viewed as information which was already in the public domain or of general nature. The non-public nature of the information exchanged is further supported by the traders' use of code words.
- (390) Bank of America also disputes that the four CODS & CHIPS communications referenced by the Commission in the LoF are evidence of regular social interaction between DBAC members and the Bank of America trader.<sup>747</sup> Bank of America claims that these exchanges do not provide evidence that their trader attended the event or met with other traders, and that in two instances where their trader launches an invitation to dinner, the statements are actually jokes and not sincere invitations to

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<sup>739</sup> Recitals (84)-(85).

<sup>740</sup> See Table 3 in recital (89).

<sup>741</sup> [...]

<sup>742</sup> [...]

<sup>743</sup> [...]

<sup>744</sup> See the overview of contacts used as evidence in Annex 1.

<sup>745</sup> Recital (80).

<sup>746</sup> See the examples of the language used in recitals (380) and (381) that illustrates that the traders acted upon the information exchanged in the chatrooms.

<sup>747</sup> [...]

dinner. Finally, it argues that the Commission's reliance on four chat references over two years shows a lack of evidence of an infringement on the part of Bank of America.<sup>748</sup> Bank of America further argues that the CODS & CHIPS is a chatroom for "freeloaders", "gossip" and "mofo talk".

- (391) Whether Bank of America's trader socialised with other traders in the same way as the traders at the core of the DBAC chatroom is irrelevant. The evidence in Section 4 shows that its trader actively participated in the collusive conduct with the other traders. The fact that there were side discussions, such as gossip or invitations to social events, does not invalidate the anticompetitive character of the CODS & CHIPS chatroom.<sup>749</sup> Bank of America's claim that the chatroom CODS & CHIPS "was cheap and vulgar, there were no expectations of its members and no purpose to the chats"<sup>750</sup> relies on four chats<sup>750</sup> spread over a two years period (of which only one refers to [...] and the rest to [...]). Further, the reference to "gossip" and "freeloaders" appears on a single chat of 18 January 2011, two years after Bank of America's trader was no longer part of the CODS & CHIPS chatroom. Moreover, Bank of America's reliance on excerpts of chats showing that, after one year, the other traders are upset that Bank of America's traders (in particular [...]) do not share information contradicts Bank of America's claim that "there were no expectations of its members". On the contrary, it demonstrates that participation in CODS & CHIPS implied an expectation that all participants disclose sensitive information allowing all participants mutually to benefit from the exchanges in that chatroom.<sup>751</sup> In that regard, even if an undertaking only participates passively in an unlawful initiative, by failing to distance itself publicly from the content of that initiative or reporting it to the administrative authorities, it encourages the continuation of the infringement and compromises its discovery, and is thus liable for such participation.<sup>752</sup> Moreover, even traders that passively participated in the initiative and remained active on the market are presumed to have taken account of the information exchanged, unless they demonstrate otherwise, which the banks have not done.<sup>753</sup>
- (392) Further, evidence shows that the exchanges in the CODS & CHIPS chatroom, just like the exchanges in the DBAC chatroom, contained precise and sensitive information that went beyond mere observations<sup>754</sup> and Section 5.1.3 explains how these exchanges restricted competition. This does not imply that the Commission considers that all exchanges in the persistent chatrooms or through other means were anticompetitive. The Commission relies for this Decision on extracts from the chatrooms that demonstrate the anticompetitive nature of the chatrooms and the nature of the infringement and does not hold exchanges against the banks that were clearly and exclusively for social purposes,<sup>755</sup> for exploring bilateral trades or for

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<sup>748</sup> [...]

<sup>749</sup> See also recital (570).

<sup>750</sup> With respect to the chat of 7 January 2008, the excerpt used by Bank of America only shows that [...] observes that [...] in no longer using the chat. [...]

<sup>751</sup> See also recital (378).

<sup>752</sup> See also recitals (363) and (364).

<sup>753</sup> Judgment of the Court of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 51, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 127; and Case T-105/17, *HSBC*, paragraph 67.

<sup>754</sup> See for instance recitals (616), (625), (627), (644)-(645), (713).

<sup>755</sup> Although certain exchanges of this nature are relied upon as contextual elements demonstrating the close-knit relationship between certain of the participating traders.

exchanging market colour that is already in the public domain. There was often a combination of exchanges of sensitive and less sensitive information and the mere fact that also less sensitive information was exchanged cannot exempt the contacts as a whole from their anticompetitive character.

- (393) The parties cannot escape liability for their participation in the agreements and/or concerted practices reached in the CODS & CHIPS and/or DBAC chatroom(s) by pointing to the fact that the participants exchanged both sensitive information and non-sensitive information. Nor can the parties escape liability by minimising their participation to individual pieces of information that their own traders shared, disregarding their participation in the chatroom and the sensitive information as a whole that these traders exchanged in the chatroom. It is telling that RBS immediately banned this kind of communication with traders of competing banks after having given competition law training to its traders.<sup>756</sup>

*The evidence used*

- (394) The only relevant criterion for the purpose of assessing the probative value of evidence lawfully adduced relates to its credibility.<sup>757</sup> The main evidence in this case consists of the records of communications between traders.<sup>758</sup> This evidence is authentic, contemporaneous and specific. It is therefore credible and has a high evidentiary value.<sup>759</sup> None of the parties has contested the authenticity of this evidence or submitted any other contemporaneous evidence that the Commission should have taken into account.
- (395) The use of jargon, abbreviations and informal language in these chatroom communications does not make them less credible. Such language is common and understandable to traders in the financial sector. The Commission has dealt with several cartel cases in the financial sector where traders of financial products communicated with each other via professional chats and is also familiar with such language.<sup>760</sup> Moreover, the Commission has been assisted in the interpretation of the evidence by three banks that were fully involved in the conduct and which took the decision to report and explain the conduct to the Commission. The other parties do not directly contest all of the explanations given by the leniency applicants. Some, however, claim that the Commission has relied too much upon a single type of contemporaneous evidence and the alleged subjective interpretation of that evidence given by the leniency applicants. They argue that the relevance of these explanations is limited and cannot outweigh their own alternative interpretations of these contacts. On this basis, they allege that the Commission has failed to produce a body of evidence which is firm, precise and consistent and that there is insufficient evidence to meet the relevant standard of proof in this case.<sup>761</sup>

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<sup>756</sup> See footnote 95.

<sup>757</sup> See in that respect Judgment of the Court of Justice of , 26 September 2018, Case C-99/17 P, *Infineon Technologies AG v Commission*, ECLI:EU:C:2018:773, paragraph 65 and the case law cited

<sup>758</sup> See also recital (78).

<sup>759</sup> 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, ECLI:EU:T:2019:522, paragraph 268.

<sup>760</sup> See for instance, case AT.39861 – *Yen interest rate derivatives*, AT.39914 – *Euro interest rate derivatives*, AT.39924 – *Swiss Franc interest rate derivatives*, AT.40135 – *Forex*, AT. 40346 – *SSA bonds*.

<sup>761</sup> [...]

- (396) However, the interpretations given to the communications by the leniency applicants are credible. Each of the three leniency applicants decided, independently from each other, to cooperate with the Commission investigation and to provide and explain a selection of contemporaneous communications to the Commission. Their explanations, are consistent with the content and context of the chats to which they relate and mutually corroborate each other.<sup>762</sup> Those explanations are therefore credible.
- (397) The Commission has not simply taken on trust the explanations of the parties who decided to cooperate with the investigation.<sup>763</sup> The Commission sought by means of requests for information all of the parties' views and interpretations of the contacts.<sup>764</sup> The Commission sent RFIs under Article 18 of Regulation (EC) No 1/2003 asking the parties to clarify the content of certain extracts from communications of their traders.<sup>765</sup> Many parties<sup>766</sup> were unable to clarify or provide alternative explanations for all excerpts in their responses to these requests for information.<sup>767</sup> Based on the evidence available to it, the Commission has undertaken its own analysis and presentation of the facts. To the extent that certain interpretations are contested and alternative explanations provided, the plausibility of these alternative explanations is addressed in this Decision.
- (398) Certain parties take issue with the presentation and use of (part of) the evidence.<sup>768</sup> They accuse the Commission of building a case on a selection of contacts which were included in an Annex to the SO only and that the Annex insufficiently explained why these chats constitute evidence of anticompetitive agreements and/or concerted practices. This alleged failure to clearly identify and characterise the exchanges which gave rise to the collusive conduct allegedly also violates their rights of defence.
- (399) First, as an integral part of the SO, the Annex complemented the factual parts of the SO by setting out a wider number of instances of collusive conduct compared to the body of the SO. The body of the SO contained narrative explanations of a large

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<sup>762</sup> Where the parties that submitted the communications sometimes deviated in their explanations from the explanations given to them by their traders, this does not confirm that there was an alternative explanation for these contacts, but rather demonstrates that the explanations of the traders were sometimes too defensive and not considered credible by the parties submitting the communications in light of the evidence.

<sup>763</sup> Each Bank presented the conduct in eight categories, albeit eight different categories. [...]

<sup>764</sup> See in particular the requests for information of 15.07.2016 in recital (72), footnote 72.

<sup>765</sup> See recital (72).

<sup>766</sup> Including parties such as Nomura and UniCredit that contest the interpretation of the Commission and/or provide alternative explanations in response to the SO.

<sup>767</sup> See for instance [...] with respect to a communication of 26.01.2011: '[Nomura] has been unable to establish what the phrase '58' may refer to.'

'[Nomura] has been unable to establish with certainty what the phrase '10-20' refers to, though possibilities may include: (i) the time of 10:20am; (ii) 10 – 20 minutes prior to the opening (or closing) of an auction; or (iii) a duration of 10 – 20 minutes in total at some point prior to the auction.'

See for instance [...] with respect to communications of 26.09.2011 and 28.09.2011:

'[UniCredit] is not able to confirm what this [i got 99.15.] refers to or the source for this information.'

'[UniCredit] is not able to confirm what this [104.90] refers to or the source for this information.'

'[UniCredit] is not able to confirm what this [where do u have rag37 to dbr37 at the moment?' '59.75 ?] precisely refers to or the source for this information.'

'[UniCredit] is not able to confirm what this [I had 00 ish] refers to or the source for this information.'

'[UniCredit] is not able to confirm what this [139.09?] refers to or the source for this information.'

<sup>768</sup> [...]

number of contacts throughout the period of the infringement including detailed descriptions of the types of conduct with which the Commission took objection and the reasons therefore. The similarity between many of the contacts made it possible to set out the scope and nature of the objections against the parties without needing to provide narrative extracts of every contact in the body of the SO.<sup>769</sup>

- (400) Second, the Annex set out all of the key information regarding each contact, including the date on which the contact took place, the parties to that contact, the relevant extract of that contact with which the Commission takes issue, the reference to the evidence in the Commission file (ID numbers) and the subject matter by reference to the categories of conduct set out in the main body of the SO. The SO (of which the Annex formed an integral part) was therefore sufficiently clear to allow the parties to identify the evidence held against them and to understand the inferences that the Commission intended to draw from the evidence, and defend themselves against the Commission's preliminary conclusions.<sup>770</sup>
- (401) Third, it was evident from the structure of the SO (including its Annex) how the Commission intended to use these communications in support of its objections and how the communications support the Commission's preliminary findings. According to the case-law of the Court of Justice of the European Union, the Commission respects the addressees' rights of defence where the main body of the SO and its annexes contain sufficient information to enable the alleged contacts to be identified, the conduct alleged, the period of the infringing conduct, and the participants.<sup>771</sup> The addressees of the SO could reasonably infer from the SO (and its Annex) the conclusions which the Commission intended to draw from the contacts identified therein.<sup>772</sup>
- (402) Finally, the Commission gave the parties access to the evidence on the Commission file, including that referred to in the Annex to SO.<sup>773</sup> The Commission also addressed a LoF to all of the parties identifying the factual corrections, most of them already identified by the parties, in some communications reported in the SO and its Annex that did not extend the duration or the scope of the alleged infringement, or alter its nature, for any of the parties and gave them (renewed) access to the evidence mentioned in that LoF<sup>774</sup>. The parties could submit written comments on all of the facts alleged in the SO (including its Annex) and the LoF. Therefore, the evidence that was presented in the SO (including its Annex) and in the LoF can be used as evidence for this Decision.<sup>775</sup>

#### *Conclusion*

- (403) It is considered that the complex of coordination and exchanges of sensitive information in this case present all the characteristics of agreements and/or concerted

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<sup>769</sup> See also recitals (97) - (99).

<sup>770</sup> [...]

<sup>771</sup> Case T-8/16, *Toshiba Samsung Storage Technology*, paragraph 160 and Case T-772/15 *Quanta Storage, Inc. v Commission*, ECLI:EU:T:2019:519, paragraphs 180-187.

<sup>772</sup> Judgment of the General Court of 30 September 2003, *Atlantic Container v Commission*, T-191/98 and T-212/98 to T-214/98, ECLI:EU:T:2003:245, paragraph 162 and the case-law referred to therein.

<sup>773</sup> See recital (74).

<sup>774</sup> See Section 3, recital (75).

See also Case T-8/16, *Toshiba Samsung Storage Technology*, paragraph 160 and Case T-772/15 *Quanta Storage, Inc. v Commission*, paragraphs 180-187.

<sup>775</sup> See also Case T-8/16, *Toshiba Samsung Storage Technology*, paragraphs 145-153.

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

### 5.1.2. *Single and continuous infringement*

#### 5.1.2.1. Principles

- (404) An infringement of Article 101 of the Treaty may not only result from an isolated act but also from a series of acts or from continuous conduct. When these acts or 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 it existed.<sup>776</sup>
- (405) In fact, the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged.<sup>777</sup>
- (406) The validity of this assessment is not affected by the possibility that one or several elements of that series of acts or continuous conduct could also constitute in themselves and taken in isolation an infringement of Article 101 of the Treaty. When the different actions form part of an overall plan, because their identical object restricts and/or distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.<sup>778</sup>
- (407) The Commission is entitled to attribute liability to an undertaking in relation to the conduct as a whole, that is all the forms of anticompetitive conduct comprising the single and continuous infringement and, accordingly, that infringement as a whole if that undertaking has participated directly in all the forms of anticompetitive conduct comprising that infringement; or in only some of the forms of anticompetitive conduct comprising that infringement, but was aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and was prepared to take the risk.<sup>779</sup>
- (408) The fact that the undertaking concerned did not participate directly in all the constituent elements of the overall cartel thus cannot relieve it of its responsibility for the infringement of Article 101(1) of the Treaty. Although a cartel is a joint enterprise, each participant in the arrangement may play its own particular role, appropriate to its circumstances. The arrangements may well be varied from time to

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<sup>776</sup> See for instance Judgment of the Court of Justice of 24 June 2015, *Fresh Del Monte Produce v Commission*, Joined cases C-293/13 and C-294/13, ECLI:EU:C:2015:416, paragraph 156. Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens NV*, C-441/11P, EU:C:2012:778, paragraph 41 and the case law cited. Judgment of the Court of 26 January 2017 *Villerooy and Boch v Commission*, C-644/13 P, ECLI:EU:C:2017:59, paragraph 47, Case T-25/95, *Cimenteries CBR*, paragraph 3699.

<sup>777</sup> Case C-49/92P, *Anic Partecipazioni SpA*, paragraph 83.

<sup>778</sup> Case C-204/00 P, *Aalborg Portland*, paragraph 258. See also Case C-49/92P, *Anic Partecipazioni SpA*, paragraphs 78-81, 83-85 and 203; Judgment of the General Court of 15 Decembr 2016, *Infineon Technologies AG v. Commission*, T-758/14, ECLI:EU:T:2016:737, paragraph 215.

<sup>779</sup> See, in that respect, Case C-441/11 P *Verhuizingen Coppens*, paragraph 43; Case C-99/17 P, *Infineon Technologies*, paragraph 172.

time, or its mechanisms adapted or strengthened to take account of new developments. Some may be more involved than others. The fact that individual parties are not familiar with the details of some collusive contacts in which they did not participate or the fact that they were unaware of the existence of some of such contacts cannot detract from the Commission's finding of the existence and scope of a single and continuous infringement in this case.<sup>780</sup> Internal conflicts, rivalries or even cheating may occur, but will not, however, prevent the arrangement from constituting an agreement and/or concerted practice for the purposes of Article 101 of the Treaty where there is a single common objective. Nevertheless, such a circumstance may be taken into account when assessing the individual gravity of an undertaking's involvement in the infringement.

- (409) Thus, the undertaking may have participated directly in only some of the forms of anticompetitive conduct comprising the single and continuous infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such cases, the Commission is also entitled to attribute liability to that undertaking in relation to all the forms of anticompetitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole.<sup>781</sup>
- (410) Conversely, an undertaking cannot be held liable for the infringement as a whole if it has directly taken part in some forms of anticompetitive conduct comprising the single and continuous infringement only, and was unaware of other violating conduct planned or put into effect by the other participants in the cartel, did not intend to contribute to the same objectives as those pursued by the other participants, nor was able reasonably to foresee it and was prepared to take the risk. That cannot however relieve the undertaking of liability for conduct in which its participation is established or for conduct for which it can in fact be held responsible. The Commission is entitled to attribute liability to that undertaking only for the conduct in which it had participated directly and/or for conduct of others that it was aware of or could reasonably foresee.

#### 5.1.2.2. Application in this case

- (411) During the overall duration of the conduct, the banks, via their traders, participated in multilateral chatroom communications, in CODS & CHIPS and/or DBAC. All of the various types of conduct that constituted the cartel took place in each of the chatrooms.<sup>782</sup> Some banks occasionally participated in parallel chatrooms or instant messages that complemented the types of discussions being held in the CODS & CHIPS and/or DBAC chatrooms during that period of time.<sup>783</sup> This Decision relies

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<sup>780</sup> See, to that effect, Judgment of the General Court of 14 December 2006, *Raiffeisen Zentralbank Österreich AG and Others v Commission*, Joined Cases T-259/02 to T-264/02 and T-271/02, ECLI:EU:T:2006:396, paragraph 193.

<sup>781</sup> Case C-441/11 P, *Verhuizingen Coppens*, paragraph 43.

<sup>782</sup> See the various categories of conduct explained in Section 5.1.3., recitals (496)-(531) and the overview of anticompetitive contacts in Annex 1.

<sup>783</sup> For communications outside the main chatrooms DBAC and CODS & CHIPS, see recitals (91) and (387). The Decision mentions occasional communications outside DBAC and CODS & CHIPS in the period between 3 January 2007 and 4 February 2010. Bank of America is not involved in these communications. Nomura and UniCredit are also not involved because the communications mentioned in the Decision took place before their period of individual participation, when their traders took part in these communications on behalf of other banks.

on communications across these chatrooms and instant messages that constituted anticompetitive conduct in combination with communications that provide information on the context in which those anticompetitive communications were taking place. Some of the communications evidence – within the same contacts – the existence of more than one type of anticompetitive conduct, thereby illustrating the overlapping and interrelated nature of the conduct. Taken as a whole, the communications show that the traders exchanged commercially sensitive information according to a common plan with the anticompetitive aim of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market, which was capable of impacting the normal course of pricing components for EGB.<sup>784</sup>

- (412) The Commission considers that the conduct followed a consistent pattern and formed part of a common plan to restrict or distort competition on the EGB market in pursuit of a single anticompetitive aim of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market. Both DBAC and CODS & CHIPS chatrooms had the same objective and each bank intended to contribute to that aim. Through its traders, each of the banks was aware or could have been aware of the unlawful conduct planned or put into effect in the multilateral chatroom(s) and other communications to which its traders had access. In addition, during the period of their involvement, each of the banks (with the exception of Bank of America), through their traders could reasonably have foreseen – and were prepared to take the risk of – the existence of conduct planned or put into effect by the other cartel participants in pursuit of the same objectives in other chatrooms or other communications (but in which its trader did not participate). The impact of the individual awareness of the body of communications – and in particular the existence of both chatrooms - will be addressed in recitals (425)-(442).

*Common plan in pursuit of a single anticompetitive aim*

- (413) The traders exchanged commercially sensitive information within a circle of trusted competitors according to a common plan with the anticompetitive aim of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market, which was capable of impacting the normal course of pricing components for EGB.<sup>785</sup>
- (414) Through their contacts, the participating banks were better informed about each other's bidding and trading strategies when acquiring and trading EGB. This informational asymmetry aimed to give the colluding traders a competitive advantage and enable them to identify and take advantage of opportunities to align or adjust their EGB trading strategy and conduct in function of each other's strategy and conduct, both on the primary and the secondary market. The traders aimed to secure the desired allocations of bonds from the auctions and maintain their primary dealer status at the lowest price. The traders aimed to support or at least respect each other's positions and strategies when trading EGB and if possible align with each other. The banks' conduct on the primary and secondary market ultimately aimed to assist each other in generating more EGB trading business and increasing revenues.<sup>786</sup>

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<sup>784</sup> See also Sections 5.1.1.2 and 5.1.3.2.

<sup>785</sup> See also recital (493).

<sup>786</sup> See also recitals (532) - (544).

- (415) A range of objective elements further confirms that the multilateral chatroom(s) and other communications described in this Decision were linked and complementary in nature and sought to achieve these aims.<sup>787</sup>
- (416) First, the collusive practices related to the *same product and activity*, namely EGB trading. EGB are homogeneous products.<sup>788</sup> EGB are traded in the EGB trading desks of the major financial institutions. The *service* involved in issuing and trading EGB is similar for all countries concerned and for all EGB regardless of their maturity<sup>789</sup>: primary dealers submit bids for the volume and price of the relevant EGB that they intend to acquire when the EGB are issued on the primary market. They then, together with other non-primary traders, buy and sell the EGB on the secondary market.
- (417) Second, the same *means* were used to engage in or facilitate anticompetitive conduct using repeatedly the same means of communication for the different auctions and practices. The evidence shows that the traders consistently used the same multilateral persistent chatrooms or instant messages. Online chatrooms are easy to access in real time and provide for a particularly high degree of transparency. Participation in these chatrooms, which was by “invitation only”, implied an expectation that all participants disclosed sensitive information allowing each other to mutually benefit from these exchanges.<sup>790</sup>
- (418) Third, the *individuals involved* in the agreements and/or concerted practices were usually the same, showing a high degree of continuity and overlap. They were skilled professionals that worked at the EGB desks of their banks and knew each other very well. Some of these individuals changed employment and re-acquired access to the DBAC and/or CODS & CHIPS chatroom almost immediately, thereby embarking on the same conduct in which they had been involved prior to leaving their previous employment. These individuals engaged the liability of the new employer in the anticompetitive conduct, thus demonstrating the single and continuous nature of the infringement throughout its duration.<sup>791</sup>
- (419) Fourth, the collusive contacts took place within the same *time period* between 2007 and 2011 and the duration of the contacts in the two chatrooms largely overlapped.<sup>792</sup> The overall scheme was implemented over a period of several years employing the same mechanisms and pursuing the same common plan.<sup>793</sup>
- (420) Fifth, the scheme was developed and implemented through a complex of collusive arrangements, specific agreements and/or concerted practices. These practices followed the same *pattern*. The traders were in frequent – and sometimes daily – contact with each other throughout the period of infringement and were exchanging information that enabled them to identify opportunities to collude on or coordinate their activities on the primary and/or secondary markets.<sup>794</sup> In the run-up to an

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<sup>787</sup> The view that the various instances were interlinked and tied together in terms of conduct is shared by all parties that actively cooperated with the Commission investigation and reported these instances. [...]

<sup>788</sup> See recital (466).

<sup>789</sup> See Section 2.2. The business.

<sup>790</sup> Recitals (378) and (384) - (393).

<sup>791</sup> See Table 4 in Recital (92).

<sup>792</sup> Recitals (81) - (86).

<sup>793</sup> Recitals (88) - (96).

<sup>794</sup> Recital (79).

auction, sometimes after having coordinated already in an early phase on the recommendations given to the DMO for the auction, traders disclosed and/or aligned their bidding strategies. They joined forces in their attempts to alter the prevailing market price on the secondary market before the auction. The level of overbidding was coordinated and bid levels were adjusted or aligned. Afterwards, the results of the actions were discussed and the traders gave each other feedback.<sup>795</sup> For instance: ‘*well done everyone/guys/everybody*’<sup>796</sup>, ‘*worked well*’.<sup>797</sup> Throughout, sensitive information was exchanged allowing the participants to look for potential ways to make gains on the secondary market, including for EGB that were already issued and/or were issued via syndication.

- (421) The fact that the traders sometimes discussed their trading strategy days in advance of an auction<sup>798</sup> and congratulated each other or shared their frustrations afterwards on the results of their coordinated conduct illustrates that they acted pursuant to a common plan.<sup>799</sup>
- (422) Sixth, the *frequency* of the contacts was high, as described in Section 4 and increased the risk of a collusive outcome. It facilitated a better common understanding of the market and monitoring of deviations.<sup>800</sup>
- (423) Seventh, the anticompetitive exchanges of information and conduct were often similar in type; they intertwined and overlapped and took place in both chatrooms.<sup>801</sup>
- (424) In view of the above, the Commission considers that the conduct set out in this Decision formed part of a common plan in pursuit of a single anticompetitive aim<sup>802</sup> of colluding or coordinating the banks’ strategies for acquiring EGB on the primary market and/or trading them on the secondary market, which was capable of impacting the normal course of pricing components for EGB. As such, the Commission considers that the anticompetitive conduct identified in this Decision constitutes a single and continuous infringement.

#### *Awareness*

- (425) The banks participated in the cartel through the involvement of their traders: [...] (Bank of America), [...] (initially at ABN-AMRO and subsequently at Natixis, WestLB and UniCredit), [...] (initially at ABN- AMRO/RBS and later at Nomura), [...] (initially at ABN-AMRO/RBS and subsequently at RBS), [...] and [...] (RBS), [...] (initially at RBS and subsequently at Nomura), [...] and [...] (ABN-AMRO) and [...], [...], [...], [...], and [...] (UBS).
- (426) All of the banks (through one or more of the mentioned traders) had access to the CODS & CHIPS and/or DBAC<sup>803</sup> chatroom(s) and were or could reasonably have

<sup>795</sup> Recitals (108), (110), (122), (124), (131), (155), (164), (167), (178), (185), (220), (226), (234), (244), (282), (285), (297), (299), (302), (304), (309), (310), (322), (325), (328), (330), (337) and (345).

<sup>796</sup> Recitals (110), (185) and (282).

<sup>797</sup> Recital (151).

<sup>798</sup> See for instance recitals (156), (158), (166), (169), (179), (191), (195), (206)-(209) (215)-(218), (221), (230) - (234), (244), (253)-(257) or (298)-(299).

<sup>799</sup> Recital (420), footnote 795.

<sup>800</sup> Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, (‘Commission Guidelines on Horizontal Cooperation Agreements’), OJ C 11, 14.1.2011, point 91.

<sup>801</sup> Recitals (495)-(530) and the overview of anticompetitive contacts in Annex 1.

<sup>802</sup> See also Section 5.1.2.2.

<sup>803</sup> Including its predecessor RBSUBSABN.

been aware of the unlawful conduct planned or put into effect by the other banks in the chatroom(s) in which their traders participated. All of the various types of anticompetitive conduct that constituted the cartel took place in each of the chatrooms.<sup>804</sup> Even if the traders were at times not actively involved in the discussion, they were aware of the conduct of the other cartel participants, or could, at the very least, reasonably have foreseen that conduct and have been prepared to take that risk, through their access to the chats revealing that conduct. In addition (with the exception of Bank of America), even if a bank's trader only had access to one of the persistent multilateral chatrooms (CODS & CHIPS or DBAC), the bank could reasonably have foreseen the conduct taking place during the period of its involvement in the other multilateral persistent chatroom, by virtue of at least one of its trader's involvement in that other multilateral persistent chatroom when previously working for another bank.

- (427) Many traders with access to the persistent chatrooms also used the telephone or instant messages for bilateral communications with each other or for communicating with other traders that did not have access to the CODS & CHIPS and DBAC chatrooms, often in parallel with, and in support of their communications in the persistent chatrooms.<sup>805</sup> Most traders with access to the persistent chatrooms were aware or ought to have been aware of the existence of such additional contacts, even if they did not directly participate in them. Such awareness follows either from their own participation in other such instant messages and/or through references in the persistent chatrooms to such instant messages, including during previous periods of participation in the infringement, when employed by a different bank.
- (428) Traders of RBS (including ABN-AMRO) and UBS participated throughout in all aspects of the cartel. Their traders [...], [...], [...] and [...] participated in the conduct from the very beginning of the cartel and actively participated in both chatrooms, CODS & CHIPS and DBAC, as well as other communications. Those traders initially called themselves 'kings' (*'morning fellow kings' 'it's a select club but there you g[o]'*).<sup>806</sup> RBS and UBS' involvement in the conduct began when their traders [...], [...], [...] and [...] created the CODS & CHIPS chatroom on 5 January 2007. [...], [...] and [...] were amongst the traders that on 28 February 2007 set up the DBAC chatroom<sup>807</sup> and decided on the admission of new members to the chatroom: *'sure but we ll cut his balls' 'if things get out' ':-)'*. [...] was the administrator of both chatrooms and presented the purpose of the chatroom to a new member as: *'a couple guys in the market that work on 30yrs' 'we just try to help each other when we can'*.<sup>808</sup>
- (429) Other traders of UBS and RBS mentioned in the Decision participated in one persistent chatroom only or in the occasional other communications, but that does not reduce the undertakings' awareness of the scope and essential characteristics of the cartel.

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See Table 3 in recital (89).

<sup>804</sup> See the various categories of conduct explained in Section 5.1.3., recitals (485)-(531) and the overview of anticompetitive contacts in Annex 1.

<sup>805</sup> See Recitals (91) and (387).

<sup>806</sup> Recital (119).

<sup>807</sup> Recital (83).

<sup>808</sup> Recital (294).

- (430) RBS and UBS therefore, were aware, or ought reasonably to have been aware and were prepared to take the risk, of the full scope and essential characteristics of the cartel and are liable for the whole of the single and continuous infringement, including the unlawful conduct planned or put in place by the other participants, for the periods of their individual participation.
- (431) Natixis' involvement began when the ABN-AMRO trader [...] moved to Natixis and received renewed access to both persistent chatrooms DBAC and CODS & CHIPS and continued the anticompetitive conduct while working at Natixis. He was also involved in occasional anticompetitive communications outside DBAC and CODS & CHIPS having the same common aim. Another trader of Natixis participated in the cartel to a lesser degree.
- (432) Natixis therefore, was aware, or ought reasonably to have been aware and was prepared to take the risk, of the full scope and essential characteristics of the cartel as it existed at the time of its participation. Natixis is liable for the whole of the single and continuous infringement, including the unlawful conduct planned or put in place by the other participants, for the period of its individual participation.
- (433) WestLB's involvement began when the Natixis trader [...] moved to WestLB and received renewed access to the DBAC and CODS & CHIPS persistent chatrooms and continued the anticompetitive conduct while working at WestLB. He was also involved in occasional anticompetitive communications outside DBAC and CODS & CHIPS having the same anticompetitive aim.
- (434) WestLB, therefore, was aware, or ought reasonably to have been aware and was prepared to take the risk, of the full scope and essential characteristics of the cartel as it existed at the time of its participation. WestLB is liable for the whole of the single and continuous infringement, including the unlawful conduct planned or put in place by the other participants, for the period of its individual participation.
- (435) Nomura's involvement began when the RBS trader [...] moved to Nomura and received renewed access to the persistent chatrooms DBAC and CODS & CHIPS and continued the anticompetitive conduct while working at Nomura. He was later joined by [...] (who had previously participated in the cartel while working at ABN-AMRO and RBS) who also received renewed access to the CODS & CHIPS persistent chatroom.
- (436) Nomura therefore, was aware, or ought reasonably to have been aware and was prepared to take the risk, of the full scope and essential characteristics of the cartel as it existed at the time of its participation.<sup>809</sup> Nomura is liable for the whole of the single and continuous infringement, including the unlawful conduct planned or put in place by the other participants, for the period of its individual participation.
- (437) UniCredit's involvement began when the WestLB trader [...] moved to UniCredit and received renewed access to the CODS & CHIPS persistent chatroom and continued the anticompetitive conduct while working at UniCredit. From his time working at WestLB, [...] knew that the DBAC chatroom was no longer operational.<sup>810</sup>

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<sup>809</sup> In the period of participation of Nomura, the Decision does not establish or attribute liability for any communication outside the DBAC or CODS & CHIPS chatrooms.

<sup>810</sup> Recital (83). It was no longer operational since 08.07.2011 and was closed on 06.03.2012.

- (438) UniCredit therefore, was aware, or ought reasonably to have been aware and was prepared to take the risk, of the full scope and essential characteristics of the cartel as it existed at the time of its participation.<sup>811</sup> UniCredit is held liable for the whole of the single and continuous infringement as it existed at the time of its involvement,<sup>812</sup> including the unlawful conduct planned or put in place by the other participants, for the period of its individual participation.
- (439) UniCredit's arguments that [...] was only active on the secondary market will be assessed in Section 8 on Remedies.
- (440) Bank of America's involvement began when its trader [...] received access to the CODS & CHIPS chatroom. [...] came from ABN-AMRO, where he had worked with [...] and [...], traders that recently had created the CODS & CHIPS chatroom. He still had social contacts with them after he left ABN-AMRO and worked for Bank of America.<sup>813</sup> On 29 January 2007, [...] took the initiative and asked to join the CODS & CHIPS chatroom.<sup>814</sup> He joined the CODS & CHIPS chatroom at an early stage before the DBAC chatroom had been created. Bank of America – through its trader [...] – remained a member of the CODS & CHIPS persistent chatroom until he left the bank (he was removed from CODS & CHIPS chatroom on 10 August 2009).<sup>815</sup> All of the various types of conduct that constituted the cartel took place in the CODS & CHIPS chatroom during the period of Bank of America's involvement.<sup>816</sup> Bank of America's involvement – through [...] – in anticompetitive discussions in the CODS & CHIPS chatroom shows that Bank of America contributed to the common plan to restrict and/or distort competition on the EGB market with the anticompetitive aim of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market.
- (441) On the basis of the above, the Commission concludes that Bank of America was aware of, or ought reasonably to have foreseen and was willing to take the risk, of the unlawful conduct planned or put into effect in the CODS & CHIPS chatroom, including the unlawful conduct planned or put in place by the other participants in the CODS & CHIPS chatroom for the duration of its individual participation in the single and continuous infringement. However, it cannot be concluded with sufficient certainty that Bank of America was aware or ought reasonably to have been aware and was willing to take the risk of the existence and functioning of the DBAC chatroom or other anticompetitive communications.
- (442) Bank of America is, therefore, liable for the unlawful conduct planned or put into effect in the CODS & CHIPS chatroom, including the unlawful conduct planned or put in place by the other participants in the CODS & CHIPS chatroom, for the duration of its individual participation in the single and continuous infringement.

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<sup>811</sup> That is without communications in DBAC or instant messages. In the period of participation of UniCredit, the Decision does not establish or attribute liability for any communication outside the CODS & CHIPS chatroom.

<sup>812</sup> For the sake of clarity, it follows from the above, that UniCredit is not held liable for the conduct engaged in via the DBAC chatroom, since the anti-competitive conduct in the DBAC chatroom came to an end prior to that beginning of UniCredit's participation in the single and continuous infringement.

<sup>813</sup> See footnote 101.

<sup>814</sup> Recital (104).

<sup>815</sup> Recital (264).

<sup>816</sup> See the various categories of conduct explained in Section 5.1.3., recitals (485)-(531) and the overview of anticompetitive contacts in Annex 1.

*Intention to contribute to the common objective*

- (443) The exchange of information mainly in persistent chatrooms was based on a mutual expectation that all of the banks participating in the chatroom(s) would share information that was relevant for their trading of EGB and that such information would not be used against the traders who shared it.<sup>817</sup> This appears, for example, from the contacts where traders expressed gratitude for receiving information<sup>818</sup> and a willingness to coordinate<sup>819</sup> or, conversely, in which they complained about traders not sharing information.<sup>820</sup> When a trader did not live up to the general expectation of mutual exchange, he risked being removed from the contacts.<sup>821</sup>
- (444) The banks, via their participating traders, had access to the multilateral persistent chatroom(s) and were aware of the conduct planned or put into effect in that/those chatroom(s). Indeed, it follows from the structure of the contacts and of the subject matter of the exchanges (including pricing components) that the banks, through their own conduct, intended to contribute to the common aim of the chatroom(s).<sup>822</sup>
- (445) In this regard, the banks, through their traders, were, or ought to have been, aware of the sensitivity of the information exchanged and the illegitimate nature of the conduct in which they were participating. This is indicated by the traders' use of specific language, including sometimes code words, in attempts to conceal the conduct. For instance: *'please delete'*<sup>823</sup>, *'I don't think that these things should be discussed'*<sup>824</sup>, *'so we keep it a bit quiet'*<sup>825</sup>, *'dutch accused me of colluding with you on the last dutch tap by the way, I denied, with a laugh'*<sup>826</sup>, *'fine as long as [...] doesn't see it and when hes away from desk he logs out thats fair and no chance if [...] tries to fuk us'*, *'Don't worry will close the chat if I am off the desk, nothing goes out'*<sup>827</sup>, *'for the purposes of the tapes that's not really allowed...yeah maybe we get on a phone...ok done...lets do that'*<sup>828</sup>, *'yeah but don't say that we occasionally compare prices because then they will know'*<sup>829</sup> or *'I think you can talk about markets but defo not clients and flows of a recent nature should not be on here I think'*<sup>830</sup>, *'no u will no within 5 mins ok when I use everton'*<sup>831</sup>, *'cool ill give u shout on ireland its called everton ok'*<sup>832</sup>, *'everton 12.45'*<sup>833</sup>, *'everton the code word this afternoon'*<sup>834</sup>, *'everton playing in next half an hour'*<sup>835</sup>, *'everton'*<sup>836</sup>.

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<sup>817</sup> See for instance Recital (307).

<sup>818</sup> See for instance Recitals (112), (199), (206), (218), (221), (252), (259), (276), (309), (312), (325), (328) or (349).

<sup>819</sup> See for instance Recitals (101), (124), (150), (152), (204), (215), (226), (234), (245), (246), or (282).

<sup>820</sup> See for instance Recitals (141), (145), (157), (239).

<sup>821</sup> See for instance Recital (178).

<sup>822</sup> See Judgment of the Court of Justice of 7 February 2013, *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, C-68/12, ECLI:EU:C:2013:71, paragraphs 26-28.

<sup>823</sup> Recital (218).

<sup>824</sup> Recital (348).

<sup>825</sup> Recital (276).

<sup>826</sup> Recital (152).

<sup>827</sup> Recital (104).

<sup>828</sup> Recital (228).

<sup>829</sup> Recital (244).

<sup>830</sup> Recital (350).

<sup>831</sup> Recital (252).

<sup>832</sup> Recital (256).

<sup>833</sup> Recital (257).

<sup>834</sup> Recital (259).

### 5.1.2.3. Arguments of the parties

(446) [...], RBS and UBS [...] that the conduct set out in Section 4 constituted a single and continuous infringement. However, Bank of America and Nomura deny that there was a common plan or objective behind these contacts or at least that the Commission has sufficiently explained such common plan.<sup>837</sup> Bank of America and Nomura also claim that these were disparate contacts for different products without a clear pattern.<sup>838</sup> Portigon and UniCredit add that even if other parties acted in pursuit of such common plan, they were not aware of it and had no intention to contribute to such plan.<sup>839</sup>

#### *Explanation of the common plan*

(447) First of all, some parties deny or contest that the Commission has sufficiently explained the common plan behind the contacts.<sup>840</sup> They argue that the description of the common plan or objective behind these contacts is confusing, inconsistent or excessively broad. They contest that the Commission has failed to explain clearly how the exchanges of allegedly sensitive information in a closed circle created informational asymmetry and distorted competition.

(448) Contrary to those allegations, it has been clearly explained that the banks exchanged commercially sensitive information according to a common plan with the anticompetitive aim of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market.<sup>841</sup> Thus, the traders tried to obtain the desired volumes of EGB at low cost, allowing them to maintain their primary dealer ranking and safeguard participation in syndications and more generally to help each other generate more business and revenues when acquiring and trading EGB. Moreover, it has been explained that the various contacts are linked by the same actors, products and activities, services, means, and pattern.<sup>842</sup> With respect to the claims that the Commission has not provided sufficient explanations of the cartel mechanism, the Commission recalls that it is settled case-law that it is not required to produce evidence of the specific mechanism by which the anticompetitive object was to be attained.<sup>843</sup> Such claims are, in any event, unfounded given the Commission's detailed explanation of the functioning of the cartel.<sup>844</sup>

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<sup>835</sup> Recital (268).

<sup>836</sup> Recitals (329) and (333).

<sup>837</sup> [...]

See also recitals (447) - (448).

<sup>838</sup> [...]

See also recitals (449) - (466).

<sup>839</sup> [...]

See also recitals (468), (475) and (476).

<sup>840</sup> [...]

<sup>841</sup> Recital (413)-(415) .

<sup>842</sup> Recitals (416)-(424).

<sup>843</sup> See also Judgment of the General Court of 12 December 2014, *Eni v Commission*, T-558/08, EU:T:2014:1080, paragraph 36; and Judgment of the General Court of 12 July 2018, *Sumitomo Electric Industries Ltd and J-Power Systems Corp. v Commission*, T-450/14, EU:T:2018:455, paragraph 51.

<sup>844</sup> Recitals (79)-(96) and (376)-(383).

*Pattern of contacts*

- (449) Bank of America and Nomura claim that the contacts were disparate across a number of years without a regular pattern.<sup>845</sup> They allege that the contacts did not follow the same pattern over the years and there were significant gaps between the contacts. They point out that the Commission itself has organised these contacts in different types of conduct.
- (450) Contrary to those claims, there were numerous regular contacts in various chatrooms.<sup>846</sup> Natixis, RBS and UBS provided the Commission with a selection of contacts that they considered most relevant and the Commission relies on a substantial part of these contacts that it considers representative.<sup>847</sup> The leniency statements corroborate one another despite having been submitted independently. The Commission critically assessed the interpretation of the chats provided by the leniency applicants and conducted an independent assessment of the chats, which resulted in the Commission dismissing or including extracts of the evidence as relevant for the assessment of the conduct.<sup>848</sup> This does not, however, support a conclusion that the contacts were disparate. Rather, notwithstanding their differences, these contacts shared the common objective of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market.<sup>849</sup>
- (451) Concerning the Commission's attempt to organise the topics covered in the contacts into categories, the Commission has already explained why it considered such exercise to be useful for the purposes of explaining the scope and nature of the infringement.<sup>850</sup> It cannot be inferred from this exercise that the Commission accepts that these categories were disparate activities; that there cannot be a common plan behind the contacts or across the categories; or that each contact must be considered an isolated instance.<sup>851</sup> On the contrary, the categories are intertwined and partially overlapping, thereby demonstrating the commonality between them.<sup>852</sup>
- (452) Despite having extensively defended itself in its response to the SO<sup>853</sup> concerning the Commission's preliminary conclusions regarding the single and continuous nature of the infringement, Bank of America claims that it had understood from paragraph (595) of the SO that the Commission considered each contact to be a stand-alone infringement, but that this position was insufficiently motivated in the SO and that it was impossible for Bank of America to understand the case made against it.<sup>854</sup>
- (453) During the Oral Hearing, however, when questioned, Bank of America could not explain how such reading could be inferred from the text of the SO. In any event, such understanding is incorrect. While certain contacts might constitute in

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<sup>845</sup> [...]. Bank of America also brings up that the means of communication were different but this argument is addressed in recital (470) and following.

<sup>846</sup> Recitals (68) – (71) and footnote 69 in particular.

<sup>847</sup> Recitals (97) – (99).

<sup>848</sup> See, for instance, communications in recitals (105), (113), (119), (125), (141), (157), (225), (300), (307), (319) or (336).

<sup>849</sup> Recital (413)-(415) .

<sup>850</sup> Recitals (93)-(94).

<sup>851</sup> [...]

<sup>852</sup> Recital (550).

<sup>853</sup> [...]

<sup>854</sup> [...]

themselves and taken in isolation an infringement of Article 101 of the Treaty, on the basis of the evidence viewed as a whole, such conduct should properly be viewed as a single and continuous infringement for the time frame in which it existed.

- (454) Paragraph 595 of the SO<sup>855</sup> clarifies that, objectively, the finding of a single and continuous infringement is based on the fact that the anticompetitive communications identified in the SO (across both DBAC and CODS & CHIPS chatrooms and the parallel communications) covered the same products and activity, and largely involved the same traders who used both of them in pursuit of the same plan.<sup>856</sup> The fact that a participant like [...], the trader of Bank of America, was possibly not aware of the existence of the DBAC chatroom or the other parallel communications and did not participate in them, does not result in multiple infringements. The conduct planned or put into effect in the CODS & CHIPS chatroom shared the same common objective as that in the DBAC chatroom (and the parallel communications), namely the traders colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market.<sup>857</sup> A participant's subjective awareness of the scope of the single infringement is relevant for determining the scope of the relevant undertaking's liability for its participation in the single and continuous infringement. It is not, however, relevant for determining the scope of the single and continuous infringement as such, which is determined by the existence of an 'overall plan' having an identical object of distorting the normal pattern of competition on the internal market.<sup>858</sup>
- (455) This position is fully in line with the existing case-law of the Court of Justice of the European Union, which establishes that, *"the issue whether all of the agreements and practices contrary to Article 81 EC constitutes a single and continuous infringement is, on the contrary, an issue which depends solely on objective factors, including the common objective of those agreements and practices. That latter criterion is one which must be assessed in the light only of the content of those agreements and practices, which must not be confused, as Siemens seem to have done, with the subjective intention of the various undertakings to participate in a single and continuous infringement. By contrast, that subjective intention can and must be taken into account only in the context of assessing individual participation of an undertaking in a single and continuous infringement"*.<sup>859</sup>

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<sup>855</sup> Paragraph (595) of the SO: *"On the basis of the evidence, taken as a whole, the Commission preliminarily considers that each of the series of agreements and/or concerted practices identified above constitutes an infringement of Article 101 of the Treaty on its own right. At the same time, it appears these agreements and/or concerted practices together formed part of an overall plan pursuing a common anticompetitive aim and thereby constituted one single and continuous infringement of Article 101(1) of the Treaty. In this regard, the contacts set out in this Statement of Objections largely involved the same traders, covered the same products, showed a consistent pattern and were complementary. The conduct shared the same common objective of taking advantage of the various opportunities to help each other in their EGB trading business, gain a competitive advantage vis-à-vis other competitors and eventually generate more EGB trading business and increase revenues when acquiring EGBs on the primary market and trading them on the secondary market."*

<sup>856</sup> Recitals (416)-(424).

<sup>857</sup> See recital (413)-(415).

<sup>858</sup> Case T-105/17, *HSBC*, paragraphs 197-198 and 208.

<sup>859</sup> Judgment of the General Court 3 March 2011, *Siemens AG v Commission*, T-110/07, ECLI:EU:T:2011:68, paragraph 246. See also paragraph 247-247 and, to that effect Case T-105/17, *HSBC*, paragraph 201.

- (456) Despite not being a member of DBAC, Bank of America, through its trader [...], contributed by its own conduct to the overall objective pursued by the participants in the infringement and was aware of the illicit acts of the other participants in view of the same objective as far as CODS & CHIPS is concerned.<sup>860</sup>
- (457) For the purposes of establishing intervals between the contacts, Bank of America focused exclusively on those contacts which included the participation of a Bank of America trader and which were quoted in the body of the text of the SO. Bank of America ignored the contacts contained in the Annex to the SO as further examples of the same conduct, arguing that they should be ignored for the establishment of a (continued) infringement on the grounds that, according to Bank of America, they were insufficiently explained.
- (458) However, the SO clearly stated that the whole body of evidence on which the Commission, relied was set out in the SO and Annex thereto (which forms an integral part of the SO, and that the conduct set out in Chapter 4 of the SO and Annex formed part of a common plan pursuing a common anticompetitive aim and therefore constituted a single and continuous infringement.<sup>861</sup> Consequently, all contacts in Section 4 of this Decision and its Annex<sup>862</sup> contribute to the body of evidence supporting the Commission's assessment of the continuous character of the infringement. All communications that constitute the body of evidence for this Decision were part of the SO and its Annex and the few that were not were brought to the banks' attention through the LoF. These communications have been mentioned in the chronological description of events in Section 4 of this Decision and in the overview of anticompetitive communications in Annex 1 to this Decision. Consequently, when assessing Bank of America's individual participation in the infringement, regard should be not only to the contacts that were mentioned in the body of the text of the SO,<sup>863</sup> but also the contacts that were mentioned in Annex I to the SO.<sup>864</sup> On this basis, Bank of America's claim that the choice of extracts used in the body of the SO as evidence prove that its trader did not regularly participate in the contacts and that there are significant gaps between the instances of his participation both in the body of the SO and the Annex is unfounded.
- (459) Following the Oral Hearing, Bank of America took the opportunity to put forward additional arguments concerning the single and continuous infringement, in a letter of 4 December 2019.<sup>865</sup>

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<sup>860</sup> See Recitals (440)-(442).

<sup>861</sup> See paragraph 608 of the SO.

<sup>862</sup> See the overview of anticompetitive contacts in Annex 1.

<sup>863</sup> These contacts are also described in the Decision at the following recitals: Communications of 29 January 2007 in recital (104), 18 April 2007 in recital (112), 25 July 2007 in recital (121), 11 October 2007 in recital (128), 13 December 2007 in recitals(134)-(135), 7 February 2008 in recital (150), 25 February 2008 in recital (155), 30 April 2008 in recital (173), 25 June 2008 in recital (179), 4 September 2008 in recital (192), 6 November 2008 in recitals (213)-(214) and 14 January 2009 in recital (225).

<sup>864</sup> These contacts are also described in the Decision at the following recitals: Communications of 14 February 2007 in recital (106), 6 March 2007 in recital (109), 5 June 2007 in recital (115), 11 June 2007 in recital (116), 29 June 2007 in recital (116), 30 July 2007 in recital (122), 9 August 2007 in recital (123), 4 October 2007 in recital (127), 8 November 2007 in recital (131), 23 November 2007 in recital(132), 11 December 2007 in recital (132), 3 January 2008 in recital (137), 9 January 2008 in recital (143), 10 January 2008 in recital (144), 11 January 2008 in recital (146) and 6 March 2008 in recital (163)-(164) .

<sup>865</sup> [...]

- (460) With respect to Bank of America's allegation that there are significant gaps in the contacts which render the Commission's finding of a single and continuous infringement untenable, it is important to note that there are no substantial time periods where no contacts between the Bank of America trader and other traders occurred or where the character and content of the discussions had materially changed. The longest interval between anticompetitive exchanges involving the Bank of America trader is two months and ten days (from 25 June 2008 until 4 September 2008). This period of time (coinciding with the summer holidays) does not mean that the Commission has erred in finding a single and continuous infringement in respect of Bank of America.
- (461) First, in the context of an overall agreement extending over several years, a gap of a couple of months between the manifestations of the cartel 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.<sup>866</sup> In this case, the exchanges in which the Bank of America trader participated certainly formed part of such common plan of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market, which was capable of impacting the normal course of pricing components for EGB. The infringement therefore constitutes a single infringement by virtue of the identical nature of the objective pursued by each participant in the cartel, not by virtue of the methods of implementing it.<sup>867</sup>
- (462) Second, the cartel expanded over five years and ten months between 5 January 2007 and 28 November 2011, within which time the Bank of America trader participated for almost one year and ten months from 29 January 2007 until 6 November 2008. The collusive contacts took place regularly throughout this period and there is no evidence to indicate that Bank of America's participation in the infringement had been interrupted. By way of example, in 2007 and including DBAC and instant messages for which Bank of America is not held liable, in April and September, one out of three collusive contacts involved Bank of America; in June, three out of three; in July three out of seven; in October and November two out of three; in December two out of six contacts. In 2008, the collusive contacts involving Bank of America are less frequent and for three consecutive months appear once per month, followed by an interval of two months and ten days over the summer holiday. However, this incidence also happens between the traders of UBS and ABN-AMRO/RBS when their contacts occur once per month in May and August 2007.
- (463) Third, where an undertaking participates, either actively or passively, in meetings between undertakings with an anticompetitive object and does not publicly distance itself from it, thus giving the impression to the other participants that it subscribes to the results of the meetings and will act in conformity with them, it may be considered as established that it participates in the cartel resulting from those meetings.<sup>868</sup> In this case, the Bank of America trader failed to distance himself publicly from the cartel during the period of participation in the anticompetitive exchanges between 29 January 2007 and 6 November 2008. It must be noted that even if the end date of the infringement for Bank of America is 6 November 2008, the Bank of America trader was still invited to exchanges in CODS & CHIPS chatroom on 14 January 2009,

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<sup>866</sup> Judgment of the Court of First Instance of 8 July 2008, *BPB plc v Commission*, T-53/03, ECLI:EU:T:2008:254, paragraph 256 and the case-law cited.

<sup>867</sup> Case T-53/03, *BPB plc*, paragraph 255.

<sup>868</sup> Case T-53/03, *BPB plc*, paragraph 85 and case-law cited.

showing that the other participants still perceived him as a cartel member. This, together with the fact that the Bank of America trader did not publicly distance himself from the cartel, is evidence of the continuity of the infringement during the period 29 January 2007 and 6 November 2008.<sup>869</sup>

- (464) In view of the above, the Commission’s findings of Bank of America’s participation in a single and continuous infringement is in line with the case-law.

*Non-homogeneous products*

- (465) Nomura and Bank of America contest that EGB constitute a homogeneous product.<sup>870</sup> Nomura argues that the Commission is not entitled to find the existence of a single and continuous infringement covering the entire EGB sector because EGB are issued by different DMOs, in different countries, at different moments in time, for different maturities, and different volumes and prices.

- (466) First, the differences mentioned cannot undermine the fact that EGB are issued and traded similarly. They are acquired on the primary market and traded on the secondary market by dedicated professionals. These traders work at dedicated desks dealing with all EGB. These traders could easily switch between substitute EGB with similar characteristics. Sensitive information on a specific EGB has not only direct commercial value for the auction or trade of that individual EGB, but also indirectly for other EGB and EGB trading in general<sup>871</sup>. It is settled case-law that “*separate markets do not preclude the existence of a single and continuous infringement*” and that “*the finding of a single infringement by definition proposes that the anticompetitive conduct in question relates to distinct goods, services or territories*”.<sup>872</sup>

- (467) Second, even if EGB were heterogeneous products, the fact that the same parties colluded on multiple EGB, does not imply the finding of multiple separate infringements as the collusion took place within the same scheme and within the same chatrooms covering all EGB, and responded to a single economic aim.<sup>873</sup> Moreover, in this case, the objectives behind the cartel did not relate to individual EGB, but to the traders’ activities in the primary and/or secondary markets for EGB in general. Even if EGB were not homogeneous products or products in different markets, the cartel potentially covered any of them. Consequently, this would not change the conclusion that the coordination of EGB trading, in which the banks engaged, was part of a plan in pursuit of a single anticompetitive aim.

*Intention to contribute to the common plan and awareness*

- (468) Many parties stress that their trader was not, or not actively, involved in numerous communications in the persistent chatrooms.<sup>874</sup> For the communications that their trader had access to, they also claim that the trader was not interested in parts of the discussions and therefore was not, or not actively, involved in many relevant parts of

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<sup>869</sup> Opinion of Advocate General Wahl of 26 March 2015 in Case C-634/13 P, *Total Marketing Services SA v European Commission*, ECLI:EU:C:2015:208, paragraph 33.

<sup>870</sup> [...]

<sup>871</sup> See sections 2.2.2 and 2.2.3.

<sup>872</sup> Judgment of the General Court of 16 September 2013, *Masco and Others v Commission*, T-378/10, ECLI:EU:T:2013:469, paragraph 67.

<sup>873</sup> See recitals (413)-(424).

<sup>874</sup> [...]

See also Section 8.4.2. for claims on limited participation.

the discussions. On that basis, some parties deny participation in any regular or consistent pattern of conduct that supports the establishment of a single and continuous infringement, or awareness of any common plan behind such pattern.<sup>875</sup>

- (469) These arguments should be rejected. Contrary to their claims, the banks were aware or could reasonably foresee the unlawful conduct planned and put into effect by other banks, because even as passive participants in the persistent chatrooms, banks can follow the conversations of other participants in the chatroom and read them without contributing to the discussions.<sup>876</sup> First, the contacts in the cartel took place to a large extent in two multilateral persistent chatrooms which both had the same anticompetitive aim of colluding or coordinating the banks' strategies for acquiring EGB on the primary market and/or trading them on the secondary market. Second, the conversations taking place in both chatrooms covered all relevant characteristics of the conduct, including the four categories mentioned in recital (93), in relation to multiple EGB, with each participant being able to read and follow the conversations. This invalidates any argument that these traders were not involved in and had no awareness of the scope of the conduct as developed and put in place in that/these chatroom(s). The varying degrees of participation or awareness of only one chatroom does not affect the finding of a single and continuous infringement as that finding is based on the assessment of the conduct as a whole.<sup>877</sup> Finally, these arguments cannot exempt the parties from their liability for the conduct of their traders.<sup>878</sup>
- (470) Bank of America and UniCredit each point out that their trader was a participant in CODS & CHIPS only, one of the two relevant persistent chatrooms. Their traders had no access to and therefore allegedly were not aware of any conduct outside that chatroom. On that basis, they argue that they could not have been aware of the common plan behind the cartel, let alone had any intention to contribute to such plan.<sup>879</sup> They allege that the anticompetitive conduct, if at all, took place outside the CODS & CHIPS chatroom, namely in the DBAC chatroom. They claim that CODS & CHIPS, at least during the time of the participation of their trader, was not anticompetitive. It only served innocent exchanges of market colour, or, in the case of Bank of America, only served for “*gossip*” and “*mofo talk*”. These arguments should be rejected.
- (471) First, while Bank of America and UniCredit only participated, via their traders, in the CODS & CHIPS chatroom, this does not exempt them from liability for their participation in the single and continuous infringement as described in this Decision. The impact of the individual awareness of the offending conduct planned or put into effect in only one of the chatrooms has already been addressed in Section 5.1.2.2.
- (472) Second, contrary to Bank of America’s and UniCredit’s arguments, the CODS & CHIPS chatroom served the same anticompetitive objective of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market. The evidence in Section 4 demonstrates that exchanges of anticompetitive character took place in CODS & CHIPS, including during the period of participation of the traders of Bank of America and UniCredit.<sup>880</sup>

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<sup>875</sup> [...]

<sup>876</sup> See also recital (386).

<sup>877</sup> See recitals (454) and (455).

<sup>878</sup> See Section 6. Addressees of the present proceedings.

<sup>879</sup> [...]

<sup>880</sup> See Section 4.2. Chronological overview of events.

All categories of conduct were discussed in the CODS & CHIPS chatroom.<sup>881</sup> More specifically for UniCredit, the CODS & CHIPS chatroom did not only contain all the categories of conduct, but also all the multilateral anticompetitive exchanges of the cartel at the time, since they were all channelled through it as DBAC had been made redundant.

- (473) The possible existence of other means of communication between the traders - including another multilateral persistent chatroom - was not kept secret.<sup>882</sup> Some contacts reveal that the same or similar sensitive information was exchanged in both persistent chatrooms.<sup>883</sup> At times, the traders in the CODS & CHIPS chatroom received information that had been influenced by discussions in the DBAC chatroom.<sup>884</sup> This could make the traders who were members of CODS & CHIPS aware of some of the conduct planned or put into effect by the participants in the DBAC chatroom, even if they were not a member of that chatroom.<sup>885</sup> All traders, except for the trader of Bank of America, could have been aware or could reasonably foresee and were prepared to take the risk that there were additional contacts between the traders pursuing the same common objective. The liability of an undertaking only extends to the factors of which it was aware or should have been aware of and for which it was prepared to take the risk. This applies to Bank of America, for which it cannot be established that it was aware or should have been aware of the existence of the exchanges that other cartelists were having outside of the CODS & CHIPS chatroom during the time of its participation in the infringement.<sup>886</sup> By way of contrast, as explained in recital (438), UniCredit, via its trader [...], participated in and/or was aware or ought to have been aware, of the full scope of the cartel as it existed at the time of UniCredit's participation and the fact that all exchanges were channelled through one persistent chatroom instead of two has no bearing on its liability.<sup>887</sup>
- (474) Bank of America further argues that DBAC was specifically created to exclude its trader from any sensitive discussion and that complaints about the lack of cooperation of the Bank of America trader confirm his lack of intention to share sensitive information and coordinate with the other traders. Bank of America also points at complaints of other traders on the apparent unwillingness of its trader to share useful information in the CODS & CHIPS chatroom. However, these complaints date back to 2008, a year after Bank of America's trader had joined the CODS & CHIPS chatroom. Moreover, even if the other participants thought the Bank of America trader was, or became, a free-rider in the cartel, this does not detract from the fact that he was aware of the chatroom contacts for as long as he had access to them (see also recitals (440)-(442)). Bank of America's complaints rather

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<sup>881</sup> See the overview of anticompetitive communications in Annex 1.

<sup>882</sup> See recitals (157) and (313).

The communications reveal that the traders also communicated via other chats and channels. See for instance recitals (100), (152), (154), (156), (164), (167), (168), (184), (189), (204), (210), (225), (229), (236), (242), (247), (277), (282), (283) and (352). See also footnote 102.

Even other traders, not participating in any of the persistent chatrooms, had suspicions as to the existence of collusive contacts between a group of EGB traders. See recital (276).

<sup>883</sup> Recitals (125), (150), (165)-(166), (192), (214), (225).

<sup>884</sup> Recitals (150), (165), (193), (214), (227), (238), (307), (313).

<sup>885</sup> Recitals (165)-(166), (193), (238).

<sup>886</sup> See also recital (474). Bank of America's more limited liability would have been reflected in the calculation of its fine had the applicable limitation period not expired.

<sup>887</sup> That is without DBAC and other chatrooms, including instant messages.

confirm that CODS & CHIPS was created for the purpose of mutually sharing information and that free-riders risked being excluded from the contacts. The Bank of America trader never distanced himself from the discussions in the chatroom and participated in them until the beginning of January 2009.<sup>888</sup>

- (475) Bank of America, Nomura and UniCredit refer to their alleged limited participation in terms of duration,<sup>889</sup> number of contacts, contribution to the discussions and volume of trade or scope in the anticompetitive scheme. Nomura and UniCredit claim that these factors confirm their lack of awareness of a common plan and lack of intention to contribute by their own conduct to such plan and support the argument that they cannot be held liable for the single and continuous infringement as described in the SO.<sup>890</sup>
- (476) Portigon and UniCredit's participation is linked to the involvement in the chatrooms of the same trader (that is [...]) who consecutively worked for both banks. They rely, however, on other individual circumstances. Portigon claims that it was only active on the primary market in Germany,<sup>891</sup> while UniCredit claims (for the same trader) that he was not authorised to operate on the primary market and therefore did not share the same interest, purpose and benefit as the other participants.<sup>892</sup>
- (477) First, [...], while working at UniCredit and Portigon, received information in the chatroom related to both the primary and the secondary market. He contributed to the information exchange with what was in his reach, that is, information on the secondary market, which in turn is relevant to primary traders.<sup>893</sup>
- (478) With respect to Portigon, any exchange of sensitive information, including on the primary market in countries outside Germany or on the secondary market anywhere, could have been directly or indirectly relevant and interesting for the trading business of the Portigon trader on the primary market in Germany or on the secondary market everywhere.<sup>894</sup>
- (479) With respect to UniCredit, the Commission notes that even if [...] was not active on the primary market himself, he appeared to provide the other traders with information that could be relevant for them, including on the primary market, for instance by disclosing mid-prices<sup>895</sup>. He traded on the secondary market with the knowledge of information received on the other traders' trading strategy<sup>896</sup> or mid-prices<sup>897</sup> as well as the information revealed by other traders on their activity in the primary market.<sup>898</sup> For instance, the disclosure of information on the traders' bidding strategies<sup>899</sup> was capable of reducing market uncertainties regarding the demand and thus the price of the bonds discussed. In this respect, overbidding in the primary market generally reflects a high demand in the secondary market for the bonds in

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<sup>888</sup> Recitals (225) and (243).

<sup>889</sup> [...]

<sup>890</sup> [...]

<sup>891</sup> [...]

<sup>892</sup> [...]

<sup>893</sup> See Section 2.2.3. Relationship between the primary market and the secondary market.

<sup>894</sup> See recitals (630)-634) and (635)-(639).

<sup>895</sup> Recital (342).

<sup>896</sup> Recital (345).

<sup>897</sup> Recital (342).

<sup>898</sup> See Section 2.2.3. Relationship between the primary market and the secondary market.

<sup>899</sup> Recitals (342), (345), (348), (349)-(350).

question whereas flat or below bids generally suggests a lack of interest for those bonds.<sup>900</sup> Apart from this direct interest for his trading on the secondary market, he had been active on the primary market before and expected to become active on the primary market for UniCredit.<sup>901</sup>

- (480) Second, according to settled case-law, an undertaking's participation in an anticompetitive meeting creates a presumption of the illegality of its participation, which that undertaking must rebut through evidence of public distancing. This public distancing must be perceived as such by the other parties to the cartel.<sup>902</sup> In this respect, [...] at no point in time publicly distanced himself from the cartel either when he was working at UniCredit or at Portigon.
- (481) Third, 'there is nothing in the wording of Article 101(1) [of the Treaty] that indicates that the prohibition laid down therein is directed only at parties to agreements or concerted practices who are active on the markets affected by those agreements or practices'. UniCredit was active on both markets but the concerned UniCredit trader, [...], was not trading on the primary market when employed by UniCredit. He was however allowed, on UniCredit's behalf to trade and actually traded on the secondary market, which is closely linked to the primary market.<sup>903</sup> The fact that [...] was not entitled to trade on the primary market on UniCredit's behalf neither affects the scope of the infringement as such nor detracts from liability for the infringement of which he (and therefore UniCredit) was aware of, meaning all types of exchanges constituting the alleged infringement, as it existed at the time.<sup>904</sup> Furthermore, it is sufficient for the Commission to demonstrate that a party, including passive participants, intended to contribute by its own conduct to the common objective pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk.<sup>905</sup>
- (482) UniCredit claims that its trader might have made false statements concerning the primary market and the information exchanged had no possible impact on any of his trades as they generally concerned entirely different and unrelated bonds.<sup>906</sup> UniCredit submits that its trader [...] only pretended to participate in something he could not in reality be part of and that this cannot make the bank liable for that conduct. In this respect it must be noted that the other traders were experts in their field, informed players knowing [...] personally and that they were under the impression that his contributions were worth taking into account and worth receiving reciprocal disclosures, over a sustained period of time. The credit the other traders gave to his contributions is clear. While it is irrelevant whether the information provided by [...] was inaccurate, it is relevant that the other participants legitimately believed that his statements were accurate.<sup>907</sup> Whether the other parties assumed that

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<sup>900</sup> See also section 2.2.3.

<sup>901</sup> [...]

<sup>902</sup> Judgment of the Court of 17 September 2015, *Total Marketing Services v Commission*, C-634/13 P, ECLI:EU:C:2015:614, paragraph 21; Case C-204/00 P, *Aalborg Portland*, paragraph 81, and cited case-law.

<sup>903</sup> See Section 2.2.3.

<sup>904</sup> It will be relevant for assessing the gravity of the infringement of UniCredit. See recital (861).

<sup>905</sup> Case T-180/15, *Icap*, paragraphs 97, 100, 101.

<sup>906</sup> [...]

<sup>907</sup> Judgment of the General Court of 12 July 2018, *NKT Verwaltungs GmbH v European Commission*, T-447/14, ECLI:EU:T:2018:443, paragraph 192.

[...] was disclosing internal information from UniCredit even if he was not active on the primary market himself or whether the information he disclosed was only factual regarding secondary trading and constituted informed estimates regarding primary issues, the fact remains that: (i) he contributed to the discussions and gave the other participants the impression that he had access to relevant information; (ii) he received forward looking sensitive information both on the primary and the secondary market as a result of his participation in the cartel, and (iii) even if he had managed to cheat on the other traders for a subset of the information he disclosed, that would not affect his active participation in the infringement. In that regard, the Court has already ruled that an undertaking, despite colluding with its competitors, followed a policy that departed from the one agreed on with other cartellists, could simply be trying to exploit the cartel for its own benefit.<sup>908</sup>

(483) UniCredit considers that [...] made certain false statements in the chatroom.<sup>909</sup> According to UniCredit, such false information has no probative value and excludes any form of coordination. According to UniCredit, evidence based on false statements should not be considered to have evidentiary value in establishing an infringement. However, the Commission considers that cheating between the members of a cartel does not invalidate the existence of an anticompetitive practice.<sup>910</sup> In this case, even if certain statements of [...] were not factually correct, or overstated his importance, it is irrelevant because he used the information received from other participants to exploit the cartel to his own benefit. Last, UniCredit also refers to paragraphs 1312 and 1406 of the *Intel* judgment where the General Court held that the given statements in that case had '*limited probative value because it was impossible to know the legal consequences which possible false information in those statements might have had*'. In this case, however, the Commission relies on the information in the chats. That is contemporaneous evidence and therefore the information disclosed and received by [...] at the time of the facts has significant probative value.<sup>911</sup>

(484) On the basis of the above, the Commission rejects the claims of Portigon and UniCredit. When traders changed employer, they implicated different undertakings for different time periods and their individual contribution to the cartel may have been affected by the scope of activity of their employer in the EGB industry. These external factors, however, did not materially alter their awareness or intention to contribute to what is objectively a single and continuous infringement. The varying degrees of participation in the cartel is discussed in Sections 7 and 8 on Duration and Remedies.<sup>912</sup>

### 5.1.3. *Restriction of competition*

#### 5.1.3.1. Principles

(485) Article 101(1) of the Treaty expressly includes as restrictive of competition agreements and concerted practices which:

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<sup>908</sup> See, for instance, Judgment of the Court of 10 February 2011, *Activision Blizzard Germany GmbH v Commission*, C-260/09, ECLI:EU:C:2011:62, paragraphs 19 and 81-82.

<sup>909</sup> [...]

<sup>910</sup> Judgment of the General Court of 11 July 2019, *Huhtamäki Oyj and Huhtamäki Flexible Packaging Germany GmbH & Co.KG v European Commission*, T-530/15, ECLI:EU:T:2019:498, paragraph 118.

<sup>911</sup> Judgment of the General Court of 27 September 2012, *Shell Petroleum and Others v Commission*, T-343/06, ECLI:EU:T:2012:478, paragraph 207.

<sup>912</sup> Sections 7 and 8.

- (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.
- (486) Certain types of coordination between undertakings reveal a sufficient degree of harm to competition for the examination of their effects to be considered unnecessary. This 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 competition.<sup>913</sup>
- (487) To determine whether an agreement or concerted practice satisfies this criterion, regard must be had to its content, objectives and the economic and legal context of which the conduct forms a part. 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.<sup>914</sup> Intention is not a necessary factor, but it may be taken into account as well.<sup>915</sup>
- (488) Article 101 of the Treaty, like the other competition rules of the Treaty, is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the structure of the market and thus competition as such.<sup>916</sup>
- (489) With regard to the exchange of information between competitors, the criteria of coordination and cooperation necessary for determining the existence of a concerted practice are to be understood in the light of the notion inherent in the Treaty provisions on competition, according to which each economic operator must determine independently the policy which it intends to adopt on the common market.<sup>917</sup> This requirement 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.<sup>918</sup> The exchange of 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.<sup>919</sup> In particular, an exchange of information which is

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<sup>913</sup> Case T-105/17, *HSBC*, paragraphs 53-54 and case-law cited, Judgment of the Court of 30 January 2020, *Generics (UK) Ltd and Others v Competition and Markets Authority*, C-307/18, ECLI:EU:C:2020:52, paragraph 67 and case-law cited and Judgment of the Court of 2 April 2020, *Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others*, C-228/18, ECLI:EU:C:2020:265, paragraphs 35, 54 and 76 and case-law cited.

<sup>914</sup> Case T-105/17, *HSBC*, paragraph 57 and case-law cited and Judgment of the Court of 14 March 2013, *Allianz Hungária Biztosító Zrt and Others v Gazdasági Versenyhivatal*, C-32/11, ECLI:EU:C:2013:160, paragraphs 35 to 38.

<sup>915</sup> Case T-105/17, *HSBC*, paragraph 58 and case-law cited.

<sup>916</sup> Case T-105/17, *HSBC*, paragraph 65 and case-law cited.

<sup>917</sup> Case T-105/17, *HSBC*, paragraph 59 and case-law cited.

<sup>918</sup> Case T-105/17, *HSBC*, paragraph 60 and case-law cited.

<sup>919</sup> Case T-105/17, *HSBC*, paragraph 61 and case-law cited.

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.<sup>920</sup> 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 is particularly likely to lead to a collusive outcome on the market.<sup>921</sup>

- (490) Where undertakings are better informed through exchanges of information and are better able to know in advance with a certain accuracy at what level prices are being set by their colluding competitors, this creates an informational asymmetry between market participants. That conduct changes the competitive process solely for the undertakings that participated in the exchanges and is capable of restricting competition to the advantage of the undertakings taking part in these exchanges and to the detriment of other operators on the market. There is no contradiction between, on the one hand, the fact that it is possible for the undertakings concerned to offer better conditions than their competitors as a consequence of the agreements and/or concerted practices and, on the other hand, the finding of an infringement by object.<sup>922</sup>
- (491) It is well established that exchanges of information between competitors in respect of pricing matters replace the risks of pricing competition with practical cooperation.<sup>923</sup> Also agreements and concerted practices on price elements, cost components or indicative prices are prohibited by the competition rules.<sup>924</sup> This includes exchanges of information on so-called mid-prices between traders in the financial sector.<sup>925</sup>
- (492) The Commission is not required to show that the participants took the information exchanged into account. As long as the participant remains active on the market, and in the absence of proof to the contrary, it can be presumed that the participants have taken account of the information exchanged when determining their conduct on the market.<sup>926</sup>
- (493) The Commission is not required to prove the actual effect on competition when the coordination between undertakings involves a restriction of competition by object.<sup>927</sup>

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<sup>920</sup> Case T-105/17, *HSBC*, paragraph 62 and case-law cited.

<sup>921</sup> Commission Guidelines on Horizontal Cooperation Agreements, points 72-74.

<sup>922</sup> Case T-105/17, *HSBC*, paragraph 102.

<sup>923</sup> Case T-25/95, *Cimenteries CBR*, paragraphs 1936-1937.

<sup>924</sup> On part of the price, see Judgment of the Court of First Instance of 13 December 2001, *Acerinox v Commission*, T-48/98, ECLI: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, ECLI:EU:T:1995:34, paragraph 146. On cost components, see Case C-8/08, *T-Mobile Netherlands*, paragraphs 37-39. On indicative prices, see Judgment of the General Court of 3 July 2018, *Keramag Keramische Werke and Others v Commission*, T-379/10, ECLI:EU:T:2013:457, paragraphs 51-67.

<sup>925</sup> See in that respect Case T-105/17 *HSBC*, paragraphs 125-161.

<sup>926</sup> Case T-105/17 *HSBC*, paragraph 67 and case-law cited.

<sup>927</sup> Judgment of the Court of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13, ECLI:EU:C:2014:2204, paragraph 51; Judgment of the Court of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, ECLI:EU:C:2008:643, paragraphs 33-34; Judgment of the General Court of 8 September 2016, *Lundbeck v Commission*, T-472/13, ECLI:EU:T:2016:449, paragraph 341.

(494) The Commission is also not required to establish in respect of each unlawful discussion that the discussion constitutes a restriction of competition by object, provided that it establishes that the practices in question, taken together in an overall assessment, constitute a restriction of competition by object.<sup>928</sup>

#### 5.1.3.2. Application in this case

(495) The agreements and/or concerted practices engaged in by the banks had as their object the restriction and/or distortion of competition through the sharing of sensitive commercial information within a circle of trusted competitors with the aim of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market, which was capable of impacting the normal course of pricing components for EGB.<sup>929</sup>

(496) These contacts followed clear patterns. For analytical purposes, the Commission organises these contacts or series of contacts into four categories which are intertwined and partially overlapping categories of agreements and/or concerted practices that had the object of restricting and/or distorting competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.<sup>930</sup> The Commission considers that this organisation helps explain the scope and nature of the infringement:<sup>931</sup> The contacts are categorised as follows:

- (1) attempts to influence the prevailing market price on the secondary market in function of the conduct on the primary market;
- (2) attempts to coordinate the bidding in the primary market;
- (3) attempts to coordinate the level of overbidding in the primary market;
- (4) other exchanges of sensitive information, including on (i) pricing elements, positions and/or volumes and strategies for specific counterparties related to individual trades of EGB on the secondary market; (ii) individual recommendations given to a DMO and (iii) the timing of pricing of syndicates.

(497) For Category (1), the *attempts to influence the prevailing market price on the secondary market in function of the conduct on the primary market*, the traders exchanged information on their price strategy for an EGB and directly or indirectly attempted to coordinate their strategies for driving the prevailing market price of an EGB up or down in the run-up to and after the auctions.

(498) The prevailing market prices are reflected in a price curve. The evidence demonstrates that the banks had a common interest in working towards a U-shaped price curve whereby the value of the bond goes down before the auction and goes up

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<sup>928</sup> Case T-758/14, *Infineon Technologies*, paragraph 185.

<sup>929</sup> See also recital (413).

Case T-180/15, *Icap*, paragraph 52: ‘*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*’.

<sup>930</sup> The four categories are not unique. Each bank that cooperated with the Commission investigation organised and presented the conduct differently. They organised the conduct in eight categories, albeit eight different categories. [...]

<sup>931</sup> See also recitals (93) and (382).

again thereafter. Ahead of the auction, the traders worked together to try to drive the price down by opening short positions (that is by selling EGB on the secondary market) thereby speculating on a price decrease, and thus reducing the cost of overbidding and potentially acquiring the bond at the auction at a lower price. Thereafter, when room is created for price increases, the traders can work together to change position, close a short position and open a long position (that is by acquiring EGB on the primary market or purchasing them on the secondary market), speculating on a price increase. Driving the market price down is called ‘steepening the curve’ and driving it up is called ‘flattening the curve’.

- (499) Coordinated attempts to steepen the curve in the run up to the auction are not only capable of affecting the price paid for the (reference) bond on the secondary market, but these attempts aim at, and are capable of, affecting the price actually paid at the auction.<sup>932</sup> Thus, any disclosure of information that reveals the individual strategy of a trader steepening the curve is price sensitive and any attempt by the banks to coordinate their strategy in this respect represents explicit or implicit price fixing agreements and/or concerted practices on the primary market for EGB.
- (500) The existence of collusion and/or coordination is also apparent from the language used by the traders in the contacts seeking to cheapen the bonds (that is steepen the curve). For example: ‘so let [...] try to richen it’<sup>933</sup>, ‘ok i think w gotta try and steepen it’<sup>934</sup>, ‘im just going to bash them/ asking if u can bash the 3yr down as well?/ that is good cheapening preauction’<sup>935</sup>, ‘need to push it cheaper cos it will prob trade like a dog after/lets steepen this’<sup>936</sup>, ‘is it wirth smacking em?’<sup>937</sup>, ‘gonna steepen then’<sup>938</sup>, ‘think we can steepen this curve mate’<sup>939</sup>, ‘think we can steepenen this long end...’<sup>940</sup>, ‘we can cream 3[8]s tomorrow’<sup>941</sup>, ‘got to get that down’<sup>942</sup>, ‘yes want to kill france dont we’<sup>943</sup>, ‘we going to steepen or flatten into it?’<sup>944</sup>, ‘at least we try and get [the] curve to steepen’<sup>945</sup>, ‘we can bash it in the morning’<sup>946</sup>, ‘anyway we gonna try fuk itlay today?’<sup>947</sup> and ‘lets likk the curve then/kill’<sup>948</sup>.
- (501) Strategies to flatten the curve were also disclosed. In such instances, the traders attempted to push up the price of bonds once they have been issued at auction. These are instances where the traders attempted to increase the prevailing market price of

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<sup>932</sup> A decrease in the price of bonds in the secondary market would push down the mid-prices of the bonds at the time of bidding. The traders would coordinate to influence the yield curve ahead of the auction to the benefit of the potential traders' positions. In this case, the steepening of the curve would benefit traders holding short positions. This happens because the yield of long term bonds rises faster than the yield of short-term bonds. [...]

<sup>933</sup> Recital (106).

<sup>934</sup> Recital (121).

<sup>935</sup> Recital (122).

<sup>936</sup> Recital (124).

<sup>937</sup> Recital (128).

<sup>938</sup> Recital (136).

<sup>939</sup> Recital (146).

<sup>940</sup> Recital (147)-(148).

<sup>941</sup> Recital (161).

<sup>942</sup> Recital (182).

<sup>943</sup> Recital (202).

<sup>944</sup> Recital (280).

<sup>945</sup> Recital (196).

<sup>946</sup> Recital (228).

<sup>947</sup> Recital (236).

<sup>948</sup> Recital (246).

newly issued bonds acquired at the auction so as to benefit when trading them onwards at the secondary market.

- (502) The existence of collusion and/or coordination is again apparent from the language used by the traders when seeking to flatten the bonds. For example: *'can we flatten it now'*<sup>949</sup>, *'so we going to try and flatten this sh/t now?'*<sup>950</sup>. In some instances, the traders also discuss possibilities to flatten the curve ahead of an auction: *'we going to steepen or flatten into it?'*<sup>951</sup>, *'gonna squeeze it before'*<sup>952</sup>, *'we a little flatter?'* *'I will flatten then'*<sup>953</sup> or as part of an index rebalancing exercise where traders would buy bonds in anticipation of big demand for bonds: *'big month end extensions this month'* *'lets all get long together squeeze it tomorrow'*.<sup>954</sup>
- (503) The Commission identified for this Decision 99 communications<sup>955</sup> where the traders exchanged information on the steepening or flattening of the curve that fall within Category (1). ABN-AMRO/RBS, Bank of America, Natixis, Nomura, UBS, UniCredit and WestLB/Portigon, through their respective traders, were each involved in some exchanges concerning Category (1).<sup>956</sup>
- (504) For Category (2), the *attempts to coordinate the bidding on the primary market*, the traders attempted to increase transparency in the bidding process for the EGB auctions on the primary market by exchanging information on parameters such as mid-prices, bidding levels and volumes and positions ahead of and during the auctions. These exchanges gave the participants access to sensitive information – to which they would not otherwise have had access – about their competitors' trading strategies for upcoming auctions, and enabled the participants to coordinate so as to maximise their chances of obtaining their EGB allocations and verify the level to which their bids had been fulfilled.<sup>957</sup>
- (505) Information on *mid-prices* for bonds traded over-the-counter ('OTC') is not public.<sup>958</sup> The market mid-price is available on screen but not the individual mid-prices. These individual mid-prices are not shown on either D2D or D2C platforms. Information relating to individual mid-prices of other traders is relevant for pricing. It may be of assistance on the primary market in the run up to an auction because in determining what level to (over)bid, the prevailing market price, which is the mid-point on the current spread, is only the starting point.<sup>959</sup> The individual mid-prices give extra information allowing the primary dealers to adjust their bidding strategy in light of the information exchanged and the strategy of their competitors.

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<sup>949</sup> Recital (224).

<sup>950</sup> Recital (198).

<sup>951</sup> Recital (280).

<sup>952</sup> Recital (209).

<sup>953</sup> Recital (257).

<sup>954</sup> Recital (171).

[...] the RBS trader wanted to set up long positions, anticipating that others would be buying from the market at the end of the month as a result of index rebalancing. The index rebalancing would generate significant flows and push prices up ahead of the auction. Consequently, the DBAC traders wanted to buy bonds ahead of such increased demand and benefit from the expected rise in prices.

<sup>955</sup> The relevant communications are those indicated as falling within the relevant category in the overview of anticompetitive communications in Annex 1 to the Decision.

<sup>956</sup> See the overview of anticompetitive communications in Annex 1.

<sup>957</sup> [...]

<sup>958</sup> Recital (41).

See also Case T-105/17, *HSBC*, paragraph 142.

<sup>959</sup> See recital (25).

- (506) By exchanging price-related information relevant to *bid levels* before the auctions dealers sought to assist each other and be more successful at the auctions. With such privileged information, they were able to adjust or align their bid submissions in advance of the auction thereby increasing the prospect of securing the desired allocation of bonds from those auctions.<sup>960</sup>
- (507) *Yield spreads* are another important element in the pricing of a bond. Comparing bonds issued by the same sovereign across tenors and comparing similar bond tenors across sovereign issuers enables traders to determine the relative value of bonds and set prices for specific bonds in relation to these reference points. These comparisons help to estimate the price of bonds ahead of issuance – an exercise that the banks should have been conducting independently and in competition with one another.<sup>961</sup>
- (508) Knowledge of *bidding volumes* is another sensitive element in the initial pricing of the bonds as in most countries prices are weighted by volumes.<sup>962</sup> Acquiring sufficient volumes is important as this allows a bank to maintain its primary dealer status for future auctions and syndicates. By exchanging information on required volumes on the primary market the traders sought to assist each other to obtain the desired volumes of EGB at the auctions at more favourable prices.
- (509) *Trading positions* referring to either going short or long into auctions also enables the participants to better understand how the other banks will be bidding at auctions. This information helps traders to identify if and to what extent they are competing with one another and helps them to explore if there is room for alignment or for adjustment of their own strategy.
- (510) The increased transparency in a closed circle enables the traders to identify opportunities for the alignment of their bidding strategies and to actually adjust or coordinate their bidding or trading strategies to the detriment of other market participants, including DMOs.
- (511) The Commission identified for this Decision 230 communications in which the traders exchanged information on their bidding ahead of an auction that falls within Category (2). ABN-AMRO/RBS, Bank of America, Natixis, Nomura, UBS, UniCredit and WestLB/Portigon were each, through their respective traders, involved in some exchanges concerning Category (2).<sup>963</sup>
- (512) For Category (3), *attempts to coordinate the level of overbidding in the primary market*, the disclosure of information on the premium that the participating banks intended to pay at an auction is commercially sensitive. This premium paid by a trader is individual information. Any disclosure on the level of overbidding is an exchange of sensitive information.
- (513) Disclosure of current and forward looking information of the individual level of overbidding and the volume desired could lead to the submission of modified bid prices and volumes at the auctions. Directly or indirectly, through these exchanges the participating banks attempted to coordinate the level of overbidding and/or were able to adjust or align the bid prices and volumes at the auctions.

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<sup>960</sup> [...]

<sup>961</sup> See also recital (583).

<sup>962</sup> [...]

<sup>963</sup> See the overview of anticompetitive communications in Annex 1.

- (514) The collusion and/or coordination on the levels of overbidding aimed at securing the volumes that each participant desired at the auctions without competing against each other on the cost of overbidding. The exchanges of information were capable of assisting the banks involved in coordinating and/or fixing this particular pricing component of EGB and created opportunities for them to collude and agree on their auction bids: *'wat we over bidding for the Italy'* *'gonna go higher form my 35'* *'3%'* *'wat we paying wops ?'* *'+13'* *'+14 for me 4%'*<sup>964</sup>, *'if we bid plus 4 that will be 450 between us thats enough for me'*<sup>965</sup>, *'so wat we over bidding gor rags?'*<sup>966</sup>, *'What are we thinking for the austria ? We are +16 for about 70m.'*<sup>967</sup>, *'i am bidding mid and - 5'*<sup>968</sup>, *'what overbidding do we think in olo 10y?'* *'and5y'* *'8 +10'* *'iam gonna go'*<sup>969</sup>, *'wat do we have 2 over bid'*<sup>970</sup>, *'wat we have to pay up'*<sup>971</sup>, *'what we paying up for 30s tomorrow'*<sup>972</sup>, *'what u over bidding [...]'* *'10 and 12'* *'or more'*<sup>973</sup>, *'what we bidding'* *'overbidding for italy?'*<sup>974</sup>, *'what you thinking of overbidding'*<sup>975</sup>, *'I go 4 cents 2 carry 2 overbidding'*<sup>976</sup>, *'wot we over bidding for the poo'*<sup>977</sup>, *'hi for the 10yrs were thinking 6 cents overbidding, what you guys thinking pls?'*<sup>978</sup>, *'what we thinking overbidding in these 25s?'*<sup>979</sup>, *'what we thinking about overbidding on this spain?'*<sup>980</sup>, *'what do we overbid for oats 10 years'*<sup>981</sup>, *'what we thinking overbidding for these 26s?'*<sup>982</sup>, *'what u guys overpaying in ten years'*<sup>983</sup>, *'what we thinking overbidding'* *'23s'*<sup>984</sup>, *'what overpaying?'*<sup>985</sup>, *'what we are overbidding'* *'15 yrs'*<sup>986</sup>.
- (515) The Commission identified for this Decision 118 communications in which the traders exchanged information on the level of the overbidding that falls within Category (3). ABN-AMRO/RBS, Bank of America, Natixis, Nomura, UBS, UniCredit and WestLB/Portigon were each, through their respective traders, involved in at least some exchange(s) concerning Category (3)<sup>987</sup>.
- (516) Category (4) involves the *exchange of other sensitive information* concerning (i) pricing elements, positions and/or volumes and strategies for specific counterparties related to individual trades of EGB on the secondary market; (ii) individual recommendations given to a DMO; and (iii) the timing of pricing of syndicates. This

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<sup>964</sup> Recital (106).

<sup>965</sup> Recital (108).

<sup>966</sup> Recital (109).

<sup>967</sup> Recital (110).

<sup>968</sup> Recital (121).

<sup>969</sup> Recital (124).

<sup>970</sup> Recital (173).

<sup>971</sup> Recital (183).

<sup>972</sup> Recital (178).

<sup>973</sup> Recital (197).

<sup>974</sup> Recital (218).

<sup>975</sup> Recital (152).

<sup>976</sup> Recital (282).

<sup>977</sup> Recital (287).

<sup>978</sup> Recital (297).

<sup>979</sup> Recital (304).

<sup>980</sup> Recital (316).

<sup>981</sup> Recital (322).

<sup>982</sup> Recital (327).

<sup>983</sup> Recital (328).

<sup>984</sup> Recital (330).

<sup>985</sup> Recital (345).

<sup>986</sup> Recital (348).

<sup>987</sup> See the overview of anticompetitive communications in Annex 1.

category therefore includes all other disclosures of forward looking and competitively sensitive information that may have allowed the traders directly or indirectly to adjust or align their EGB trading activities.<sup>988</sup> Other examples of information exchanges which have been categorised, for analytical purposes, under Category (4), relate to the individual recommendations given to a DMO before an upcoming auction on the type, maturity or size of EGB to be issued, or information exchanged between the traders on the timing of pricing of syndicates.

- (517) The Commission identified for this Decision 261 communications in which the traders exchanged other sensitive information that falls within Category (4). ABN-AMRO/RBS, Bank of America, Natixis, Nomura, UBS, UniCredit and WestLB/Portigon were each, through their respective traders, involved in multiple exchanges concerning Category (4).<sup>989</sup> In recitals (518) to (529) these exchanges are organised in groups according to the centre of gravity of their content:

*(i) Information exchanges on pricing elements, positions and/or volumes and strategies for specific counterparties related to individual trades of EGB on the secondary market*

- (518) D2D and D2C platforms offer a solution for traders to simultaneously trade and compete with each other. On these platforms, traders quote bid-ask prices ('spreads') and the deals concluded are visualised, but only on an anonymous and/or aggregated basis. Running lists of prices and volumes of recent traders occur, but the identity of a counterparty will only be revealed to a trader having executed a transaction. Traders are not supposed to share additional individual information within a closed circle of competitors. A considerable amount of information exchanged in relation to pricing elements, positions and/or volumes of individual trades was therefore sensitive.
- (519) As explained in the context of Category (2)<sup>990</sup>, in the same way that the disclosures of individual mid-prices, volumes, positions, information on yield spreads and individual transactions are sensitive for primary market activity, they are also sensitive for secondary market trading, due to the interrelation between primary and secondary markets as explained above.<sup>991</sup>
- (520) Information on individual *mid-prices* of EGB is not public and assists the traders in determining their trading strategies.<sup>992</sup> Mid-prices are used for pricing, managing trading positions and appreciation of a portfolio.<sup>993</sup> In terms of secondary market trading, the mid-price information may assist the trader to understand how competitive his own pricing is. Through knowing a competitor's mid-price, although it is not actually the dealing price, a trader is more easily able to work out the actual bid or offer price of its competitors. Information on mid-prices relating to EGB may be made public directly by certain traders or indirectly through brokerage companies, but such information is not generally available and is not necessarily reliable.

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<sup>988</sup> Other than exchanges of information on the steepening of flattening of the curve on the secondary market that are organised in Category 1.

<sup>989</sup> See the overview of anticompetitive communications in Annex 1.

<sup>990</sup> Recitals (504)-(511).

<sup>991</sup> Section 2.2.3., Relationship between the primary and the secondary market, recitals (45)-(50).

<sup>992</sup> Recital (505).

<sup>993</sup> Recitals (19) and (41).

- (521) The traders sometimes exchanged information on *prices or volumes of individual transactions* on the secondary market beyond what was publicly available. These exchanges gave details of orders, trades, trading positions and trading strategies and revealed strategies for specific counterparties.<sup>994</sup> Disclosure went beyond what was necessary for the market to function. For instance: ‘*not budging*’ ‘*he’s asking*’ ‘*stay the same*’<sup>995</sup>, ‘*asked us twice as well*’ ‘*we’re flat*’<sup>996</sup>, ‘*if he comes here I am going to tell him to fuk off/ shall we fuk him*’<sup>997</sup>, ‘*frog insurer asks me if I can offer 50m sp40s*’<sup>998</sup>, ‘*btp 23s*’, ‘*oil asking*’, ‘*wat mid*’<sup>999</sup>, ‘*same here i would not tell him what i had*’<sup>1000</sup> ‘*just offered 60m dsl28 to same guy*’<sup>1001</sup>.
- (522) Information on *trading positions*, referring to either going short or long in relation to their portfolio of bonds, is not only sensitive for the bidding process at the auctions, but is also important for traders in determining the appropriate time to sell bonds on the secondary market.<sup>1002</sup> This information helps traders to identify if and to what extent they are competitors to each other and helps them to explore if there is room for alignment or for adjustment of their own trading strategy. Thus, traders adjust their positions, thereby influencing the price components of EGB and distorting competition in the market for EGB. Disclosure of such information increased transparency between colluding parties, placing them at a competitive advantage vis-à-vis their competitors.
- (523) Information on *volumes* on individual trades is not only sensitive for the bidding process at the auctions, but is also an important element for the pricing of the bonds on the secondary market.<sup>1003</sup> On the secondary market, information on volumes recently sold to or bought from customers (whether identified or not) by a competing bank provides a valuable insight into current trading patterns and possible demand or supply on the market. This allows the colluding parties to adjust their trading strategies which have an influence on the pricing components of EGB and therefore distort competition in the market for EGB.
- (524) The vast majority of the 261<sup>1004</sup> communications mentioned in Category (4) fall within sub-category (4)(i).<sup>1005</sup> These communications increased transparency and enabled the participating traders to gain more confidence on their pricing and trading strategies in the secondary market, to alter their strategies accordingly and maximise their gains in the secondary market.

(ii) *Disclosure of individual recommendations given to a DMO*

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<sup>994</sup> See for instance recitals (101), (112), (115), (116), (127), (131), (133), (135), (167), (188), (192), (206), (215), (217), (221), (222), (226), (244), (246), (248), (281), (282), (289), (291)-(292), (302), (309), (312), (325) and (345).

<sup>995</sup> Recital (101).

<sup>996</sup> Recital (131).

<sup>997</sup> Recital (133).

<sup>998</sup> Recital (135).

<sup>999</sup> Recital (215).

<sup>1000</sup> Recital (212).

<sup>1001</sup> Recital (292).

<sup>1002</sup> Recital (509).

<sup>1003</sup> Recital (508).

<sup>1004</sup> Recital (517).

<sup>1005</sup> The communications identified for sub-category 4(ii) in recital (526) and sub-category 4(iii) in recital (529) were usually not exclusively for these categories and equally touched upon other sensitive information that falls under sub-category 4(i).

- (525) The advice given to the DMO, if not requested and given collectively, is an individual recommendation that is confidential in principle. The evidence in this case however demonstrates that the banks (through their respective traders) sometimes coordinated their advice given to a DMO before an upcoming auction rather than forming individual views, often in combination with or before sharing other information that is organised in the other categories. Colluding on their views allows the banks to coordinate their recommendations to the DMO and better influence the decision of the DMO to issue the volume and maturity of EGB that best fits the traders concerned. This amounts to coordination on the parameters of the auctions. Joining forces upfront not only allows the traders to influence the decision of the DMO to their advantage, but the increased chance that the DMO will follow them also allows the traders concerned to align their positions on the volumes and maturities recommended. This can be to the detriment of other traders that act on their own and have given their recommendations individually (and which might vary from those of the participating banks). This could undermine the DMO's choices since it might have decided to issue other volumes and maturities, had the banks not coordinated their recommendations, thereby modifying the structure of the EGB market.
- (526) The Commission identified for this Decision ten communications in which the traders from Bank of America, Natixis, RBS and UBS discussed their strategy vis-à-vis a DMO.<sup>1006</sup>
- (iii) Information exchanges on the timing of pricing of syndicates*
- (527) The traders also exchanged information on their strategy vis-à-vis a syndication and alerted each other as to the timing of pricing for EGB issued by syndication. Syndication is carried out by separate desks and information barriers should exist between the EGB trading desk and the syndication desk.<sup>1007</sup> The evidence on the file, however, suggests that where the EGB traders could get hold of sensitive information from syndication that may have been useful for their trading business, they shared this information, often by using code words, within the trusted group of participants in the chatroom.
- (528) As mentioned in recital (33), information on the timing and exact moment of pricing of syndication is not made public until it is announced to the wider market by the lead managers. Knowing that the syndication has priced, or any details of the terms, might allow a trader to gain an advantage over his competitors who do not hold this information. Knowing the pricing in advance, even if very shortly, enables traders to anticipate when the benchmark bond is at its cheapest, before the rest of the market covers their positions. This information allows the traders to raise or lower the price of the benchmark bond in the secondary market and thereby affect the success or failure of the relevant syndicated bond issue or alternatively be aware of the timing of possible significant increased volatility and price movements in the market caused by the syndication pricing, and adjust their trading accordingly.<sup>1008</sup> Thus, traders can adjust their positions prior to the official announcement of the pricing which only

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<sup>1006</sup> See communication of 26 February 2008 at recital (156), 24 April 2008 at recital (169), 22 May 2008 at recital (177), 25 June 2008 at recital (179), 27 August 2008 at recital (190), 18 December 2008 at recital (223), 30 December 2008 and 7 January 2009 at recital (223), 9 June 2009 at recital (250), 15 February 2010 at recital (284).

<sup>1007</sup> See Section 2.2.1.2. Syndication.

<sup>1008</sup> [...]

becomes public once it has been announced to the public by the syndicate. For example, primary dealers holding short positions may take advantage of this information to purchase enough of the benchmark bond immediately before pricing in order to obtain a flat position at the cheapest possible price.<sup>1009</sup>

- (529) The Commission identified for this Decision 13 communications in which the traders from RBS, UBS, Natixis and Nomura discussed or alerted each other on the timing of pricing of the syndication.<sup>1010</sup>
- (530) There are also instances of communications in which the traders gave each other feedback on their collusive actions.<sup>1011</sup> These communications fall into the same categories as the collusive actions for which they give feedback.
- (531) Finally, communications that are only relevant for contextual purposes do not have any category attributed to them.<sup>1012</sup>

*The anticompetitive object of the banks' conduct*

- (532) The series of exchanges of information in the various categories amounted to agreements and/or concerted practices that had the object of restricting and/or distorting competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. Traders competing in financial products must determine their bidding and trading strategies independently. The exchanges of sensitive information between these traders on their individual positions, bids, overbidding, prices, volumes and other trading conditions, outside the context of a bilateral trade, reduced uncertainty and enabled the banks to align or coordinate their strategies. This created conditions of competition that were different from those that would have existed in the absence of collusion and amounted to price fixing and/or market sharing and customer allocation agreements and/or concerted practices. They occurred between traders with a sizeable share of the market and were capable of affecting each trader's conduct on the market.
- (533) Irrespective of this organisation into categories, having regard to their content, objectives and economic and legal context, the agreements and/or concerted practices entered into by the banks had as their object the restriction and/or distortion of competition. In any event, even if the information exchanged was in the public domain or related to historical and purely statistical prices (which it was not), its exchange infringes Article 101(1) of the Treaty where it underpins another anticompetitive arrangement. That interpretation is based on the consideration that the circulation of price information limited to the members of a cartel has the effect of increasing transparency among the colluding members.<sup>1013</sup>
- (534) This subsection is structured as follows: (i) price fixing; (ii) increasing transparency to the detriment of others; (iii) aligning trading strategies; and (iv) exchanging sensitive information, including in relation to specific counterparties.

*(i) Price fixing*

- (535) Through their contacts, including on relevant parameters for the price setting of EGB on the primary market and for trading them on the secondary market, the

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<sup>1009</sup> [...]

<sup>1010</sup> Recitals (130), (194), (227), (252), (254), (255), (257), (259), (268), (273), (307), (329) and (333).

<sup>1011</sup> Recital (420), footnote 795.

<sup>1012</sup> See, for example, recitals (104), (113), (157), (300), (332), (336), (351), (352), (353) and footnote 101.

<sup>1013</sup> Case C-204/00 P, *Aalborg Portland*, paragraph 281.

participating banks coordinated their conduct in EGB<sup>1014</sup> and directly or indirectly fixed purchase<sup>1015</sup> or selling prices, altered the normal trading conditions of the market<sup>1016</sup> and shared the market (such as when exchanging confidential information about specific counterparties, as well as information on volumes in order to obtain the desired allocation at auctions).<sup>1017</sup>

*(ii) Increasing transparency to the detriment of others*

- (536) The banks (through their respective traders) sought to alter the competitive process to their advantage by attempting to reduce the uncertainties, in terms of costs and potential allocations, that are inherent to competition for buying EGB on the primary market and for trading them on the secondary market. They created a situation of informational asymmetry and were better informed about their competitors' bidding and trading strategies when acquiring and trading EGB. They were able to align their strategy in light of each other's conduct.<sup>1018</sup>
- (537) The conduct ultimately aimed at taking advantage of the opportunities to coordinate the bank's EGB trading business whenever they arose, both on the primary and the secondary market, and eventually generate more EGB trading business and increase revenues from this business for the banks involved in the infringement. This behaviour operated to the detriment of competing banks not participating in the anticompetitive scheme and their end customers who invested in EGB.
- (538) The conduct ensured that the traders (and therefore the banks) involved were better informed than their competitors, and thereby reduced some of the normal market uncertainties and competitive tension which would otherwise have existed between the banks absent the disclosures. In this regard, the traders were able to adjust or align their individual bidding strategies in the light of the volumes and/or bid levels their competitors proposed to submit for the same auctions (or vice versa)<sup>1019</sup> and shared with them. The objective was, in particular with regard to the primary market, to increase the prospect of securing the desired allocations of bonds from the

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<sup>1014</sup> Recitals (380)-(381).

<sup>1015</sup> See for instance recitals, (100), (101), (102), (106), (108), (109), (110), (112), (115), (116), (117), (122), (123), (124), (125), (126), (127), (131), (132), (133), (137)-(138), (142), (143), (146), (147), (150)-(151), (152), (155), (156), (158), (163)-(164), (165)-(166), (167), (168), (177), (178), (182)-(185), (186), (187), (189), (191), (192), (193), (199), (200), (203), (204), (206), (207), (208), (210)-(211), (214), (217), (218), (219), (220), (222), (224), (225), (226), (227), (228), (229), (230), (232), (233), (234), (236), (238), (239), (242), (244), (245), (246), (247), (248), (249), (250), (256) (258), (260), (261), (262), (265), (271), (275), (277), (280), (282), (283), (285), (289), (290), (291)-(292), (293), (295), (296), (297), (298), (299), (301), (302), (304), (305), (307), (308), (309), (312), (315), (316), (317), (318), (322), (325), (327), (328), (330), (335), (337), (338), (340), (342), (345), (346), (347), (348) and (349), where information on the (over)bidding was exchanged.

<sup>1016</sup> See for instance recitals, (100), (101), (102), (108), (109), (112), (115), (120), (121), (122), (124), (127), (131), (133), (135), (137), (138), (141), (142), (146), (150), (163)-(164), (165)-(166), (168), (174), (176), (177), (182)-(185), (188), (192), (193), (199), (200), (206), (207), (210)-(211), (214), (215), (216), (218), (221), (225), (226), (238), (242), (248), (249), (269), (271), (273), (275), (277), (280), (281), (283), (285), (288), (289), (290), (291)-(292), (293), (296), (297), (302), (303), (304), (305), (307), (309)-(310), (312), (315), (316), (319), (321), (325), (328), (330), (334), (337), (338), (340), (342) and (355), where mid-prices were exchanged.

<sup>1017</sup> See for instance recitals (101), (131), (133), (135), (192), (215), (212), (291)-(292), (517), as well as recitals (106), (108), (109), (110), (124), (150), (174)-(176), (182)-(185), (192), (218), (152), (282), (297), (304), (316), (322), (327), (330), (345), (348).

See also recital (523).

<sup>1018</sup> See for instance recitals (379), (380), (381), (500), (502) and (514).

<sup>1019</sup> [...]

auctions at the lowest price. By colluding on their bidding strategy the participating primary dealers sought to assist each other to increase their prospects of securing their desired allocations of bonds from the auctions, at a lower price than they may otherwise have needed to pay.<sup>1020</sup> This reduced competition on bidding and market shares and trading business was aimed at increasing gains from subsequent sales and trading in the primary and secondary markets. Since the primary dealer rankings with each DMO are determined, in part, by reference to the proportion of issued bonds acquired from that DMO, it is important for them to receive the desired allocation of bonds and have a bid filled in full in an EGB auction.<sup>1021</sup> The primary dealer rankings determine if and to what extent those dealers qualify for participation in other auctions and potentially lucrative syndications and therefore directly and indirectly generate trading business.

- (539) The agreements and/or concerted practices created a situation of informational asymmetry between market participants stemming from the fact that each of the collaborating banks were informed of certain mid-prices, spreads, volumes, positions and trading and bidding strategies, including individual trades and prospective bids of their competitors. Banks participating in these anticompetitive contacts were better informed about their competitors' conduct which enabled them to adjust or coordinate their strategy towards each other, their customers and the DMOs. In contrast, their non-colluding competitors were unaware of this shared knowledge. This asymmetrical information gave the colluding traders a competitive advantage with respect to EGB trading. They were able to modify their trading and pricing strategies towards the market generally and towards specific counterparties (end customers or other traders).

*(iii) Aligning trading strategies*

- (540) The exchanges of information also enabled the banks to identify opportunities to align their conduct on the primary market. The traders were informed about each other's bidding strategies at the auctions, including on the level of overbidding and could therefore align their strategies. They helped each other to obtain and trade the desired volumes of EGB that would allow them to maintain their primary dealer ratings and/or safeguard participation in syndications on more favourable terms. Successful participation in auctions generates trading opportunities on the secondary market and further syndication business that equally generates further secondary trading. The exchanges also enabled the banks, even if they were not active in the auctions and/or syndications, to coordinate their trading opportunities on the secondary market. This coordination revealed in itself a sufficient degree of harm to competition.
- (541) At the auctions, primary dealers compete with each other by bidding on price and volume for allocations of EGB. It is clear that DMOs, in choosing the auction mechanism instead of opting for placing by syndication, intend their primary dealers to compete with each other, with each determining individually the highest price it is prepared to pay for an allocation of EGB. In a standard auction the DMO, and thus the issuing country, thereby maximises the funds raised by the issue, with each successful primary dealer paying the amount bid.

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<sup>1020</sup> [...]  
<sup>1021</sup> [...]

(542) Through their conduct, the banks sought to drive down the relevant bond price in advance of an auction, reduce overbidding, coordinate on bidding levels and volumes and thereby gain allocations on more favourable terms than in the absence of collusion. They therefore sought to reduce the cost of acquiring and placing the EGB in the market, while still obtaining the desired volumes of EGB needed to maintain the primary status. As such, the collusion was actually or potentially detrimental to the DMOs organising EGB auctions for the central governments, and therefore indirectly to the economies of the countries affected.

*(iv) Exchanging sensitive information, including in relation to specific counterparties*

(543) The conduct was not limited solely to the auctions on the primary market since these auctions generated increased trading activity on the secondary market. Information was also shared on prices/spreads, deal volumes, customer details and orders for the EGB recently traded at or being offered and details of respective competitor trading positions and trading strategies in light of these positions.<sup>1022</sup> Such exchanges on the prices/spreads (including mid-prices), deal volumes, customer details and orders of EGB which are quoted on D2D and D2C platforms, informed the banks about their competitors' trading strategies and enabled them to adjust their positions and strategy in light of the information exchanged and/or respect each other's positions and strategy. Ultimately, the banks assisted each other in generating trading business on the primary and secondary market and in maximising their gains.

(544) By means of all of the practices set out in this Decision, the participating traders knowingly substituted cooperation for normal competition on both the primary and secondary markets. The restrictive character of the communications was confirmed and corroborated by the leniency applicants.<sup>1023</sup>

#### 5.1.3.3. Arguments of the parties

(545) The parties that did not cooperate with the Commission investigation under the leniency programme, contest the restrictive character of the communications as a whole or in isolation.

(546) As regards proof of infringement of Article 101(1) of the Treaty, although the Commission must produce sufficiently precise and consistent evidence to support the firm conviction that the infringement took place, it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the Commission, viewed as a whole, meets that requirement.<sup>1024</sup>

(547) The parties' arguments can be divided into the following topics.

#### *Organisation of conduct*

(548) Bank of America, Nomura and UniCredit contest how the Commission organised and presented the various communications in four categories or types of conduct. They argue that this categorisation is unclear, insufficiently motivated, open ended and incorrect for various contacts. As a consequence, they claim that the

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<sup>1022</sup> [...]

<sup>1023</sup> [...]

<sup>1024</sup> Judgment of the General Court of 24 March 2011, *Aalberts Industries NV and Others v European Commission*, T-385/06, ECLI:EU:T:2011:114, paragraph 45.

Commission has failed to identify, on a legally sufficient basis, that the individual contacts to which their trader actively participated constituted anticompetitive agreements or concerted practices. They claim that these contacts cannot be relied upon as evidence for holding them liable for the conduct described. They add that this insufficient explanation constituted a violation of their rights of defence and that these contacts cannot be relied upon as evidence for the purpose of establishing an infringement.<sup>1025</sup>

- (549) The parties' claim should be rejected. All of the evidence must be read and interpreted as a whole. The Commission has consistently held that the categories are intertwined and partially overlapping and have been presented in the current classification for analytical purposes. The contacts in each category may in themselves constitute infringements of Article 101(1) of the Treaty, but in view of their interdependence and the collaborative character of the persistent chatroom(s), they should be assessed together. None of the three banks that cooperated with the Commission investigation contest that the conduct reported constituted as a whole one single and continuous infringement.
- (550) The Commission's file contains evidence of hundreds of contacts between the parties. This Decision distinguishes for analytical purposes between activities related to (1) attempts to influence the prevailing market price (steepening and flattening of the curve) in function of the conduct on the primary market; (2) attempts to coordinate the bidding in the primary market; (3) attempts to coordinate the level of overbidding on the primary market; and (4) all other exchanges of sensitive information, including on (i) pricing elements, positions and/or volumes and strategies for specific counterparties related to individual trades of EGB on the secondary market, (ii) individual recommendations given to DMOs, and (iii) the timing of pricing of syndicates. Depending on the analysis of activities it would be possible to find subcategories of exchanges of information which could constitute restrictions of competition. For instance, if the analysis would have focussed separately on exchanges regarding mid-prices on the one hand, or on yields on the other hand, and so forth. In view of the fact that the subcategories would respond to the aims covered in each category and there is partial overlap and interrelation between all categories in a common plan,<sup>1026</sup> they are presented in the existing categories to set out clearly why they are considered problematic. Irrespective of the way these communications are organised or described in categories, they concerned the exchange of sensitive commercial information with the aim of colluding or coordinating their strategies for acquiring EGB on the primary market and/or trading them on the secondary market.
- (551) Even if some of the contacts mentioned in the Decision relate to the organisation and context of the cartel within the existing categories, they form part of the body of evidence on which the Commission relies in this Decision.<sup>1027</sup> Even if, taken in isolation, some of these contacts are not anticompetitive<sup>1028</sup>, they are relevant for the understanding of the functioning of the cartel and support the Commission's finding

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<sup>1025</sup> [...]

<sup>1026</sup> See Section 5.1.2. Single and continuous infringement.

<sup>1027</sup> See also recital (530).

<sup>1028</sup> In the SO, they were added as 'other sensitive information' to Category 4. See, for example, the contact of 14.12.2011 in recital (352).

that the conduct set out in Section 4, taken as whole, infringes Article 101(1) of the Treaty.

- (552) The parties' claim that their rights of defence have been violated should also be rejected. Even those parties who argue that the organisation of the evidence in categories is ambiguous or not helpful for the understanding of the anticompetitive agreements and/or concerted practices, have been able to explain their arguments and the Commission has been able to take them into account for this Decision.<sup>1029</sup> Where the Commission identified errors in the categorisation of certain contacts following the responses to the SO and the oral hearing, the Commission informed the parties in a LoF on 12 November 2020 of the corrections to the categorisation and the banks were given an opportunity to submit observations on the LoF.<sup>1030</sup>
- (553) Bank of America, Nomura, Portigon and UniCredit add that the corrections to the categorisation of certain contacts after the SO in a LoF of 12 November 2020 violated their rights of defence because such correction should have been done by way of a supplementary SO.<sup>1031</sup> Bank of America argues that because the Commission "*impermissibly raised new or modified objections against BoA by way of a simple letter of facts the Commission is obliged to issue a supplementary statement of objections setting out these objections...the Commission's failure to do so infringes BoA's rights of defence*".<sup>1032</sup> The Commission notes that this position appears to contradict Bank of America's supplementary response to the SO in which it argued that "*this breach [the allegations made against BoA, the legal basis for those allegations, the facts on which the Commission relies] of BoA's rights of defence in respect of the allegations set out in the SO is not capable of being rectified. More specifically, any attempt, for example, by the Commission to seek to address the failings in the SO as they relate to BoA through the issue of a supplementary statement of objections will, itself, be a breach of the rights of defence of BoA*".<sup>1033</sup>
- (554) The parties' claims should be rejected. Under settled case-law of the Court of Justice of the European Union, the obligation of the Commission under Article 27(1) of Regulation (EC) No 1/2003 is satisfied if the final decision does not allege that the parties concerned have committed infringements other than those referred to in the SO and takes into consideration only facts on which the parties concerned have had the opportunity to state their views<sup>1034</sup>. The Commission issues a supplementary SO only if it intends to bring additional objections as a result of the addressees' replies,<sup>1035</sup> or if the intrinsic nature of the infringement with which an undertaking is charged is modified.<sup>1036</sup> For example, a supplementary SO would be issued if new evidence allows the Commission to extend the duration of the infringement, the

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<sup>1029</sup> [...] [...] See also the arguments of Bank of America [...] that target the existence of a single and continuous infringement and that have been discussed in the Section 5.1.2.3. [...].

<sup>1030</sup> See Section 3. Procedure.

<sup>1031</sup> [...]

<sup>1032</sup> [...]

<sup>1033</sup> [...]

<sup>1034</sup> Judgment of the General Court of 24 May 2012, *MasterCard and Others v Commission*, T-111/08, ECLI:EU:T:2012:260, paragraph 266.

<sup>1035</sup> See Judgment of the General Court 13 January 2004, *JCB Service v Commission*, T-67/01, ECLI:EU:T:2004:3, paragraph 52.

<sup>1036</sup> See Best Practices Notice, paragraph 110.

geographic scope, or the nature or scope of the infringement.<sup>1037</sup> If, on the other hand, the Commission wishes to bring forward fresh documents to support its existing objections, it is sufficient to bring them to the attention of the parties by a letter of facts, giving them the possibility to provide written observations.<sup>1038</sup>

- (555) Consequently, the argument that the LoF of 12 November 2020 itself violated the rights of defence should also be rejected, as it reflects a confusion between the notion of new facts and new objections.<sup>1039</sup>
- (556) In the first place, correcting the categorisation of certain communications did not add a new objection to an existing fact, but added a new fact to an existing objection. By adding some facts to existing categories, the Commission simply brought to the parties' attention, in line with its best practices<sup>1040</sup>, how these facts supported the objections already raised in the SO. The LoF neither changed the intrinsic nature of the infringement nor raised additional objections, nor did it extend the duration of the infringement or its geographic scope.<sup>1041</sup> This Decision therefore does not allege that the parties have committed infringements other than those referred to in the SO and takes into consideration only facts on which the parties have had the opportunity to state their views.<sup>1042</sup>
- (557) Second, the LoF gave the parties an opportunity to provide written comments on this newly used evidence within a fixed time limit, and all parties that claimed that this LoF violated their rights of defence nevertheless provided detailed written observations within that time limit.<sup>1043</sup>
- (558) Third, the parties' observations were transmitted to the cabinet of the Commissioner responsible for competition, to DG Competition's hierarchy, to the other Commission services following the case, including the Hearing Officer and the Chief Economist, and to the competent authorities of the Member States ahead of the meeting of the Advisory Committee. Finally, the Court has ruled that the right to be heard does not mean that the party concerned must be given the opportunity to express its views orally, for instance in an oral hearing, since the opportunity to provide comments in writing also allows that right to be observed.<sup>1044</sup>

*The communications as a whole*

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<sup>1037</sup> Commission Notice on best practices for the conduct of proceedings concerning Articles 101 and 102 of the Treaty, OJ C308/6, 20.10.2011, point 70.

<sup>1038</sup> Judgment of the General Court of 20 March 2002, *LR AF 1998 v Commission*, T-23/99, ECLI:EU:T:2002:75, paragraphs 188-190, Judgment of the General Court of 30 January 2007, *France Télécom v Commission*, T-340/03, ECLI:EU:T:2007:22, paragraphs 28-37, Case T110/07, *Siemens*, paragraphs 87-89, and Best Practices Notice, paragraph 110, Judgment Of the Court of 29 October 1980, *Heintz van Landewyck SARL and Others v Commission*, Joined Cases 209-215/78 and 218/78, ECLI:EU:C:1980:248, paragraphs 29-35.

<sup>1039</sup> Recital (548)-(549).

<sup>1040</sup> Point 111 of the Commission Notice on best practices.

<sup>1041</sup> Point 110 of the Commission Notice on best practices.

<sup>1042</sup> Case T-180/15, *Icap*, paragraph 84; Case T-111/08, *MasterCard*, paragraph 266 and the case law cited.

<sup>1043</sup> Recital (75).

<sup>1044</sup> Judgment of the General Court of 5 October 2020, *HeidelbergCement AG and Schwenk Zement KG v. Commission*, T-380/17, ECLI:EU:T:2020:471, paragraph 634;

See also Judgment of 7 November 2019, *Campine NV and Campine Recycling NV v Commission*, T-240/17, ECLI:EU:T:219:778, paragraph 357.

- (559) A first set of a banks' claims invoke their function as market makers.<sup>1045</sup> They claim that this function requires them to engage in contacts with each other when trading EGB. More specifically, UBS argues that, in this context, the service being delivered by its EGB dealers is financial intermediation; a EGB dealer is ready to buy and sell, supporting liquidity in a particular instrument, the value of which is vastly larger than that of the intermediation itself.<sup>1046</sup> Similarly, Nomura argues that market makers (such as Nomura) buy, promote and distribute EGB, supporting liquidity for the EGB in which they deal. Nomura describes that its EGB desks act more akin to financial intermediaries which achieve revenue by holding themselves out as a market maker able to meet client demand and by anticipating market movements and client demand, such that the desk can sell EGB at a higher price than that at which it was bought.<sup>1047</sup> Bank of America also argues that, in the EGB bond market, which is an OTC market, dealers act as market makers to provide liquidity by taking the opposite side of customer traders and, for this market to function, market makers must source liquidity.<sup>1048</sup> Natixis argues, among other things, that bid-ask spreads represent a measure of market liquidity and the risk that a market maker takes when providing a quote.<sup>1049</sup> Portigon, on the other hand, points out that they were not market makers.<sup>1050</sup>
- (560) The parties' argument that a market making function automatically implies that all contacts that are the subject of this Decision were ancillary to and objectively necessary for and proportionate to the implementation of that market making activity should be rejected.
- (561) First, the Commission has not taken issue with the legitimate exchange of information related to trade between the parties for the purpose of risk mitigation.
- (562) Second, market making, which is essentially a commitment by the bank to continuously quote bid and ask prices for the bonds thereby making it easier for investors and traders to buy and sell, does not require the competing traders to exchange sensitive information and coordinate on prices and/or trading strategies that go beyond what is necessary for hedging and liquidity purposes. In this respect, as the General Court has held in the specific context of financial services market: "*an exchange 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'*". Market makers are generally and continuously active on the market and therefore enter into a larger number of transactions than other market participants, thereby amplifying the potential impact of the conduct.
- (563) Third, the mere fact that market making requires the traders to engage in contacts with each other and allows them to trade with each other does not mean that the contacts identified in this Decision were '*objectively necessary*' as required in order for them to be classified as ancillary. Such an interpretation would effectively extend the concept of ancillary restraints to restrictions that are not strictly indispensable to

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1045 Recital (11).

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the implementation of the main operation or activity and would undermine the effectiveness of the prohibition laid down in Article 101(1) of the Treaty.<sup>1051</sup>

- (564) Fourth, a bank's role as market maker on the secondary market cannot justify collusion or coordination in respect of bidding strategies on the primary market or attempts collectively to influence the prices of bonds on the secondary market in contemplation of participation in auctions on the primary market. From the point of view of competition on the market, it is particularly fundamental that prices be determined independently.<sup>1052</sup>
- (565) A second set of claims concern Bank of America, Nomura and Portigon, who assert that the facts described in the Decision are not capable of justifying the finding of a restriction of competition by object.<sup>1053</sup> They claim that a proper analysis of the economic and legal context of these contacts would confirm that the information exchanged had insignificant strategic value and was not capable of removing uncertainty between the parties as regards the timing, extent and details of modifications to be adopted by them. First, the context - they claim - is characterised by the complexity, diversity and volatility of an EGB market that is highly competitive and fragmented and in which traders occupy asymmetric positions for many different EGB. The U-shaped movement in the price curve before and after an auction, referred to as '*steepening*' or '*flattening*' the curve<sup>1054</sup>, occurs naturally in the absence of collusion between traders and the interest of traders in such curve is no more common than for any undertaking in any industry seeking to buy a product at a low price and sell it at a higher price. Second, in such a context, there may be no incentive for strategic alignment when individual preferences are different because of the primary dealer ranking system and varying levels of client orders ahead of an auction. In a market that is already very transparent, and in which multiple factors contribute to a trader's pricing and trading strategy, information exchanged between traders contributes little to the existing transparency and is unlikely to restrict competition. Certain DMOs allegedly even encouraged transparency. Third, some parties add that in such context the exchanges of information were necessary for the market to function properly and were even pro-competitive, and in any event did not harm the traders' customers. In their view, the information exchanged consisted of mere 'market colour' observations based on personal assessments of publicly available information.<sup>1055</sup> In summary, the parties allege that the exchange of information did not entail a sufficient degree of harm to competition. In the context of the importance for competitors, and in particular for traders that are generally and continuously active on the market, to determine their prices independently, these claims must be rejected.<sup>1056</sup>

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<sup>1051</sup> Case T-105/17, *HSBC*, paragraph 156-160 and case-law cited.

<sup>1052</sup> Case T-105/17, *HSBC*, paragraph 145.

<sup>1053</sup> [...]. In its presentation at the Oral Hearing Portigon referred to the *HSBC* ruling to argue that '*even direct exchanges among traders do not constitute 'by object' infringement if they do not result in an informational advantage that may have allowed them to adjust their trading strategies (para 188)*' and further references to paras 189 and 193. Beyond the *HSBC*, Portigon argued that there was no by object infringement in chats concerning non-German EGB since WestLB could not even have had a 'strategy' for such auctions.

[...]

<sup>1054</sup> See recitals (39) and (498).

<sup>1055</sup> [...]

<sup>1056</sup> Recital (564).

- (566) First, it is inconsistent to claim on the one hand that - in their role as market makers - the traders are obliged to exchange information with each other for hedging and liquidity purposes, and on the other hand, argue that the exchange of information was of insignificant strategic value.
- (567) Second, certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition. Consequently, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing, may be so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101 of the Treaty, to prove that they have actual effects on the market<sup>1057</sup>. The Commission has adduced concrete evidence to prove that there were agreements and/or concerted practices aimed at colluding on and coordinating the banks conduct for the bidding and trading of EGB on the primary and secondary markets. The participants colluded to set up a secret horizontal scheme designed to restrict competition in the EGB sector and were well aware that price coordination constitutes a wrongdoing.<sup>1058</sup>
- (568) Third, the General Court has held “[t]he fact that the Commission has not, in the past, considered that a certain type of agreement was, by its very object, restrictive of competition is therefore not, in itself, such as to prevent it from doing so in the future following an individual and detailed examination of the measures in question having regard to their content, purpose and context”.<sup>1059</sup> However, the conduct described in this Decision included elements of price fixing, market sharing and customer allocation and is likely to produce negative effects and, therefore, no detailed examination is required to assess whether the agreements and/or concerted practices were by their very object restrictive of competition.
- (569) Fourth, the parties’ claims cannot succeed against the backdrop of a careful analysis of the legal and economic context of an over the counter financial product market in which traders are not only competing but also trading with each other.<sup>1060</sup>
- (570) It has been established that the nature of the information exchanged was often precise and sensitive. The information exchanged gave the traders an informational advantage that reduced or removed the degree of uncertainty on the market in such a way that enabled them to adjust their trading strategies. Sensitive information mentioned in this Decision relates to mid-prices, bidding volumes, positions at auctions, yield spreads, bid levels, information on secondary market trading (prices, spreads, trading positions, volumes, strategies on specific counterparties), the timing of syndication and recommendations to the DMOs.<sup>1061</sup> Recitals (535) to (544) address how these exchanges on sensitive information enabled the traders to coordinate their trading strategies, increased transparency and reduced uncertainties about the behaviour of their competitors.
- (571) It is incorrect that for an over the counter financial product like EGB all information on trades and strategies is publicly available.<sup>1062</sup> Accurate additional pieces of

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<sup>1057</sup> See Case C-67/13 P, *Groupement des cartes bancaires*, paragraphs 50 and 51.

<sup>1058</sup> See for instance recitals (104) and (307).

<sup>1059</sup> Case T-742/13, *Lundbeck*, paragraph 438.

<sup>1060</sup> These claims were anticipated and addressed in the SO, paragraphs (583) – (584).

<sup>1061</sup> See recitals (516) - (528).

<sup>1062</sup> See recital (37).

information were valuable information to traders. The information available on screen on D2D and D2C trading platforms is anonymous and/or aggregated.<sup>1063</sup> A trader is normally not able to identify the exact source of price sensitive information and disclosing this to each other in a closed circle creates informational asymmetry and distorts the competitive process. The level of transparency on screen therefore cannot justify the exchanges of information between traders.

- (572) As a whole, these exchanges sought to increase transparency and reduce normal market uncertainties<sup>1064</sup> between the participating banks regarding the issuing and/or trading of EGB, knowingly substituting the risks of competition to the benefit of all cooperating members and to the detriment of other market participants, banks, their customers or DMOs. Access to the chatrooms was exclusive and by invitation only and was based on an expectation that the participants would engage in a general and recurrent disclosure of commercially sensitive information with other competitors within a trusted group of traders.<sup>1065</sup>
- (573) The existence of different trading positions and different interests does not make the information exchanged insignificant. Information on the pricing elements, positions and/or volumes of individual trades in an auction or on the secondary market helps traders to identify if and to what extent they are competitors to each other and helps them to explore if there is room for alignment or for adjustment of their own strategy. This kind of information was of such value to the participants that no individual trader would have been able to instantly obtain that information without cooperating with competitors.
- (574) Fifth, the argument that the information exchanged amounted to mere observations based on traders' personal assessments of publicly available data is unconvincing. The contacts mentioned in this Decision went beyond such mere observations, and revealed strategies on pricing elements, positions and/or volumes of individual trades. Moreover, in these fast-paced markets personal observations are, even if they are based on publicly available data, of high importance as they allow for a consolidation of the personal perceptions of the competitors. It is not because a trader believes on the basis of publicly available data that an EGB should be priced at a certain level that he is allowed to exchange, test and align his pricing view with the views of his competitors. Similarly, fair competition in an auction process requires the participants to submit individual bids on the basis of their individual price assessments. The pooling of views is capable of leading to alignment of interests and coordinating strategies. The argument that the market is volatile and fastmoving, to the extent that the information exchanged becomes outdated and irrelevant very quickly, is therefore unfounded.
- (575) Sixth, the generic claim that any exchange of information between the parties was legitimate because it was within the context of exploring and concluding individual trades is factually incorrect. While such a context may have been an explanation for some contacts between the traders, individual explanations in that respect have been taken into account. As explained in recital (561), this Decision only takes issue with contacts that went further than necessary to explore and conclude individual trades.

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<sup>1063</sup> Recital (518).

<sup>1064</sup> See also recital (494).

<sup>1065</sup> See also recital (378).

- (576) Finally, the argument that U-shaped price curves also occur without collusion between traders<sup>1066</sup> is not a plausible alternative explanation or justification for the exchanges of information and attempts collectively to further steepen or flatten these curves.<sup>1067</sup> To the extent that the banks argue that the conduct hardly had any impact, the Commission reiterates that it does not have to quantify the effect of conduct that is anticompetitive by object. Likewise, the argument that (some) DMOs may have encouraged transparency on the market<sup>1068</sup> cannot explain or justify the banks' collusive conduct. Moreover, the argument is also not substantiated as the banks invoking this argument fail to explain which contacts would be linked to any transparency requests or otherwise encouraged by a DMO.
- (577) A third set of arguments claim that the information exchanged was not sensitive. The Commission considers that, as a whole, the exchanges of information that are the subject of this Decision are not exchanges of genuinely public information which was generally and equally accessible to all competitors and customers. Moreover, in a situation in which a significant amount of public information is available to all market participants, the exchange of even limited additional information between competitors may further reduce strategic uncertainty and give rise to restrictive effects on competition. It is the incremental information that can be critical to tip the market balance towards a collusive outcome.<sup>1069</sup>
- (578) First, even if brokers may sometimes disclose in negotiations with a trader the individual bid-ask prices or volumes they have received from another trader, this does not imply that this kind of information is not sensitive and can be freely exchanged between traders.<sup>1070</sup> On the contrary, the exchange of such information assists these traders to coordinate their individual strategies.
- (579) Similarly, the fact that traders may make certain bid-ask prices accessible to certain customers on D2C platforms does not imply that this kind of information is not sensitive, or that it must be assumed that all information on spreads is publicly accessible and can be freely exchanged between competitors.<sup>1071</sup>
- (580) This equally applies to the recommendations given to a DMO by a trader.<sup>1072</sup> The fact that the DMO consult primary dealers on their auctions, including, at times, on a multilateral basis, and publish the auction results (often anonymised) afterwards, does not imply that individual recommendations are not sensitive and can be freely exchanged between traders. On the contrary, such exchanges of information enable those primary dealers to coordinate the recommendations they give to the DMO and their related trading strategy before and/or at auction.
- (581) Second, contrary to Nomura's suggestion<sup>1073</sup>, a price curve is not merely a composite of predominantly publicly available information. One bank's conception of a curve is of significant value to another. A price or yield curve may be an aggregate of various individual data, but when traders exchange information and agree to try to steepen or flatten that curve it is clear that they are coordinating their individual strategies and

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<sup>1066</sup> [...]

<sup>1067</sup> See also recitals (497) - (503).

<sup>1068</sup> [...]

<sup>1069</sup> Commission Guidelines on Horizontal Cooperation Agreements, point 93.

<sup>1070</sup> [...]

<sup>1071</sup> [...]

<sup>1072</sup> [...]

<sup>1073</sup> [...]

attempt to manipulate the curve.<sup>1074</sup> The mere fact that these traders considered it useful to exchange such information already contradicts the argument that the information was insignificant. A trader may individually have a limited impact on the curve, but by coordinating his/her strategy with other traders, the potential impact becomes more significant.

- (582) Third, contrary to Nomura's suggestion that a mid-price is merely a historic composite of predominantly public information that paves the way for a trade between counterparties and has insignificant value in an asymmetric market,<sup>1075</sup> a trader's mid-price reveals the competitive price level at which the trader values the bond and it is his own interpretation of the prevailing mid-price that should not be shared with competitors.<sup>1076</sup>
- (583) Fourth, with regard to Nomura's claim that exchanges on yields spreads are harmless because (i) they are made by traders predominantly on the basis of public information;(ii) a yield spread is a notional reference point only; and (iii) there are legitimate reasons for a trader to share the spreads with one another<sup>1077</sup>, it must be noted that each trader makes his own personal assessment of the publicly available information on individual yield spreads and uses this for his price setting purposes. The fact that other factors may also play a role for his trading decisions cannot change the conclusion that a yield spread is a relevant and sensitive piece of price-related information that should not be exchanged between competitors. The argument that the exchange of this kind of information facilitates direct trading between two traders cannot be made in general terms, but should be linked to individual transactions between them. It is, moreover, not justified as regards trades with third parties.
- (584) Fifth, contrary to Nomura's suggestion<sup>1078</sup>, the exchanges of information on trading positions (portfolio of bonds) was neither vague nor insignificant. Knowing whether a trader holds a long or short position may help the competitors to adjust their own positions and therefore their trading strategies. As such, the colluding traders can influence the price component of the EGB depending on the size of the trades and on market conditions and therefore distort competition in the market for EGB.<sup>1079</sup>
- (585) Sixth, Nomura incorrectly suggests that information on the level of overbidding can be ascertained by reference to historic auction results.<sup>1080</sup> The argument that traders may calculate the average overbidding in a previous auction does not imply that information concerning the individual overbidding for an upcoming auction is no longer sensitive. Moreover, even for the past auctions, individual information of the overbidding is not information that is normally publicly available. Sharing information on the individual overbidding in a previous auction helps give the traders involved a better insight as to how each positioned themselves in a recent auction and this information may be valuable for another upcoming auction. Assertions that these exchanges were too vague and did not go beyond general observations on the

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<sup>1074</sup> Recitals (498)-(503).

<sup>1075</sup> [...]

<sup>1076</sup> Recitals (505) and (520)-(523).

<sup>1077</sup> [...]

<sup>1078</sup> [...]

<sup>1079</sup> See also recitals (43) and (522).

<sup>1080</sup> [...]

general market wide level of overbidding must be analysed on an individual basis.<sup>1081</sup> The argument that the overbidding levels may change as the auction approaches and are therefore too historic to be relevant cannot affect the sensitivity of the information at the time it was given and that it served to prepare and streamline further discussions often until time of the auction.<sup>1082</sup> Nomura's argument also fails to have regard to the actual content of the exchanges, which demonstrate attempts to actually collude on overbidding levels; the exchange of intentions on what to overbid (rather than historic data); and that they updated one another as the auction drew closer.

- (586) Seventh, Nomura claims that any disclosure of timing of pricing of syndications cannot be considered to be capable of removing uncertainty as regards the timing, extent and details of modifications to be adopted by the undertakings, and in particular could not have enabled the traders to adjust their positions in the market more than they would otherwise have been able to. Nomura's claims should be rejected.<sup>1083</sup> First, information on the timing of pricing of syndications is available only to the lead managers of the syndication and is made public when it is announced to the market by the lead manager. Traders may be able to estimate, based on public information or market activity, the window in which the pricing call will likely take place, but the exact timing is confidential and sensitive. Nomura's claim that it is '*an accepted market practice to share information about the timing of pricing as soon as it is done*' and not wait for the formal announcement is [...].<sup>1084</sup> Second, the disclosure in a closed circle and use of code words clearly contradicts the existence of an accepted market practice. In financial markets timing is key. Finally, information that is valuable may spread fast and therefore quickly lose its value, but when traders collude to obtain and share such information within a trusted group of competitors before it becomes publicly available and reaches other competitors, this restricts and/or distorts competition, because it allows them to anticipate before others.
- (587) Pieces of sensitive information are often exchanged in combination with other elements of sensitive information. These exchanges should not be analysed in isolation when it is clear that the body of evidence as a whole establishes the anticompetitive nature of the exchanges of information.
- (588) Eighth, Nomura's claims that the individual contribution of information by parties with an allegedly relatively small market share cannot reduce uncertainty between the traders nor enable them to adjust or align their activities must be dismissed.<sup>1085</sup> On the contrary, this ability to check the accuracy of market information via additionally acquired knowledge clearly creates a competitive advantage for those involved. The fact that traders have good visibility of market wide levels of demand and supply, based on historic and/or aggregate information, does not mean individualised information is not sensitive. Likewise, being able to match aggregate information that is available on screen with a related private disclosure of the identity of the party concerned, creates possibilities for the alignment or adjustment of

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<sup>1081</sup> To the extent this claim is made for individual contacts, they are addressed in Section 4. See for instance recital (696) the contact of 22.08.2011.

<sup>1082</sup> See the arguments of Nomura on individual contacts in recitals (640)-(719).

<sup>1083</sup> [...]

<sup>1084</sup> [...]

<sup>1085</sup> [...]

bidding or trading strategies between supposedly competing traders. By aligning and/or adjusting their trading strategies the colluding traders distort the structure of the competition in the market for EGB.

- (589) Finally, the fact that traders may have opposite positions and trade with each other does not justify the exchange of information beyond individual trades. A distinction may be drawn between, on the one hand, competitors gleaning information independently or discussing future pricing with customers and third parties and, on the other hand, competitors discussing price-setting factors and the evolution of prices with other competitors before setting their quotation prices. Although the first type of conduct does not raise any difficulty in terms of the exercise of free and undistorted competition, the same cannot be said for the second type, which runs counter to the requirement that each economic operator must determine independently the policy which it intends to adopt on the internal market, since that requirement of independence strictly precludes any direct or indirect contact between such operators with the object or effect either of 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.<sup>1086</sup>
- (590) A fourth set of arguments concern the claim by some parties that their customers were not harmed by the discussions. Such an argument, however, disregards the possible harm caused by the behaviour to the customers of competitors that did not participate in the discussions and the possible harm caused to the DMO issuing the EGB. There is no contradiction between, on the one hand, the possibility for the banks to offer better conditions than their competitors and, on the other hand, the finding of an infringement by object.<sup>1087</sup> In that respect, the Commission considers that, for alleged pro-competitive effects to be taken into account for appreciating the objective seriousness of the practice concerned, the parties must demonstrate that such claimed effects are: (i) demonstrated; (ii) relevant; (iii) specifically related to the agreement concerned; and (iv) sufficiently significant and certain as to justify a reasonable doubt as to the “by object” nature of the conduct<sup>1088</sup>. In this case, the parties have not put forward arguments satisfying those criteria. For the remainder, an examination weighing up the pro- and anticompetitive effects of an agreement when characterising it for the purpose of Article 101(1) of the Treaty is performed in the context of Article 101(3) of the Treaty.<sup>1089</sup>
- (591) A fifth set of arguments concern certain parties’ alleged small share of the EGB market, either individually or together with the other banks involved in the contacts, in order to downplay the significance of those contacts.<sup>1090</sup> Economic studies have been submitted which allegedly demonstrate that there is no link between the contacts and the perceived outcome at the auctions.<sup>1091</sup> Those arguments and studies are used for arguing that the contacts could not have had the object to restrict competition.

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<sup>1086</sup> Case T-105/17, *HSBC*, paragraph 144.

<sup>1087</sup> See in that respect Case T-105/17 *HSBC*, paragraph 102.

<sup>1088</sup> Case C-307/18 P, *Generics (UK) Ltd*, paragraphs 105-107 and 110.

<sup>1089</sup> See section 5.3.

<sup>1090</sup> [...]

<sup>1091</sup> [...]

[...].

- (592) As the banks participated in a restriction by object, it is, however, not necessary to analyse the possible effects of their conduct on competition.<sup>1092</sup> The language used in some of the contacts and the attempts to conceal the conduct also show that the banks knew very well at the time of the conduct that the object of their behaviour was to create a closed circle for exchanging sensitive information and to restrict competition.<sup>1093</sup>

*The separate communications*

- (593) Certain parties who did not cooperate with the Commission investigation under the leniency programme also contest more specifically the interpretation of various individual communications during the period of their participation. They claim that the Commission did not correctly understand or interpret those communications and cannot rely on them as evidence in support of an infringement, or at least not against the party raising the claim.
- (594) Bank of America contests the interpretation of the communications between 29 January 2007 and 22 April 2009. Portigon contests the interpretation given to the communications between 16 October 2009 and 6 September 2011. Nomura contests the interpretation given to the communications between 18 January 2011 and 1 February 2012 and UniCredit contests the interpretation of the communications between 1 September 2011 and 1 February 2012.
- (595) For the contact of **29 January 2007**,<sup>1094</sup> Bank of America accepts that its trader received access to the CODS & CHIPS chatroom on that day, but denies that he was aware what the chatroom was about. Bank of America notes that the content of the conversation on that day was not anticompetitive.<sup>1095</sup>
- (596) However, the contact of 29 January 2007 is relevant for the assessment of the involvement of the Bank of America trader in the events because it demonstrates that he had asked and eventually received access to the chatroom. He had previously worked for ABN-AMRO and knew most of the other participants. Membership of a persistent chatroom with traders of ABN-AMRO, RBS and UBS harbours an expectation of a mutual exchange of information.<sup>1096</sup> The fact that the other traders sought prior reassurances from him to keep the conversations confidential and that he was even urged to log out when he was off the desk<sup>1097</sup> confirms that he was or should have been aware of the exclusive and sensitive character of the discussion forum to which he received access. There is no evidence to support any alternative explanation that he only wanted to enter the chatroom for “gossip” or “mofo talk” purposes.<sup>1098</sup> On the contrary, as from entering he could read and take note of the sensitive character of the conversations and this did not prompt him to ask questions, denounce his participation or leave the chatroom.<sup>1099</sup> The relevance of this contact was confirmed by [...].<sup>1100</sup>

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<sup>1092</sup> Case C-67/13 P *Groupement de cartes bancaires*, paragraphs 48-50 and 57.

<sup>1093</sup> See for instance recitals (244), (276) and (350).

<sup>1094</sup> Recital (104).

<sup>1095</sup> [...]

<sup>1096</sup> See recital (140).

<sup>1097</sup> Recital (104).

<sup>1098</sup> [...]

<sup>1099</sup> See also recital (766).

<sup>1100</sup> See footnote 120.

- (597) Soon after, already on 14 February 2007,<sup>1101</sup> the trader of Bank of America actively participates in the discussions. The contact of 14 February 2007 supports the conclusion that the Bank of America trader must have been aware when joining the CODS & CHIPS chatroom that it not only served ‘*gossip*’ or ‘*mofo talk*’ purposes but allowed the traders to exchange specific forward looking information on their individual trading and bidding strategies and thus may have allowed these traders to collude on or coordinate their conduct. The anticompetitive character of this contact was confirmed by [...].<sup>1102</sup>
- (598) For the contact of **18 April 2007**,<sup>1103</sup> Bank of America claims that the Commission has not made sufficiently clear if it is making any allegation against the bank. Bank of America argues that the information disclosed by its trader in this contact was not sensitive.<sup>1104</sup> Bank of America further argues that in the communication of 18 April 2007 it is more likely that the UBS trader expresses gratitude to the ABN-AMRO trader rather than to the Bank of America trader.<sup>1105</sup>
- (599) Bank of America cannot have misunderstood that the Commission takes issue with the Bank of America trader participating in the chat. The information specifically disclosed by the Bank of America trader may have been visible on the broker screen, but that information is anonymous – that is, it does not reveal who has made the trade. Any additional information that reveals the source of the information on the broker screen must be considered sensitive, for instance when he revealed that he was the one trading OAT 19/21 at 5.85. In addition, the Bank of America trader also received sensitive information<sup>1106</sup> from the other traders that he could have used. The chat is relevant because it reveals that the traders were checking each other’s positions, bids and mid-prices. The anticompetitive character of the contact is confirmed by [...].<sup>1107</sup>
- (600) In its reply to the LoF, Bank of America claims that the Commission has changed the legal assessment by qualifying this exchange as Category (4) instead of Category (2) as initially indicated in the Annex to the SO. As explained in recital (411), the categories are overlapping and intertwined. Claims of wrong categorisations of individual contacts or aggregations of types of conduct illustrate that. In its LoF, the Commission assigned the exchanges on 18 April 2007 to Category (4) because that category mirrored more accurately the description set out by the Commission in the SO. Paragraph 141 of the SO describes the communication as an exchange of traders’ positions and mid-prices for various bonds and this assessment has not changed.<sup>1108</sup> In any event, Bank of America was given the opportunity to submit observations on the LoF, including the 18 April 2007 discussion. Bank of America submitted its observations in its reply to the LoF on 8 January 2021.

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<sup>1101</sup> Recital (106).

<sup>1102</sup> See footnote 123.

<sup>1103</sup> Recital (112).

<sup>1104</sup> [...]

<sup>1105</sup> [...]

<sup>1106</sup> See recital (112).

<sup>1107</sup> See footnote 142.

<sup>1108</sup> See also recital (555)-(558).

- (601) Bank of America further claims that adding the bank to a list of participants in the Annex to the SO did not clarify or provide evidence of the Commission’s allegations against it.<sup>1109</sup>
- (602) However, it was Bank of America which brought to the Commission’s attention in its response to the SO<sup>1110</sup> that the Annex to the SO contained errors in terms of time stamps and participants regarding the communication of **18 April 2007**. The Commission assessed those claims, adapted its preliminary position on these facts and shared them in a LoF. The description of the communication in the SO clearly indicated the correct time stamps (but not the Annex) in which the exchanges take place as well the fact that the Bank of America trader participates in the exchange. The LoF corrected the Annex to the SO<sup>1111</sup> and reflected the correct time stamps and participants as described in the SO to which Bank of America had access to and was given the opportunity to comment in its reply to the SO. There is therefore no new evidence put forward on which Bank of America was not given the opportunity to respond.<sup>1112</sup>
- (603) For the contact of **5 June 2007**, Bank of America argues in its reply to the LoF that the new excerpts from the communication that were never cited either in the SO or its Annex, have been added without any supporting evidence or analysis that demonstrates the existence of an agreement or a concerted practice.<sup>1113</sup> The communication of 5 June 2007 was, however, already cited in the Annex to the SO<sup>1114</sup>, was assigned to Category (2) and had only one time stamp. That time stamp was complemented by additional time stamps in the LoF, also falling under Category (2). Bank of America had access to the whole of the chat during the access to file exercise, not only to the time stamps of the chat indicated in the Annex to the SO. The time stamps were added to further support the exchanges on mid-prices and only corroborate the objections already raised in the SO.<sup>1115</sup> These have been brought to the attention of Bank of America by a LoF, and Bank of America was given the possibility to provide written comments on the new references within a fixed deadline.<sup>1116</sup>
- (604) According to paragraph 81 of the SO, Section 4.2 of the SO contains ‘a selection of chatroom communications’ that ‘evidence the pattern of the conduct against which the Commission raises objections’ and that this selection ‘is not exhaustive, but rather, constitutes a representative sample of the whole body of evidence on which the Commission relies, which is included in Annex 1’ (to the SO). Further, paragraph 114 of the SO indicates that each undertaking concerned ‘participated in some or all of these activities’. Bank of America was therefore given the opportunity to be heard and make known its views on the relevance of the facts and circumstances alleged

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<sup>1109</sup> [...]

<sup>1110</sup> [...]

<sup>1111</sup> See recitals (399)-(402).

<sup>1112</sup> See also recital (552).

<sup>1113</sup> [...]

<sup>1114</sup> See also recitals (399)-(402).

<sup>1115</sup> See also recital (552).

<sup>1116</sup> Case T-23/99, *LR af 1998*, paragraphs 188-190, Judgment of the Court of First Instance of 30 January 2007, *France Télécom SA v Commission*, T-340/03, ECLI:EU:T:2007:22, paragraphs 28-37; Case T-110/07, *Siemens AG*, paragraphs 87-89.

and on the documents used by the Commission to support its claim that there has been an infringement of Article 101 (1) of the Treaty.<sup>1117</sup>

- (605) For the contact of **25 July 2007**,<sup>1118</sup> Bank of America claims that its trader did not actively contribute to the discussions in the chatroom and that it is not clear what the traders agreed to and/or that there was no relation between the communication and the conduct on the market of the bank.<sup>1119</sup>
- (606) The trader of Bank of America inquired about the mid-prices of his competitors and disclosed his own level of bidding. This is sensitive information. Moreover, he also received information from the other participants in the chatroom and it must be assumed that this information was directly or indirectly taken into account.
- (607) In its reply to the LoF, Bank of America claims that the time stamps in the Annex to the LoF for the communication of 25 July 2007 are inconsistent with the discussion on this communication in the SO.<sup>1120</sup> In fact, the Annex to the SO<sup>1121</sup> indicates that as from 06:15:58, the exchanges taking place in the chatroom are anticompetitive. In order to be more specific about the timing when the anticompetitive exchanges took place, the Commission has introduced specific time stamps up to 07:08:43. Indeed, the description of the communication in the body of the SO ends at 06:29:16, but this is because the body of the SO puts forward a selection of evidence, which is complemented in the Annex to the SO<sup>1122</sup>.
- (608) Bank of America further claims that by assigning the communication to Category (3) the Commission did not explain how the Bank of America trader took part in the new allegations.<sup>1123</sup> Contrary to Bank of America's claims, the communication starting from 06:15:58 shows that the Bank of America trader is involved in the exchanges relating to overbidding. In fact, at 07:03:02 when the ABN-AMRO trader says '*I will be bidding flat and for the tail*', the Bank of America trader answers '+6 unpriced - 5'. Bank of America claims that the Commission, in support of its reasoning to add the chat to Category (3), only gave as an example the disclosure of overbidding level by the UBS trader (and therefore did not give the example that includes Bank of America trader). However, from the context, it can be inferred from the communication that the UBS trader is also contributing to the exchanges on overbidding levels along with other traders by explaining to the RBS trader what '*the + and the - mean*'. This was also in reference to what the Bank of America trader indicated as his overbidding level at 07:03:12 ('+6 unpriced -5'). The language in the Annex to the LoF used to describe Category (3) in this communication is not restrained, but includes the wording "*see for instance*", meaning it is not limited only to the example(s) in the explanation column of the Annex to the LoF. Irrespective of whether the time stamps refer to "*as of 06:15:58*" as in the Annex to the SO, or whether they are more precise as in the LoF (06:58:56-07:08:43), the time stamps both include the disclosure by Bank of America trader of its level of overbidding. Bank of America cannot therefore claim that the chat and the time stamps do not

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<sup>1117</sup> Judgment of the Court of 7 June 1983, *Musique Diffusion française v Commission*, Joined Cases 100-103/80, ECLI:EU:C:1983:158, paragraph 10.

<sup>1118</sup> Recital (121).

<sup>1119</sup> See also Section 5.1.2 Restriction of Competition.

<sup>1120</sup> [...]

<sup>1121</sup> See also recitals (399)-(402).

<sup>1122</sup> See also recital (604).

<sup>1123</sup> [...]

prove their trader's involvement in the exchange on overbidding levels. The allegations made against the Bank of America trader can be easily inferred from reading the exchange concerned, in particular against the background of the Commission's explanations of exchanges on overbidding levels<sup>1124</sup> and the frequent nature of such contacts<sup>1125</sup>.

- (609) For the contact of **30 July 2007**, Bank of America argues in its reply to the LoF that the Commission added Category (3) in addition to the existing Categories (1) and (2) and that the explanation column provided only lists two quotations by participants at UBS and ABN-AMRO in relation to Category (3). It further claims that the column does not provide any explanation as to how this communication is evidence of an agreement or concerted practice on the part of Bank of America.<sup>1126</sup> First, the Annex to the LoF provides in the explanation column the chat excerpt which is related to Category (3), while also indicating that in accordance with paragraph 542 of the SO, which explains the categories of conduct, the participants attempt to coordinate their level of overbidding. Second, the fact that this exchange is considered evidence of an agreement and/or a concerted practice can be inferred from the Commission's explanations of exchanges on overbidding levels and the frequent nature of such contacts.
- (610) For the contact of **24 September 2007**,<sup>1127</sup> Bank of America argues that their trader did not actively participate in the discussion, possibly because Bank of America was not a primary dealer for Belgium and their trader would not take part in that auction.<sup>1128</sup>
- (611) The Bank of America trader, even if he was not actively taking part in the discussion, had access to the information that was shared between the other traders that were actively discussing their strategy for the Belgian auction.<sup>1129</sup> Moreover, even if Bank of America was not a primary dealer in Belgium, this information could be relevant as well for trading that bond on the secondary market. The discussions in the communication extended to secondary market trading activity and in particular, in connection with steepening of the yield curve ahead of the auction. The communication also contradicts claims by Bank of America that its trader did not regularly participate in the contacts and that there are significant gaps between the instances of its participation. The anticompetitive character of the contact is confirmed by [...] and [...].<sup>1130</sup>
- (612) For the contact of **11 October 2007**,<sup>1131</sup> Bank of America argues that the Commission has misinterpreted the communication and that it does not contain any sensitive information. According to Bank of America, the traders were not involved in the issuing of the bond and the Bank of America trader remained passive throughout the conversation.<sup>1132</sup>

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<sup>1124</sup> Recitals (512)-(515).

<sup>1125</sup> See the overview of anticompetitive contacts in Annex 1.

<sup>1126</sup> [...]

<sup>1127</sup> Recital (124).

<sup>1128</sup> [...]

<sup>1129</sup> See also recitals (370) and (417).

<sup>1130</sup> See footnote 171.

<sup>1131</sup> Recitals (128)-(129).

<sup>1132</sup> [...]

- (613) That communication is relevant as it is another example of how the traders discuss the pricing of an EGB before it is placed in the market and exchange specific information on their secondary trading. Even if the traders were not involved in the issuing of the bond on the primary market, the information they shared was relevant for trading the bond on the secondary market. The fact that the Bank of America trader remained passive in parts of the conversation and did not publicly distance himself from it, means that he at least tacitly approved the unlawful conduct. In this regard, according to settled case-law, it is sufficient for the Commission to show that an undertaking participated in meetings where anticompetitive agreements were concluded, without manifestly opposing them, in order to prove to the requisite standard that this undertaking participated in the cartel. In this respect, 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. This conduct constitutes a passive mode of participation in the infringement<sup>1133</sup>. The anticompetitive character of the communication was confirmed by [...].<sup>1134</sup>
- (614) In its reply to the LoF, Bank of America argues that the Commission's new allegations about this excerpt (Categories (1) and (4) instead of (2) and (3)) do not provide evidence to demonstrate any concurrence of wills or subsequent conduct on the part of the Bank of America trader in relation to the new categories of conduct.<sup>1135</sup> In its reply to the SO, Bank of America brought to the Commission's attention an error on the Commission's part that the communication of **11 October 2007** does not refer to an Irish bond auction, but to a forthcoming Irish syndication. Accordingly, the Commission has reassessed the content of the communication and agrees with Bank of America's latter correction. Thus, the categories have changed from (2) and (3) to (1) and (4) since the Irish new issue in question is a syndication and not an auction. Further, Bank of America claims that the reference by [...] to '40bp' at 08:02:28 cannot be interpreted as a bidding price. In fact, the SO does not indicate that the 'bp' stands for bidding price, but it can be inferred from reading the chat that the traders discuss the pick-up price, which is defined in terms of basis points ('bp').
- (615) For the contact of **7 February 2008**,<sup>1136</sup> Bank of America argues that the communications in the CODS & CHIPS chatroom do not give rise to an agreement or concerted practice. Bank of America argues that the UBS trader's comment '*don't think need to pay up large big auction really*' was nothing but a general statement that in auctions with large volume the premium is likely to be lower. Bank of America notes that its trader was not part of the parallel discussions taking place in DBAC on that day and that the Commission did not specify for which maturities the traders were agreeing on. Bank of America adds that its trader was not trading 10 year bonds and does not reveal his intended bid for OAT 23 bonds. Bank of America asserts that disclosures on the overbidding are meaningless absent any common understanding of the mid, bid or offer price. Finally, Bank of America claims that the Commission misinterprets the fact that the bids submitted in relation to OAT23s are

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<sup>1133</sup> Case C-204/00 P, *Aalborg Portland*, paragraphs 81-84.

<sup>1134</sup> See footnote 180.

<sup>1135</sup> [...]

<sup>1136</sup> Recitals (150)-(151).

too low and that the bids submitted after the auction are generally non-confidential.<sup>1137</sup>

- (616) Bank of America attempts to isolate the various communications in CODS & CHIPS on **7 February 2008**. However, these communications, taken as a whole and in their proper context, show that the traders were discussing their bidding strategies ahead of an auction. The communications were not mere general observations about how the market behaves in certain situations. The disclosure in CODS & CHIPS by the UBS trader of his intended bidding strategy (that is no need to ‘*pay up large*’ in an auction with large volumes) strengthens the finding that the objective was to collude and that only those who had access to this information were able to benefit from it. The UBS trader’s statement is sensitive as it reveals that UBS does not intend to pay a high premium above the prevailing mid-price. Any disclosure about a trader’s own bidding strategy, including the level of overbidding, may further reduce uncertainties for the selected group of participants that have access to this information. Bank of America claims that its trader did not trade any 10 year EGB. However, the communication in CODS & CHIPS of that day reveals that the Bank of America trader initially said that he: ‘*was thinking of just doing 23’s*’ (that is the 15 year EGB and not the 10 year EGB) and that he nevertheless later disclosed the bid level for the 10 year EGB: ‘*that is what we are thinking about the 10yr*’. Irrespective of whether Bank of America eventually managed to obtain or trade the 10 year EGB, the information disclosed was sensitive and may have helped the other participants to align or adjust their trading strategies based on this information. The claim that the Commission misinterprets the bids submitted by the traders as being ‘*too low*’ is incorrect. Bank of America informs ABN-AMRO ([...]) that the actual overbidding for the bonds maturing in 2023 was ‘*9 cents [...]*’, which is higher than the levels the participating traders disclosed before and after the auction cut off. Finally, the disclosure of the level of bids post-auction helps competitors to understand how they positioned themselves in a recent auction and such information may be valuable for an upcoming auction.<sup>1138</sup> This information helps the traders to benefit from greater transparency as to the levels of bids submitted and filled by other participants. This information places them at an advantage over primary dealers who do not participate in such discussions and is capable of informing future behaviour.<sup>1139</sup>
- (617) For the contact of **25 February 2008**,<sup>1140</sup> Bank of America argues that the Commission does not explain how Bank of America reached a concurrence of wills with the other traders on the bidding strategies ahead of the Belgian OLO auction, taking into account that Bank of America was not a primary dealer for Belgian EGB and was not participating in the auction, and that the auction results were made public.
- (618) As already stated<sup>1141</sup>, participation in a chatroom, whether active or passive, provides the traders with access to collusive contacts and information to be used for their own anticompetitive gains. Even if the Bank of America trader was not a primary dealer for Belgian OLOs, the information shared by other participants may have been

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<sup>1137</sup> [...]

<sup>1138</sup> See also recital (585).

<sup>1139</sup> [...]

<sup>1140</sup> Recital (155).

<sup>1141</sup> Amongst others, recitals (363), (391), (613).

relevant for trading that bond on the secondary market.<sup>1142</sup> The fact that the Bank of America trader remained passive in parts of the conversation and did not publicly distance himself from it, shows that he at least tacitly approved of the unlawful conduct.<sup>1143</sup>

- (619) For the contact of **27 March 2008**,<sup>1144</sup> Bank of America argues that the contribution of its trader to the discussion on a Spanish auction was not sensitive, but speculative, imprecise and based on public information. Bank of America was itself not a primary dealer in Spain. Bank of America makes the same claims in its reply to the LoF.<sup>1145</sup>
- (620) The communication is relevant, since the Bank of America trader received sensitive information which may have been relevant for trading the bond on the secondary market. The bond auction discussed in the communication is a tap auction of an existing bond, which means an increase of the outstanding amount of a previously issued bond. The bond in question can be traded in the secondary market. Ahead of the auction, the traders could position themselves short of that bond on the secondary market in the expectation of a price decline. Knowing how the bond's price at auction, the Bank of America trader (who was active in the secondary market for such bonds), had a better perception of the appropriate price and demand in the secondary market. The fact that the Bank of America trader remained passive in parts of the conversation, and did not publicly distance himself from it, means that he at least tacitly approved of the unlawful conduct.<sup>1146</sup>
- (621) For the contact of **30 April 2008**, Bank of America claims that the Commission changed the legal assessment from Category (4) to Categories (2) and (3) without explaining how its trader participated in the agreement or concerted practice, especially since it was only a passive participant. First, the Annex to the LoF explains why the chat is assigned Categories (2) and (3) by indicating that it is an exchange on the bidding strategy for an auction ('50m on each line') and that the traders disclose information on the level of overbidding ('we r gonna bid mid mkt for 10s and 15y') respectively. It can therefore be inferred from reading the explanation and the quotations provided in combination with the definitions of Categories (2) and (3), that the traders exchange sensitive information that amounts to agreement and/or concerted practices. Second, the fact that the Bank of America trader remained passive in parts of the conversation, and did not publicly distance himself from it, means that he at least tacitly approved of the unlawful conduct<sup>1147</sup>.
- (622) For the contact of **25 June 2008**,<sup>1148</sup> Bank of America claims that the Commission failed to explain how the discussion on the recommendations given to the DMO restricted competition. Bank of America points out that the Commission accepts that the DMO make their decisions independently, irrespective of the recommendations received from the primary dealers. Some DMOs even organise for primary dealers to collectively draw up recommendations.
- (623) This argument must be rejected, because the contact illustrates that competing primary dealers may modify their recommendations to the DMO in function of

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<sup>1142</sup> See Section 2.3.3. Relationship between the primary market and the secondary market.

<sup>1143</sup> Joined Case C-204/00 P, *Aalborg Portland A/S a.o.*, paragraphs 81-84.

<sup>1144</sup> Recital (165)-(166).

<sup>1145</sup> [...]

<sup>1146</sup> Joined Case C-204/00 P, *Aalborg Portland A/S a.o.*, paragraphs 81-84.

<sup>1147</sup> Joined Case C-204/00 P, *Aalborg Portland A/S a.o.*, paragraphs 81-84.

<sup>1148</sup> Recital (179).

helping each other in their trading business. This creates an artificial demand profile which has a potential impact on the auction and may also be detrimental to other primary dealers who are not taking part in those conversations.<sup>1149</sup>

- (624) For the contact of **4 September 2008**,<sup>1150</sup> Bank of America argues that the information provided by its trader related to a previous auction and claims that this information was no longer sensitive. The number of basis points above the mid-price was public in the sense that it was available to all primary dealers.
- (625) The discussion on that day on the 38s in CODS & CHIPS, however, shows that the exchange of information between the traders spread from the DBAC chatroom to the CODS & CHIPS chatroom.<sup>1151</sup> In DBAC, the traders were already discussing 38s at 07:04. The UBS trader said: *'u buying any 38s' 'gonna buy 50mm'* and the RBS trader responded: *'i gotta buy some beforehand as im not getting any in auction for myself' 'but not large'*. The UBS trader revealed the pick out and asked about the mid-price for France: *'10.75 pick out there' 'already' 'wat mid you got them' '5/6' '35'*. The RBS trader replied: *'38' '6/7' 'ok 36' 'any one remember how far last 38s cleared' 'offered 100m 29 france'*. That information was checked with Bank of America in the CODS & CHIPS chatroom. The Bank of America trader reveals how many basis points above the mid-price had been paid to obtain bond allocation at that previous auction (*'stop was 14' 'and avg was 18 cents'*). The extract therefore shows that the traders were using both chatrooms simultaneously for cross-checking information.
- (626) For the contact of **6 November 2008**,<sup>1152</sup> Bank of America claims that its trader only commented on a 10 year bond issue in CODS & CHIPS, not the tap for 30 year bonds that was discussed in DBAC on that day. The trader of Bank of America asked a question, but allegedly only received very general observations in reply. According to Bank of America, [...] focuses on the discussions taking place in DBAC of which Bank of America's trader was not aware and eventually the entire French auction was purchased by RBS under a confidential agreement.
- (627) Bank of America's claims are unconvincing. Its trader disclosed confidential information about the pricing of the 10 year bond issue and could read the rest of the conversation in CODS & CHIPS relating to a 30 year French auction. He was the first one to ask the other participants about the French auction: *'what do you think of auction today'*. Even if the Bank of America trader did not further discuss the 30 year French bonds, this does not mean that the information shared on the 10 year bonds was not sensitive. The other traders could devise their future strategy with the benefit of that information. The comment of another participant: *'no reason to pay over mid'* is not just a simple observation but gives a clear pricing signal to the other traders.
- (628) In its reply to the LoF, Bank of America argues, for the same contact, that the Commission has changed the legal assessment to introduce Category (3) in addition to Categories (2) and (4). As explained in recital (552), when some communications

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<sup>1149</sup> The restrictive character was confirmed by [...] and [...]. See footnote 281 See further, recitals (525) and (580).

<sup>1150</sup> Recital (193).

<sup>1151</sup> Recital (192).

<sup>1152</sup> Recital (214).

were attributed to another category after the SO, this did not add a new objection to an existing fact, but added a new fact to an existing objection.

- (629) With respect to all of Bank of America's contested chats, it is recalled that Bank of America participated in a single and continuous infringement and is liable for the conduct that took place in CODS & CHIPS chatroom during its period of involvement.<sup>1153</sup> In this context, none of the arguments put forward by Bank of America contesting the individual chats is capable of calling that conclusion into question, given that the Bank of America trader (i) asked to join the CODS & CHIPS chatroom and must plausibly have been aware of the anticompetitive character of the chatroom he joined, (ii) actively participated in the CODS & CHIPS chatroom, and (iii) at no point did the Bank of America trader distance himself from the cartel despite being aware of the nature of the discussions in the chatroom.
- (630) Portigon questions the sensitivity of the communications in the period between **16 October 2009** and **6 September 2011** when the trader ([...]) was working for WestLB.<sup>1154</sup> Portigon accepts that its trader was involved in most communications in that period that dealt with the primary market in Germany, but claims that all other communications on the primary market must be disregarded.<sup>1155</sup>
- (631) First, Portigon claims that these other discussions did not, or did not entirely, relate to Germany whereas WestLB was only active on the primary market in that country.<sup>1156</sup> For instance, for the secondary market, Portigon claims that his involvement was passive<sup>1157</sup> or that the discussions did not touch upon German EGB.<sup>1158</sup>
- (632) Second, Portigon supports its claim by adding that its trader was only passively involved in the discussion,<sup>1159</sup> and actively involved only when asked a question and/or acted upon request of another trader,<sup>1160</sup> that he did not disclose sensitive information himself<sup>1161</sup> and/or that his contribution was incapable of restricting

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<sup>1153</sup> See recitals (440)-(442) and (470)-(474).

<sup>1154</sup> [...]

<sup>1155</sup> [...]. Portigon refers to contacts of 25.01.2010, 03.02.2010, 21.04.2010, 28.04.2010, 21.07.2010, 13.10.2010, 26.01.2011, 05.04.2011, 06.04.2011, 11-13.04.2011, 18.05.2011 and 20.07.2011.

<sup>1156</sup> [...]. Portigon refers to contacts of 16.10.2009, 20.10.2009, 21.10.2009, 04.11.2009, 05.11.2009, 06.11.2009, 13.11.2009, 30.11.2009, 03.12.2009, 04.12.2009, 30.12.2009, 02.01.2010, 13.01.2010, 14.01.2010, 03.02.2010, 04.02.2010, 09.02.2010, 15.02.2010, 16.02.2010, 22.02.2010, 11.03.2010, 14.04.2010, 16.04.2010, 21.04.2010, 28.04.2010, 28.06.2010, 01.07.2010, 21.07.2010, 28.07.2010, 13.08.2010, 09.09.2010, 10.09.2010, 21.09.2010, 27.09.2010, 05.10.2010, 06.10.2010, 07.10.2010, 12.10.2010, 13.10.2010, 14.10.2010, 02.11.2010, 04.11.2010, 17.11.2010, 02.12.2010, 06.01.2011, 18.01.2011, 25.01.2011, 26.01.2011, 03.02.2011, 11.02.2011, 14.02.2011, 17.02.2011, 25.11.2011, 28.02.2011, 03.03.2011, 06.04.2011, 07.04.2011, 01.06.2011 and 06.09.2011.

<sup>1157</sup> Portigon refers [...] to the contacts of 05.11.2009, 30.11.2009, 01.07.2010, 17.02.2011, 01.06.2011 and 06.09.2011.

<sup>1158</sup> [...]

<sup>1159</sup> [...]. Portigon refers to contacts of 05.11.2009, 30.11.2009, 09.02.2010, 11.03.2010, 13.10.2010, 14.10.2010, 17.02.2011, 28.02.2011, 20.07.2011 and 06.09.2011.

<sup>1160</sup> [...]. Portigon refers to contacts of 21.10.2009, 04.11.2009, 07.01.2010, 13.01.2010, 28.04.2010, 01.07.2010, 21.07.2010, 10.09.2010, 21.09.2010, 27.09.2010, 05.10.2010, 06.10.2010, 03.11.2011, 04.11.2011, 18.01.2011, 25.01.2011, 26.01.2011, 03.02.2011, 11.02.2011, 05.04.2011, 11.04.2011, 13.04.2011, 01.06.2011, 23.06.2011 and 24.06.2011.

<sup>1161</sup> [...]. Portigon refers to contacts of 14.01.2010 and 07.10.2010.

competition, for instance because it took place too long before the auction and was limited in scope.<sup>1162</sup>

- (633) Third, Portigon adds that it was not successful in every bid and often only received a very limited share of the bonds auctioned.<sup>1163</sup> The bidding price mentioned in the communications did not always match the price actually paid.<sup>1164</sup>
- (634) Finally, for the discussions on the secondary market, Portigon accepts that its trader actively participated in 26 contacts with respect to German EGB.<sup>1165</sup> Portigon refers to many contacts or periods where its trader did not participate.<sup>1166</sup>
- (635) Portigon's claims should be rejected.
- (636) First, the fact that a discussion on a given day possibly did not entirely relate to a German EGB auction does not exclude that the discussion related to EGB issued through an auction or a syndication in other countries and/or to EGB traded on the secondary market, in Germany or elsewhere. Any exchange of sensitive information, including on the primary market in countries outside Germany or on the secondary market anywhere, could have been directly or indirectly relevant and interesting for the trading business of the WestLB trader on the primary market in Germany or on the secondary market everywhere.<sup>1167</sup>
- (637) Second, Portigon's claims do not call into question the sensitivity of the information exchanged, but rather invoke an alleged more limited participation of the WestLB trader in the conduct. These claims are addressed elsewhere in this Decision.<sup>1168</sup>
- (638) Third, the fact that some discussions started a long time before the auction, that the information exchanged on the bidding prices did not necessarily match the actual bidding price and/or that WestLB eventually was not or not very successful in the auctions cannot call into question that the information was sensitive when it was exchanged.
- (639) In any event, such claims relate to the actual or potential effects of the conduct which the Commission is not required to assess since the conduct in this Decision relates to restriction of competition by object.<sup>1169</sup>
- (640) Nomura contests the sensitivity of the contacts between **18 January 2011** and **1 February 2012**.
- (641) For the contact of **18 January 2011**<sup>1170</sup>, the Nomura trader was unable to trade and Nomura claims that the information exchanged on the syndication is generic and too

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<sup>1162</sup> [...]. Portigon refers to contacts of 16.10.2009, 06.11.2009, 13.11.2009, 04.12.2009, 30.12.2009, 14.01.2010, 20.01.2010, 03.02.2010, 03.02.2010, 04.02.2010, 15.02.2010, 16.02.2010, 22.02.2010, 16.04.2010, 21.04.2010, 28.06.2010, 01.07.2010, 28.07.2010, 13.08.2010, 09.09.2010, 05.10.2010, 06.10.2010, 07.10.2010 and 14.02.2011.

<sup>1163</sup> [...]. Portigon refers to contacts of 13.01.2010 and 21.04.2010.

<sup>1164</sup> [...]. Portigon refers to the contact of 21.04.2010.

<sup>1165</sup> [...]. Portigon refers to contacts of 20.10.2009, 21.10.2009, 04.11.2009, 06.11.2009, 03.12.2009, 14.01.2010, 22.02.2010, 28.04.2010, 18.05.2010, 28.06.2010, 10.09.2010, 27.09.2010, 12-13.10.2010, 02.11.2011, 17.11.2010, 18.01.2011, 25.01.2011, 26.01.2011, 03.02.2011, 28.02.2011, 03.03.2011, 05.04.2011, 06.04.2011, 07.04.2011, 11-13.04.2011 and 18.05.2011.

<sup>1166</sup> [...]

<sup>1167</sup> See recitals (45) and (50).

<sup>1168</sup> Section 8.2.6.5.

<sup>1169</sup> Case C-67/13 P, *Groupement des cartes bancaires*, paragraph 51.

<sup>1170</sup> Recital (307).

vague to constitute an infringement. Nomura argues that this communication must be interpreted in the context of a bilateral trade between WestLB and UBS. Nomura claims that no specific EGB auctions or prices were discussed and the jokes in the chat, in particular those explaining that participation in DBAC is not for free, would demonstrate that all this must have been a joke.<sup>1171</sup>

- (642) Contrary to Nomura's claims, the alleged reference to a bilateral trade in the communication cannot undo the sensitive character of the information exchanged elsewhere in that communication. When the traders discuss the timing of pricing of the Belgian syndication, this is unrelated to a bilateral trade.<sup>1172</sup> Even if such discussion were relevant for the bilateral trade it is neither necessary nor appropriate to disclose such information in a multilateral chatroom containing traders from competing banks. The fact that the syndication will price on that day is obviously public information and the traders may even be well informed as to when approximately the syndication will price. The communication is however relevant in this respect because it reveals that the traders were trying to request from and give to each other early information on the exact timing of pricing of syndication, irrespective of whether that plan actually worked out well on that day. Such information is very sensitive, even if only useful for a very short time. As explained in recitals (527) and (528), it is considered problematic when traders try to give each other a competitive advantage by sharing sensitive information about the exact timing of pricing of a syndication. The exchanged information on the timing of the pricing of a syndication falls under the category of other sensitive information exchanged (Category (4)). The communication is also relevant because it explains the relationship between the EGB traders and how they use the chatrooms interchangeably for exchanging sensitive information. The jokes made in the communication cannot undo the sensitive character of the communication as a whole but rather illustrate that participation in the chatroom entails a reciprocal exchange of sensitive information to help each other in their trading strategies: *'then make yourself useful and put it on the chat' 'you not on here for free'*. The anticompetitive nature of the contact was corroborated by [...] and [...].<sup>1173</sup>
- (643) For the contact of **25 January 2011**,<sup>1174</sup> Nomura alleges that there are two shortcomings in the Commission's analysis. First, Nomura takes the example of an extract in the communication to claim that the Commission has not given proper analysis or recognition of the importance of exploring trading opportunities in the context of the EGB sector. The communication in this extract which takes place between 12:54 and 13:00 refers to a German tap auction, which, according to Nomura, resulted in dealer to dealer trades. Second, the time stamps referred to in the SO differ from the time stamps in the Annex to the SO and, considering only the time stamps of the Annex, Nomura claims that the particular exchange, when properly considered in context, does not constitute a genuine disclosure of an intended trade volume or position<sup>1175</sup>. Consequently, Nomura considers that the Commission has mischaracterised the passage as a matter of fact and it cannot be relied on as evidence of conduct falling within the meaning of Category (2) (or

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<sup>1171</sup> [...]

<sup>1172</sup> Recital (307).

<sup>1173</sup> See footnote 540 and Recital (307).

<sup>1174</sup> Recital (308).

<sup>1175</sup> [...]

evidence in support of an alleged infringement of Article 101(1) of the Treaty in this regard).

- (644) First, as explained in recital (392), the Commission has not taken issue with extracts or contacts that are clearly and exclusively used for social purposes, for exploring bilateral trades or for exchanging market colour that is already in the public domain.
- (645) Second, the Commission has relied on several extracts in the communication to show that the communication is anticompetitive. The extract Nomura refers to corroborates the existence of collusion referred to in the entire conversation (and time stamps) described in the SO. The entire conversation is relevant because it reveals that the traders were checking their positions. The last extract also reveals that the traders attempted to coordinate their bidding strategy for an upcoming auction. The sensitive character was confirmed by [...].<sup>1176</sup> Moreover, the discussion reveals that the traders do not want to compete against each other and are seeking opportunities in which they all can increase their revenues.
- (646) Finally, for clarity and completeness, the Commission has added the time stamps mentioned in the SO and this Decision to Annex 1 to this Decision.<sup>1177</sup> Nomura was informed of the additions to the Annex by way of the LoF and had the opportunity to submit observations in this regard.
- (647) For the contact of **26 January 2011**<sup>1178</sup>, Nomura claims that (i) the discussions on overbidding were hypothetical and too distant from the auction to constitute an infringement; (ii) the disclosure of a mid-price cannot remove uncertainty and exchanges on prices on the secondary market were, allegedly, not forward looking; and (iii) the information its trader gave was wrong as Nomura eventually received an allocation of bonds.<sup>1179</sup>
- (648) First, information on what each primary dealer is bidding is not public and exchanges of such information increase transparency for the recipients. The information was competitively sensitive. The exchanges started well before the auction, and were not hypothetical, as confirmed by the various updates as the auction drew closer.
- (649) Second, the chat contained specific information on mid-prices, bids, overbidding and volumes at the auction which is commercially sensitive. Also on the secondary market, the exchange revealed the traders' strategies and added to the information already in the public domain.
- (650) Third, the fact that Nomura eventually obtained an allocation, despite telling its competitors that it was not interested, does not necessarily mean that Nomura deliberately gave false information and it certainly does not prove that the information exchange was not sensitive. Even if the Nomura trader would have provided inaccurate or false information which the other participants believed to be reliable, that would not affect his active participation in the infringement. In that regard, the Court has already ruled that an undertaking, despite colluding with its competitors, followed a policy that departed from that agreed on with other cartelists, is still liable for the infringement.<sup>1180</sup> Alongside commenting, Nomura received

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<sup>1176</sup> See footnote 545.

<sup>1177</sup> Overview of anticompetitive contacts in Annex 1.

<sup>1178</sup> Recital (309)-(310).

<sup>1179</sup> [...]

<sup>1180</sup> See, for instance, Case C-260/09 P, *Activision Blizzard Germany GmbH*, paragraphs 19 and 81-82.

sensitive information. The anticompetitive character of this contact was confirmed by [...] and [...].<sup>1181</sup>

- (651) For the contact of **3 February 2011**,<sup>1182</sup> Nomura claims that the exchanges on mid-prices were too far in advance of the auction to have any strategic significance and that the exchanges on overbidding were hypothetical and speculative.<sup>1183</sup>
- (652) The fact that an exchange started long before the auction does not make it insignificant. It determines the starting points and a willingness to coordinate as proven by the fact that the chat continues until right before the auction. Far from being hypothetical, the traders were exchanging and testing their positions with each other. Information on what each primary dealer is bidding is not public and increases transparency for the recipients of such information. The anticompetitive character of this contact was confirmed by [...].<sup>1184</sup>
- (653) For the contact of **11 February 2011**,<sup>1185</sup> Nomura argues that it is not sensitive and that there is no relation to an auction.<sup>1186</sup>
- (654) The Commission only uses this communication in this Decision for contextual purposes. It illustrates that the CODS & CHIPS and DBAC chatrooms were not isolated but that information from one chatroom could be copied and used in the other chatroom.
- (655) For the contact of **14 February 2011**,<sup>1187</sup> Nomura claims that there are no references to mid-prices, volumes or positions in this communication.<sup>1188</sup> Nomura argued at the oral hearing that this was nothing but an exchange of market colour.<sup>1189</sup>
- (656) However, the contact is relevant because the traders exchanged their views on the auction and discussed the overbidding before the auction. Nomura's claim only relates to the extract before the auction. However, the evidence shows that the discussion continued on the secondary market after the auction and that sensitive information on mid-prices, volumes and positions was exchanged. The anticompetitive character of this contact was confirmed by [...].<sup>1190</sup>
- (657) For the contact of **17 February 2011**,<sup>1191</sup> Nomura claims that the auction took place at 09:30 and that there are no exchanges of mid-prices, volumes or positions before the auction took place.<sup>1192</sup>
- (658) The contact is relevant because already before the Spanish auction on that day the traders were exchanging their views on overbidding levels. Also later that day, the traders discussed their trading strategies on the secondary market and that discussion included exchanges of information on mid-prices, volumes or positions with regard to other bonds (for example German BDR). Although the latter exchanges of mid-

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<sup>1181</sup> See footnote 547.

<sup>1182</sup> Recital (312).

<sup>1183</sup> [...]

<sup>1184</sup> See footnote 552.

<sup>1185</sup> Recital (313).

<sup>1186</sup> [...]

<sup>1187</sup> Recital (314).

<sup>1188</sup> [...]

<sup>1189</sup> See footnote 77.

<sup>1190</sup> See footnote 555.

<sup>1191</sup> Recital (316).

<sup>1192</sup> [...]

prices are not related to an auction, they still constitute exchanges of sensitive information in the secondary market. The anticompetitive character of this contact was confirmed by [...].<sup>1193</sup>

- (659) For the contact of **25 February 2011**,<sup>1194</sup> Nomura claims that there were no disclosures of mid-prices, volumes or positions before the Italian auction.<sup>1195</sup> First, Nomura considers that the references to overbidding were too vague and too far away from the auction to be sensitive. Second, Nomura considers the reference to ‘26’ by the WestLB trader to be a maturity and not a mid-price, whilst at the same time acknowledging that the subsequent reference by the UBS trader to ‘26’ was a mid-price.
- (660) First, the contact is relevant because before the Italian auction the traders were exchanging their views on the auction, including on the overbidding. By already exchanging views on overbidding at an early stage, the traders signalled their intention to coordinate.
- (661) Second, the traders are also discussing their trading on the secondary market later that day including exchanges of information on mid-prices, volumes or positions. The anticompetitive character of this contact was confirmed by [...].<sup>1196</sup>
- (662) For the contact of **28 February 2011**,<sup>1197</sup> Nomura denies the sensitivity of the contact and explains this communication in terms of historic information being exchanged after the Belgian auction.<sup>1198</sup>
- (663) However, the whole contact is relevant. The extract referred to in recital (318) on the overbidding took place before the auction and contradicts the claim that only historic information was exchanged. The anticompetitive character of this contact was confirmed by [...].<sup>1199</sup>
- (664) For the contact of **3 March 2011**,<sup>1200</sup> Nomura claims that the traders did not disclose forward looking positions and that the disclosure of a mid-price is not sensitive.<sup>1201</sup>
- (665) However, the whole communication is relevant because the traders exchanged views on an upcoming auction and disclosed mid-price information. That information was specific and sensitive.
- (666) For the contact of **5 April 2011**,<sup>1202</sup> Nomura claims that the communication was not sensitive. Nomura claims that there was no exchange of forward looking information and the information exchanged on trading positions was too vague or high level or not serious because relating to a too small volume.<sup>1203</sup> Nomura considers that exchanging information on volumes is legitimate for exploring bilateral trades. Nomura acknowledges that the RBS trader mentioned an offer, but adds that this offer was unsuccessful.

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<sup>1193</sup> See footnote 559.

<sup>1194</sup> Recital (317).

<sup>1195</sup> [...]

<sup>1196</sup> See footnote 561.

<sup>1197</sup> Recital (318).

<sup>1198</sup> [...]

<sup>1199</sup> See footnote 563.

<sup>1200</sup> Recital (319).

<sup>1201</sup> [...]

<sup>1202</sup> Recital (320).

<sup>1203</sup> [...]

- (667) However, the whole communication is relevant because the traders were exchanging views on their bidding positions and offers. Trading positions indicate the interest of the competing traders in the bond and help them to be better informed about the expected direction of future trades and these discussions often lead to more specific exchanges. The mere claim that an exchange of information on volumes is legitimate because it was exchanged for exploring a bilateral trade is insufficient. This is apparent when the RBS trader tests his individual offer with the views of his competitors. It matters little if that offer was eventually unsuccessful. The anticompetitive character of this contact was confirmed by [...].<sup>1204</sup>
- (668) For the contacts of **6 and 7 April 2011**,<sup>1205</sup> Nomura claims that the information exchanged is not sensitive. The information concerned allegedly is historic or otherwise publicly available.<sup>1206</sup>
- (669) First, the traders talk about possibly sharing a grid they may have made individually based on information received from the French DMO. Traders that have not received that information from the DMO ask their competitors to share their grid. The claim that grid relates to past auctions is contradicted by the facts, because the Nomura trader ([...]) explicitly asked on 6 April 2011: ‘*anyone got the grid from who wants what at this next French auction*’,<sup>1207</sup> while the French auction took place on 7 April 2011. This grid constitutes information that undertakings typically prepare for internal purposes and is not supposed to be shared with competitors.
- (670) Second, the communication also reveals in how much detail the traders discuss with each other the recommendations they have given to the French DMO. Any information that the primary dealers may receive at such meeting with the DMO before the auction is in principle confidential.
- (671) Third, the communication of 7 April 2011 is also relevant because the discussion between the primary dealers were discussing their bids and the overbidding before the auction. The anticompetitive character of this contact was confirmed by [...].<sup>1208</sup>
- (672) For the contact of **11 April 2011**,<sup>1209</sup> Nomura contests the sensitivity of the information exchanged and notes that this exchange took place after the auction.<sup>1210</sup>
- (673) The fact that the traders share their views after an auction does however not exclude that the exchange enables them to align and coordinate their strategies. This communication is an example of traders sharing their individual views and strategy. They comment on what they see on screen and thereby disclose information about individual clients (*‘do u hit with that client [...] sop hard’ ‘sold the 38s yes’*), trading positions and exchanges of forward looking views on how the market will develop (*‘got a feeling we flatten’ ‘into taps’ ‘well I do too but there will be sellers’ ‘everytime I lo[o]k longs it’ ‘steepens’ ‘like’ ‘so maybe u right’ ‘iam long longs just 25 mil’ ‘yee got 50mm but like france 26 and 29s’ ‘vs 10s’*) and price related information (*‘where u gita iyt market’ ‘3.4’ ‘shown give 3.1’*). Even if the traders share views on information that is publicly available, their individual views are not

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<sup>1204</sup> See footnote 567.

<sup>1205</sup> Recitals (321) - (322).

<sup>1206</sup> [...]

<sup>1207</sup> Recital (321).

<sup>1208</sup> See footnote 571.

<sup>1209</sup> Recital (323).

<sup>1210</sup> [...]

publicly available and the information on individual clients is not available on screen, or only in anonymised and aggregate form.

- (674) For the contact of **12 April 2011**, Nomura claims that there is no reference to trades on the secondary market and that the price mentioned is not sensitive because it is likely to have been disclosed by the DMO already.<sup>1211</sup>
- (675) However, the Commission notes that traders of Nomura ([...]), RBS ([...]) and UBS ([...]) are trying to obtain information on each other's position for an upcoming Dutch auction and agree to inform each other as soon as possible, irrespective of whether the information is publicly available. The RBS trader inquires: '*anyone bidding for Holland here*'. In reply, the UBS trader informs that he is: '*not primary*'. The Nomura trader is also not bidding: '*no*', but asks the RBS trader to inform him: '*can u let us know first price please*[...]'. The UBS trader asks if this information is public: '*is there a page to see*', but the RBS trader is "*not sure*". A bit later, the UBS trader asks: '*is the price set*' and the Nomura trader adds: '*whats the price?*'. The RBS trader informs them: '*95.15*'. Nomura has not demonstrated that the DMO had already disclosed the price at that moment and the communication confirms that information on the primary market is relevant for traders on the secondary market and that they try to obtain information from primary dealers, before the price is disclosed by the DMO.
- (676) For the contact of **13 April 2011**,<sup>1212</sup> Nomura contests the sensitivity of the information exchanged. It claims that information on mid-prices was only exchanged after the auction window had closed.<sup>1213</sup> Nomura also claims that a reference to a particular offer is not sensitive because there are multiple parties bidding for offering bonds.
- (677) First, it is correct that the discussion on the German tap started with a review of how previous taps went wrong. This information illustrates the desire of the traders to do better on the upcoming tap. The discussion then shifts to the upcoming tap at 11 ('*anyone got any orders*' '*yes*' '*10m*') and the traders share specific and often forward looking information (for example '*mid like 73 here?*' '*75 i have*' '*75 28/9*' '*i am bidding from mid*' '*75 v29*' '*not offer*' '*+8 +10*' '*and no cmp*': '*same*' '*mid like 73 here?*' '*75 I have*' '*75 28/9*' '*iam bidding from mid*' '*75 v 29*' '*not offer*' '*+8 +10*' '*and non cmp*'). One trader even suggests to pull his offer for another trader. The communication is relevant because it reveals that parties are capable of removing uncertainty vis-à-vis their individual strategies by sharing sensitive information before and after the auctions, and their willingness to adapt their market behaviour in order to assist one another.
- (678) Second, the disclosure of trades that primary dealers have executed in the secondary market including their respective mid-prices (information which is not publicly available) reveals the participants' pricing and trading strategies. These exchanges increase market transparency and allow the participants to alter or align their trading strategies and prices.
- (679) The anticompetitive character of this contact was confirmed by [...].<sup>1214</sup>

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<sup>1211</sup> [...]

<sup>1212</sup> Recital (325).

<sup>1213</sup> [...]

<sup>1214</sup> See footnote 576.

- (680) For the contact of **3 May 2011**,<sup>1215</sup> Nomura asserts that the information exchanged occurs too far in advance of the auction to be of any significant strategic value.<sup>1216</sup> Nomura also claims that the passage identified by the Commission contains no reference to secondary trading.
- (681) First, the communication is relevant because it reveals that the traders are willing to share information and remove uncertainty on their individual levels of overbidding at the auctions.
- (682) Second, the exchanges must be analysed as a whole and not solely on the basis of one isolated extract. It is clear that later in the chat the traders share information on their trading on the secondary market. For instance, the Nomura trader says: ‘*iam a seller of oats.*’ The RBS trader asks: ‘*which bond?*’ and the Nomura trader replies: ‘*21s.*’ The RBS trader states that RBS is: ‘*a seller longer ones but might be abuyer a bit shorter*’ ‘*if oct20s [...] might care i can ask,*’ but the Nomura trader declines. At the conclusion of the chat, the Nomura trader says that he is: ‘*out of [oats]*’. The anticompetitive character of this contact was confirmed by [...].<sup>1217</sup>
- (683) For the contact of **5 May 2011**,<sup>1218</sup> Nomura claims that, first, traders have many different motivations for going into an EGB auction and that the disclosure of one trader’s position is isolated information with no strategic value. The disclosure of positions is vague and cannot be considered to be capable of removing uncertainty as regards the timing, extent and details of modifications to be adopted by the parties. Second, the disclosure of a mid-price is also not considered sensitive and references to overpaying are considered speculative exchanges of market-wide expectations, too distant from the auction to possess any significant strategic value. Third, there are no references to secondary market trading or to specific counterparties. The information disclosed could not have been forward looking because it was exchanged after the auction.<sup>1219</sup>
- (684) First, the communication is relevant because it reveals that the traders share information on their individual views and their bidding or trading strategy. Exchanges on trading positions are not isolated but form part of the overall information exchanged on the bidding and trading strategy. Second, part of the exchanges took place before the auction, and even after the auction exchanges can still be forward looking for secondary market trading. Exchanges on mid-prices and the level of overbidding are sensitive, irrespective of how long before the auction the information is exchanged. Third, there are various references to secondary market trading in the chat. For instance, at 10:36 the RBS trader ([...]) shares that he is: ‘*small seller of 34 or 37 if anyone cares*’. The anticompetitive character of this contact was confirmed by [...] and [...].<sup>1220</sup>
- (685) For the contact of **18 May 2011**,<sup>1221</sup> Nomura notes that this exchange related to a bond issued by the European Investment Bank (EIB), a body of the European Union whose shareholders are the Member States. Nomura refers to a reference at 09:04 by the WestLB trader to: ‘*eib 5y deal to price later today*’. Nomura argues that a bond

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<sup>1215</sup> Recital (327).

<sup>1216</sup> [...]

<sup>1217</sup> See footnote 582.

<sup>1218</sup> Recital (328).

<sup>1219</sup> [...]

<sup>1220</sup> See footnote 585.

<sup>1221</sup> Recital (329).

issued by the EIB is not an EGB bond and any allegations therefore fall outside the scope of the Commission's allegation in this case.<sup>1222</sup>

- (686) These traders were EGB bond traders and this has apparently not stopped them from discussing trade in bonds issued by the EIB, possibly for hedging or swapping purposes. Irrespective of the type of issuer of the underlying bond, the communication supports the finding that those EGB traders shared information on the timing of syndication.
- (687) For the contact of **1 June 2011**,<sup>1223</sup> Nomura claims that many elements of the alleged anticompetitive conduct were not present in this contact. The discussions on a French auction were mere speculations about market wide levels based on historic information.<sup>1224</sup>
- (688) However, the contact is relevant because the traders discussed the level of overbidding for a French auction. The information exchanged was specific and forward looking. Any forward looking information in bonds trading is to some extent speculative as bidding positions may constantly change. That does not make the information exchanged less sensitive. On the contrary, by regularly checking the strategy of their competitors, the traders are able to adjust their own strategy. Furthermore, there was also other sensitive information exchanged in this contact, on mid-prices, trading positions or more generally on the context and participants in the chatroom. The anticompetitive character of this contact was confirmed by [...] and [...].<sup>1225</sup>
- (689) For the contact of **22 June 2011**,<sup>1226</sup> Nomura claims there was no EGB syndication on that day. There only was a syndication of a bond issued by a French sub-sovereign agency and this allegedly falls outside the scope of the objections raised. Nomura also points to the absence of any reference to the syndication before stating the word "*everton*".<sup>1227</sup>
- (690) The fact that these EGB traders could occasionally extend their exchanges of information to other bonds, possibly for hedging or swapping purposes, does not imply that these discussions were less anticompetitive. The contact is relevant because it reveals that these EGB traders could exchange information on the timing of syndications. As to the absence of any clear reference to that syndication before the code word "*everton*", the Commission notes that there is no alternative explanation for the use of that word in this communication other than in relation to a syndication. Rather, it follows from the context that the word was not used in the context of a social discussion on football.<sup>1228</sup>
- (691) For the contact of **24 June 2011**,<sup>1229</sup> Nomura claims that the information disclosed was too generic to be sensitive. It also argues that there was no EGB auction on that day and that there is no exchange of mid-prices, spreads or curves in the chat.<sup>1230</sup>

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1222 [...]

1223 Recitals (330)-(331).

1224 [...]

1225 See footnote 590.

1226 Recital (333).

1227 [...]

1228 See recital (445).

1229 Recital (334).

1230 [...]

- (692) There is indeed no reference in the communication to collusion for an auction on that day, but the contact is still relevant because it demonstrates that the traders tried to coordinate their secondary trading. Some of the information exchanged was very specific, for example, *'where bunds at 4.15?' '127.25' 'iam with ya'* (red: where do you think the bund will price at 4.15pm? I think it will price at 127.25. I share this view). The anticompetitive character of this contact was confirmed by [...].<sup>1231</sup>
- (693) For the contact of **7 July 2011**,<sup>1232</sup> Nomura claims that the information exchanged was too vague and not forward looking.<sup>1233</sup>
- (694) However, the information exchanged was at times very specific and price sensitive. For instance, when a trader of UBS ([...]) informs at 06:33 that he sold bonds maturing in 2028: *'lost 20 jan 28s oil'*, a trader of Nomura ([...]) recommends to hedge this sale by buying bonds maturing in 2029 that were equally tapped that day: *'buy 29s against it'*. When the UBS trader subsequently asks: *'that's the plan?'* and becomes more specific by asking: *'what u over bidding 29s?'* the Nomura trader reveals: *'15 i hear. 10 in ten year.'* A trader of RBS ([...]) adds he will be long. The UBS trader continues by revealing that its mid level for the French bonds maturing in 2029: *'29s bid up ow. mid 29s 23/4 50'*, to which the RBS trader replies: *'yeah same.'* Closer to the auction, the UBS trader updates this mid against a Bund future spread: *'44 mid 17/8'*, to which the traders of RBS (both [...] and [...]) say yes. The traders of UBS, RBS ([...]) and Nomura then reveal their bidding strategy for the upcoming auction of French bonds maturing in 2029: UBS: *'58 top bid'* to which RBS replies: *'62 here'* leading UBS to: *'56 58 60'* and Nomura to: *'101.64 and 63 for 29s'*. The traders of Nomura and UBS equally exchange their auction level for the French bonds maturing in 2021: Nomura: *'10 y 101.94' (...)* *'any idea wat u did in ten year'* and UBS: *'94 in 21s'*. Throughout, they discuss secondary market activity. For example, the Nomura trader ([...]) says: *'just bid 38s.'* The UBS trader ([...]) says: *'lost 75mm spain 21s. buy em back' 'pukes'* and adds he is a buyer of OLO 49s and *'gfi bidding 29s.'*
- (695) The communication is relevant because the traders were coordinating their bidding and trading strategies for the auction by exchanging specific forward looking information on the overbidding level, curve and mid-price. The fact that the discussion started long before the auction does not make it less significant. It illustrates that the traders were willing to coordinate their strategy in advance. The discussion continues until the auction. The argument that some information used or exchanged in the discussion was already public does not detract from the fact that the traders also disclosed non-public, sensitive information. The anticompetitive character of this contact was confirmed by [...].<sup>1234</sup>
- (696) For the contact of **22 August 2011**,<sup>1235</sup> Nomura claims that the participants were only speculating around possible market-wide overbidding levels [...] *'we'* refers to the market and not to the participants in the chat.<sup>1236</sup>

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<sup>1231</sup> See footnote 601.

<sup>1232</sup> Recital (335).

<sup>1233</sup> [...]

<sup>1234</sup> See footnote 603.

<sup>1235</sup> Recital (338).

<sup>1236</sup> [...]

- (697) It should, however, be noted that [...] ‘we’ in this context could be read as relating to the actual chat participants.<sup>1237</sup> Having regard to this context, and more in particular that the exchange took place right after a discussion in the group about who is participating in the Belgian auction, the only credible explanation is that the RBS trader was asking for the group’s views and that it is not plausible that this contact was about market-wide overbidding levels. The anticompetitive character of this contact was also confirmed by [...] and [...].<sup>1238</sup>
- (698) In addition to Nomura, UniCredit also contested the sensitivity of the contacts between **9 September 2011** and **1 February 2012**.
- (699) For the contact of **6 September 2011**,<sup>1239</sup> Nomura claims that the discussion consisted of mere speculation around possible market-wide overbidding level and that this was not sensitive.<sup>1240</sup> UniCredit claims that the Commission provided no description of the conduct of its trader in this chat.<sup>1241</sup>
- (700) The communication is, however, relevant because the traders discussed the level of overbidding for an Austrian auction. They exchanged specific forward looking information. The fact that a trader’s forward looking view is based on what has been done in the past may not be surprising, but cannot make his view any less sensitive. The anticompetitive character of this contact was confirmed by [...] and [...].<sup>1242</sup>
- (701) As to the conduct of the UniCredit trader, when changing employer, the description of this conduct is factual. The mere presence of this trader in the CODS & CHIPS chatroom, already working for UniCredit but still using his WestLB Bloomberg account, illustrates his continued interest in the activities in the chatroom when changing employer and does not require further additional description or explanation.
- (702) For the contact of **26 September 2011**,<sup>1243</sup> Nomura claims that the discussion on overbidding took place too long before the auction to be sensitive and that no mid-prices were discussed.<sup>1244</sup> UniCredit argues that its trader only gave price information, without disclosing its position or strategy. UniCredit further argues that the trader was not authorised to trade on the primary market and the bank was not involved in the auction and only traded for a small volume of the EGB on the secondary market.<sup>1245</sup>
- (703) However, the communication is relevant because the traders discussed the level of overbidding for a Belgian auction. They exchanged specific forward looking information, starting early and going up until close to the auction, and checked the mid-price. They also discussed other EGB for secondary market trading. By helping the other participants to check their mid-prices, the UniCredit trader contributed to the exchange of sensitive information relevant for the trading of an EGB on the primary and/or secondary market. UniCredit was trading the EGB on the secondary market, and it can be presumed that he took any information shared within the

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1237 [...]

1238 See footnote 609.

1239 Recitals (340) - (341).

1240 [...]

1241 [...]

1242 See footnote 612.

1243 Recital (342).

1244 [...]

1245 [...]

chatroom into account. The anticompetitive character of this contact was confirmed by UBS [...].<sup>1246</sup>

- (704) For the contact of **28 September 2011**,<sup>1247</sup> Nomura argues that the Commission has mischaracterised the contact, that the discussion was not related to an auction, was speculative and only contains a vague reference to the trading of bund futures on the EUREX platform. Nomura argues that it did not lead to any follow-up agreement and cannot be relied on as evidence in support of an infringement.<sup>1248</sup> UniCredit also claims that no sensitive information was exchanged in this contact.<sup>1249</sup>
- (705) However, the communication is relevant because the traders share their trading positions and check their strategy for the trading of a German EGB. The argument that it is not related to an auction cannot exempt the communication from being anticompetitive, because the collusive conduct of the traders also spread to trading on the secondary market. Such disclosures on individual positions and strategies are not just speculative but are deliberately shared so that the others are capable of taking that information into account and possibly adjusting or aligning their strategy. The fact that another trader approves the strategy disclosed by his competitor only confirms that he is taking the information received into account. The anticompetitive character of this contact was confirmed by [...].<sup>1250</sup>
- (706) For the contact of **4 October 2011**,<sup>1251</sup> Nomura and UniCredit deny that the information exchanged was sensitive.<sup>1252</sup>
- (707) The communication is relevant because the exchange confirms the spirit of cooperation between the traders in a difficult market. For instance, when the UniCredit trader ([...]) comments at 10:14: *'this mkt has just died now' 'anyone got an good ideas?' 'other than go home or to the pub?'*, the UBS trader ([...]) replies: *'get the book down' 'but no great ideas' 'iam short periph' 'outright'*. The UniCredit trader ([...]) continues: *'really difficult to hang onto any view for long for sure' 'just trying to stay as small as poss'* and the RBS trader ([...]) replies: *'yeah no good ideas' 'trying to dodge bullets'*. Also later, at 14:50, when discussing Belgian EGB, they cannot help each other due to the difficult market. The anticompetitive character of this contact was confirmed by [...].<sup>1253</sup>
- (708) For the contact of **12 October 2011**,<sup>1254</sup> Nomura claims that the information exchanged was too vague to be sensitive.<sup>1255</sup> UniCredit claims that this was one of UniCredit's smallest EGB allocations during the entire period and that its trader had no authority to trade on the primary market.<sup>1256</sup> The UniCredit trader indicated at an early stage in the communication that he was not going to the auction.<sup>1257</sup>

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<sup>1246</sup> See footnote 618.

<sup>1247</sup> Recital (343).

<sup>1248</sup> [...]

<sup>1249</sup> [...]

<sup>1250</sup> See footnote 621.

<sup>1251</sup> Recital (344).

<sup>1252</sup> [...]

<sup>1253</sup> See footnote 625.

<sup>1254</sup> Recital (345).

<sup>1255</sup> [...]

<sup>1256</sup> [...]

<sup>1257</sup> [...]. [...] in other parts of this contact information was exchanged for the purpose of bilateral trades.

- (709) The information exchanged on the overpaying was specific and forward looking. The anticompetitive character of this contact was confirmed by [...].<sup>1258</sup> The Commission also maintains that, by his actions, the UniCredit trader contributed to an exchange of sensitive information relevant for the trade of an EGB on the primary and/or secondary market. It shows his willingness to contribute to discussions also on the primary market. UniCredit was trading the EGB on the secondary market and must have taken into account information shared within the chatroom.<sup>1259</sup> The Commission does not (and is not required to) measure the actual effect of the discussion on UniCredit's trading or its competitors.
- (710) For the contact of **19 October 2011**,<sup>1260</sup> Nomura argues that the Commission has mischaracterised the contact, that the discussion was not related to an auction, and that there was no disclosure of mid-prices or positions.<sup>1261</sup> UniCredit also argues that the information was visible to all traders on screen and was not sensitive.<sup>1262</sup>
- (711) This communication reveals that the parties took each other's information into account in a spirit of cooperation. An offer may be visible on screen, but that information is anonymous and by revealing the identity of the trader behind the offer sensitive information may be added to what is publicly available. The argument that brokers often identify the counterparty for the purpose of confirming the reliability of the proposal is no excuse for the traders to share this information with their competitors.<sup>1263</sup> The communication also contains references to the checking of each other's mid-prices. When the RBS trader ([...]) says at 08:32 '*I just flattened curve. 25 guess I was low...got 93 curve*', the UniCredit trader ([...]) replies '*92.8*'. The fact that the communication was not directly related to an auction but to secondary market trading does not mean that it was not anticompetitive. The anticompetitive character of this contact was confirmed by [...].<sup>1264</sup>
- (712) For the contact of **2 November 2011**,<sup>1265</sup> Nomura argues that the Commission has mischaracterised the contact and claims that the information exchanged was too vague to be sensitive. The comments on the overbidding allegedly were nothing but a joke.<sup>1266</sup> UniCredit adds that its trader was not acting on the primary market and that his comment on the overbidding was therefore irrelevant. He only purchased a small amount of this EGB at the secondary market after the auction.<sup>1267</sup>
- (713) The information exchanged was specific and even by jokingly discussing the overbidding, the Nomura trader expressed an intention not to overbid in Germany and France and the other participants acknowledged that limiting the overbidding was a common interest. The UniCredit trader at least showed his willingness to be involved in these discussions. The anticompetitive character of this contact was confirmed by [...].<sup>1268</sup>

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<sup>1258</sup> See footnote 628.

<sup>1259</sup> See section 2.2.3. Relationship between the primary and secondary market.

<sup>1260</sup> Recital (346).

<sup>1261</sup> [...]

<sup>1262</sup> [...]

<sup>1263</sup> [...]

<sup>1264</sup> See footnote 631.

<sup>1265</sup> Recital (347).

<sup>1266</sup> [...]

<sup>1267</sup> [...]

<sup>1268</sup> See footnote 634

- (714) For the contact of **3 November 2011**,<sup>1269</sup> Nomura and UniCredit claim that the traders did not announce that they were bidding flat, but that ‘0’ rather means that they were not bidding at all.<sup>1270</sup> UniCredit adds that other statements of its trader in this contact did not match the actual trading and therefore illustrates that the information discussed had no impact on his actual conduct.<sup>1271</sup> UniCredit also argues that this excerpt refers to trading activities in the primary market; though, according to UniCredit, at that time, that bank was not acting as a primary dealer for France. Therefore, the UniCredit trader did not share any competitively sensitive information when disclosing that UniCredit would not bid in that auction. In its response to the SO<sup>1272</sup> Nomura argues that when the statements are viewed in their full context, it is likely that the traders were joking rather than exchanging information on their intended overbidding levels. Nomura presents two reasons for that, namely i) the comments of the traders vis-à-vis the trade on 2 November 2011 to the effect that they would not overbid any more for French and German bonds, indicated that they were joking on 3 November 2011. Further, the surprise of the UBS trader (*‘is that whay yer bidding flat... 0?’*) is another indication; and ii) given the nature and purpose of the auction mechanism where primacy is given to the highest bids, it is unlikely that all traders wanted to bid flat. According to Nomura, this would contrast with past bidding practices of the traders in past French auctions.
- (715) The alternative explanations given are not plausible because the UBS trader explicitly asked the others to confirm if they were bidding flat. He understood ‘0’ to refer to bidding flat and this interpretation was not disputed by the other participants in the chat. It is therefore credible that the traders of Nomura and UniCredit wanted the UBS trader to believe that they were bidding flat. Beyond the clearly contradictory interpretations of this communication that Nomura and UniCredit provide, and irrespective of the exact meaning of ‘0’ in this conversation, it is clear that UBS inquired about the overbidding, RBS gave sensitive information and UniCredit and Nomura were informed and could take that information into account. The anticompetitive character of this contact was confirmed by [...] and [...].<sup>1273</sup> In the absence of proof to the contrary, it can be presumed that the traders took information shared in the contact into account. The Commission is not required to demonstrate the actual effect of the conduct on competition.
- (716) For the contact of **28 November 2011**,<sup>1274</sup> Nomura argues that the Commission has mischaracterised the contact and claims that there was no information exchanged on mid-prices, volumes or trading positions in respect of the Belgian auction.<sup>1275</sup> UniCredit also claims that the information exchanged was not sensitive and that it was not even trading the bond concerned on that day.<sup>1276</sup>
- (717) The contact is relevant not only because the traders exchanged their thoughts on the Belgian auctions and were exploring if there was room for coordination, but also because it provides useful context on participation in the chatroom and more

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<sup>1269</sup> Recital (348).

<sup>1270</sup> [...]

<sup>1271</sup> [...]

<sup>1272</sup> [...]

<sup>1273</sup> See footnote 637.

<sup>1274</sup> Recital (349)-(350).

<sup>1275</sup> [...]

<sup>1276</sup> [...]. [...] in another part of this contact information was exchanged for the purpose of a possible bilateral trade.

particularly on what happened at RBS. The relevance of the contact was confirmed by [...] and [...].<sup>1277</sup>

- (718) For the contacts after **28 November 2011**, that is to say the contacts of **14 December 2011, 11 January 2012, 1 February 2012** and **28 March 2012**,<sup>1278</sup> Nomura and UniCredit argue that the Commission cannot rely on them as evidence in support of an infringement.<sup>1279</sup>
- (719) The communications after **28 November 2011** are relevant for the understanding of the context of the infringement. They demonstrate that the traders of RBS had to leave the persistent chatroom on **14 December 2011** and that [...]. [...], but the number of contacts in the chatroom and their sensitivity declined significantly before stopping.<sup>1280</sup> The Commission therefore establishes the end of the infringement on **28 November 2011**.<sup>1281</sup>

## 5.2. Effect upon trade between EU Member States and Jurisdiction

- (720) Article 101 of the Treaty and Article 53 of the EEA Agreement only apply to agreements and concerted practices which may affect trade between Member States and between contracting parties to the EEA Agreement respectively. The Court of Justice of the European Union has consistently held that: “*in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. Article 101 [of the Treaty] does not require that agreements have actually affected trade between Member States, but it does require that it be established that the agreements are capable of having that effect.*”<sup>1282</sup>
- (721) The concept of trade used in these provisions has a wide scope which includes monetary transactions.<sup>1283</sup>
- (722) Agreements covering several Member States are by their very nature capable of affecting trade between Member States and such effect on trade is generally also by its very nature appreciable.<sup>1284</sup>
- (723) The bond markets are international by nature and there are significant trade flows of EGB worldwide, including between Member States and between contracting parties to the EEA Agreement. As explained in Section 2.2.4, the market value of the primary and/or secondary market for EGB is enormous.<sup>1285</sup> The addressees of this

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<sup>1277</sup> See footnote 640.

<sup>1278</sup> Recitals (352)-(356).

<sup>1279</sup> [...]

<sup>1280</sup> See for instance recital (355).

<sup>1281</sup> See also Section 7. Duration.

<sup>1282</sup> Judgment of the Court of 30 June 1966, *Société Technique Minière v Maschinenbau Ulm*, C-56/65, ECLI:EU:C:1966:38, paragraph 7; Judgment of the Court of 11 July 1985, *Remia BV and Others v Commission*, C-42/84, ECLI:EU:C:1985:327, paragraph 22; Case T-25/95, *Cimenteries CBR* and Judgment of the Court of 21 January 1999 *Bagnasco and Others v Banca Popolare di Novara*, Joined Cases C-215/96 and C-216/96, ECLI:EU:C:1999:1, paragraph 48.

<sup>1283</sup> See Judgment of the Court of 14 July 1981, *Gerhard Züchner v Bayerische Vereinsbank*, C-172/80, ECLI:EU:C:1981:178, paragraph 18.

<sup>1284</sup> See points 64 and 65 of the Commission Guidelines on the effect on trade concept contained in Articles [101 and 102] of the Treaty, OJ C101 of 27.04.2004, p. 81.

<sup>1285</sup> See recital (51).

Decision are, or were, investment banks doing business worldwide or at least in substantial parts of the EEA. They were all trading EGB of various Eurozone Member States that issued EGB. The Commission file contains evidence of anticompetitive communications between EGB traders in respect of virtually all of these countries. The EGB were issued on the primary market and acquired and placed on the secondary market by primary dealers from within the EEA and thereafter traded worldwide.<sup>1286</sup> For this purpose, the banks operated EGB desks in financial centres in the EEA. The traders mentioned in this Decision all worked at such EGB desks either in London or another financial centre within the EEA. Irrespective of the location of the trading desks, these EGB traders carried out transactions on a global basis throughout the day.

- (724) The arrangements in this case were thus capable of having an appreciable effect upon trade between Member States and between Contracting Parties to the EEA Agreement.
- (725) On the basis of the factors listed above, it is clear that the conduct with which this Decision is concerned was both implemented in the EEA (“implementation doctrine”) and was liable to have immediate, substantial and foreseeable effects in the EEA (“qualified effects doctrine”<sup>1287</sup>).<sup>1288</sup>
- (726) Consequently, Article 101 of the Treaty and Article 53 of the EEA Agreement are applicable, and the Commission has jurisdiction to apply both Articles.<sup>1289</sup> 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 the cartel was conducted from trading desks situated in the European Union and EEA (including London at a time when the UK was a Member State of the European Union with full capacity) and the conduct had an appreciable effect on trade between Member States and Contracting Parties to the EEA Agreement.

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

- (727) Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement provide that Article 101(1) of the Treaty and Article 53 of the EEA Agreement may be declared inapplicable in the case of an agreement or concerted practice which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not (a) impose on the undertakings concerned restrictions that are not indispensable to the attainment of those objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

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<sup>1286</sup> There may be some restrictions on undertaking EGB-transactions with non-EEA customers.

<sup>1287</sup> Judgment of the Court of 27 September 1988, *Ahlström Osakeyhtiö a.o. v Commission*, Joined Cases 89, 104, 114, 116, 117 and 125 to 129/85, ECLI:EU:C:1988:447, paragraphs 11-18; Judgment of the Court of First Instance of 25 March 1999, *Gencor v Commission*, T-102/96, ECLI:EU:T:1999:65, paragraphs 89-101; Judgment of the Court of 6 September 2017, *Intel v Commission*, C-413/14 P, ECLI:EU:C:2017:632, paragraphs 42-46.

<sup>1288</sup> 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, Case T-447/14, *NKT Verwaltungs GmbH*, paragraphs 79-82.

<sup>1289</sup> The Commission has jurisdiction to apply Article 53 of the EEA Agreement on the basis of Article 56 of that Agreement.

- (728) Conduct having the object of restricting or distorting competition – especially when it relates to the fixing of prices or quantities – is however unlikely to fulfil the conditions of Article 101(3).<sup>1290</sup> Moreover, in this case, the EGB traders have neither shown that their discussions were directly related and necessary for the functioning of the EGB market nor that they meet the conditions of Article 101(3) of the Treaty or Article 53(3) of the EEA Agreement.<sup>1291</sup>
- (729) The Commission notes that the collusive contacts involved a limited number of banks only. This already demonstrates that these contacts were not indispensable for the market to function. This is also illustrated by the fact that the EGB desk of RBS continued to function when its traders left the collusive contacts late in 2011.
- (730) UBS alleges that the conduct had pro-competitive effects. In this regard, it claims that the exchanges of information allowed them to reduce the uncertainty about the level at which they might be able to hedge their positions and, consequently, to quote more favourable prices.<sup>1292</sup> However, it does not establish that the EGB market could not function without such exchanges of information. Moreover, the fact that EGB may have been traded for hedging purposes does not detract from the fact that they were also traded for speculation purposes.
- (731) The Commission considers that the conditions of neither Article 101(3) of the Treaty nor Article 53(3) of the EEA Agreement are fulfilled in this case.

## 6. ADDRESSEES OF THE PROCEEDINGS

### 6.1. Principles

- (732) Union competition law refers to activities of ‘undertakings’.
- (733) The concept of an 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.<sup>1293</sup> 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 a matter of principle, held liable for that conduct*’<sup>1294</sup>.
- (734) It thus falls to the undertaking to answer for the infringement of Article 101 of the Treaty, but the infringement must be imputed to one or several legal entities within that undertaking on whom fines may be imposed.<sup>1295</sup>

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<sup>1290</sup> Commission Guidelines on Horizontal Cooperation Agreements, point 74.

<sup>1291</sup> [...] some type of individual conduct may have been pro-competitive, but accepted that as a whole the conduct was likely to have restricted competition. [...]

<sup>1292</sup> [...] See also recitals (565)-(567) and (590).

<sup>1293</sup> Judgment of the Court of 10 September 2009, *Akzo Nobel NV and Others v Commission*, C-97/08, ECLI:EU:C:2009:536, paragraphs 54-55 and case-law cited.

<sup>1294</sup> Judgment of the Court of Justice of 21 July 2016, *VM Remonts v Konkurences Padome*, C-542/14, ECLI:EU:C:2016:578, paragraph 24.

See also Judgment of the General Court of 15 July 2005, *Voestalpine v Commission*, T-418/05, ECLI:EU:T:2005:116, paragraph 394; Judgment of the General Court of 14 March 2013, *Dole Food Company v Commission*, T-588/08, ECLI:EU:T:2013:130, paragraph 581 and the case-law cited.

<sup>1295</sup> Case C-97/08 P, *Akzo Nobel*, paragraphs 54-57 and case-law cited.

- (735) According to the settled case-law of the Court of Justice of the European Union, 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 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 the Article 101 of the Treaty is directly or indirectly (nearly) 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.<sup>1296</sup>
- (736) 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<sup>1297</sup> or economically.<sup>1298</sup> 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 these 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.<sup>1299</sup> The

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<sup>1296</sup> Case C-97/08 P, *Akzo Nobel*, paragraph 58-61 and case-law cited. See also Judgment of the Court of First Instance of 30 September 2009, *Elf Aquitaine SA v Commission*, T-174/05, ECLI:EU:T:2009:368, paragraphs 125 and 155-156 and case-law cited and Judgment of the Court of First Instance of 30 September 2009, *Arkema SA v Commission*, T-168/05, ECLI:EU:T:2009:367, paragraphs 69-70 and case-law cited, and paragraph 100.

<sup>1297</sup> Judgment of the Court of First Instance of 30 September 2009, *Hoechst GmbH v Commission*, T-161/05, ECLI: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, ECLI:EU:T:1991:74 and Case C-49/92P, *Anic Partecipazioni*, paragraphs 47-49.

<sup>1298</sup> Judgment of the Court of 11 December 2007, *Autorità Garante della Concorrenza e del Mercato v Ente tabacchi italiani – ETI SpA and others*, C-280/06, ECLI:EU:C:2007:775, paragraph 40.

<sup>1299</sup> Judgment of the Court of 16 November 2000, *Cascades v Commission*, C-279/98 P, ECLI:EU:C:2000:626, paragraphs 78 and 79: ‘*It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking (...) Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it*’.

mere disappearance of the person responsible for the operation of the undertaking when the infringement was committed does not allow it to evade liability.<sup>1300</sup> Liability for a fine may thus pass to a successor where the corporate entity which committed the violation has ceased to exist in law.

## 6.2. Application in this case

- (737) It has been established in this Decision that various EGB traders had access to and participated in anticompetitive contacts, in particular in the persistent multilateral chatrooms DBAC and/or CODS & CHIPS. Through these contacts they were aware of, and contributed to, (at least part of) a single and continuous infringement
- (738) The Commission holds the legal entities that employed these traders and/or on behalf of whom they traded, liable for the anticompetitive conduct of the traders as direct participants. Since these legal entities are wholly owned subsidiaries, liability for the conduct is also imputed to the parent company of the undertaking. The parent company is presumed to have exercised decisive influence over the conduct of its wholly owned subsidiaries.
- (739) As some traders changed employer, but continued to participate in the anticompetitive contacts, different undertakings are held liable for the conduct of these traders for different time periods.<sup>1301</sup>
- (740) On this basis, the following undertakings and legal entities are liable for the infringement that is the subject of this Decision.

### 6.2.1. Bank of America

- (741) The EGB trader [...] participated in the conduct described in this Decision during a time period when he was employed by *Bank of America, National Association*.<sup>1302</sup> On this basis, the Commission holds *Bank of America, National Association* liable for its direct participation in the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (742) *Bank of America, National Association* was, during the period concerned, a wholly owned subsidiary of *Bank of America Corporation*.<sup>1303</sup> Consequently, the latter company is presumed to have exercised decisive influence over *Bank of America, National Association's* conduct on the market and, on this basis, the Commission holds *Bank of America Corporation* liable in its capacity as parent company with *Bank of America, National Association*, for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

### 6.2.2. Natixis

- (743) The EGB traders [...] and [...] participated in the conduct described in this Decision during a time period when they were employed by *Natixis S.A.*<sup>1304</sup> On this basis, the Commission holds *Natixis S.A.* liable for its direct participation in the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

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<sup>1300</sup> Case T-305/94, *Limburgse Vinyl Maatschappij*, paragraph 953.

<sup>1301</sup> See Section 7 on the duration of the cartel and the duration of individual participation.

<sup>1302</sup> See the contacts in Section 4 that involve Bank of America employee [...].

<sup>1303</sup> See recital (54).

<sup>1304</sup> See the contacts in Section 4 that involve Natixis employees [...] and [...] ([...]).

### 6.2.3. *Nomura*

(744) The EGB traders [...] and [...] participated in the conduct described in this Decision during a time period when they were employed by *Nomura International plc*.<sup>1305</sup> On this basis, the Commission holds *Nomura International plc* liable for its direct participation in the infringement of Article 101 of the Treaty.

(745) *Nomura International plc* was, during the period concerned, a wholly owned subsidiary of *Nomura Holdings, Inc.* The latter company is presumed to have exercised decisive influence over *Nomura International plc's* conduct on the market, and, on this basis, the Commission holds *Nomura Holdings, Inc.* liable in its capacity as parent company with *Nomura International plc*, for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

### 6.2.4. *NatWest (RBS)*

(746) The EGB traders [...], [...], [...], [...] and [...] participated in the conduct that is described in this Decision during a time period when they were employed by *The Royal Bank of Scotland Plc*, now named *NatWest Markets Plc*. The traders [...], [...], [...], [...] and [...] also participated in the conduct that is described in this Decision during a time period when they were employed by a daughter company of *ABN-AMRO Bank N.V.*, later named *The Royal Bank of Scotland N.V.* and now named *NatWest Markets N.V.*<sup>1306</sup> On this basis, the Commission holds *NatWest Markets Plc* and *NatWest Markets N.V.* liable for their direct participation in the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

(747) *NatWest Markets Plc*, formerly *The Royal Bank of Scotland Plc*, was during the period concerned a wholly owned subsidiary of *The Royal Bank of Scotland Group Plc*, now named *NatWest Group plc*. *ABN-AMRO Bank N.V.*, later renamed *The Royal Bank of Scotland N.V.*, and then *NatWest Markets N.V.* became a wholly owned subsidiary of *The Royal Bank of Scotland Group Plc* on 17 October 2007.<sup>1307</sup> *The Royal Bank of Scotland Group plc* (now *NatWest Group plc*) is presumed to have exercised decisive influence over the conduct on the market of *The Royal Bank of Scotland Plc* (now *NatWest Markets Plc*) throughout and over the conduct of *The Royal Bank of Scotland N.V.* (now *NatWest Markets N.V.*) as from 17 October 2007, and, on this basis, the Commission holds *The Royal Bank of Scotland Group plc* (now *NatWest Group plc*) liable in its capacity as parent company with *The Royal Bank of Scotland Plc* (now *NatWest Markets Plc*) and, as from 17 October 2007, with *The Royal Bank of Scotland N.V.* (now *NatWest Markets N.V.*), for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

### 6.2.5. *UBS*

(748) The EGB traders [...], [...], [...], [...] and [...] participated in the conduct that is described in this Decision during a time period when they were employed by *UBS*

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<sup>1305</sup> See the contacts in Section 4 that involve *Nomura* employees [...] ([...]) and [...] ([...]).

<sup>1306</sup> See the contacts in Section 4 that involve the *ABN-AMRO* employees [...] ([...]) and [...], the *ABN-AMRO* and later *RBS* employees [...] and [...] ([...]), and the *RBS* employees [...] ([...]), [...] and [...].

The *ABN* traders were at the time technically employed by *ABN Management Services Limited*, a wholly owned subsidiary of *ABN-AMRO Bank N.V.* See recital (60).

<sup>1307</sup> Recital (59).

AG.<sup>1308</sup> On this basis, the Commission holds *UBS AG* liable for its direct participation in the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

- (749) *UBS AG* was, during the period concerned, a wholly owned subsidiary of *UBS Group AG*. The latter is presumed to have exercised decisive influence over *UBS AG*'s conduct on the market, and, on this basis, the Commission holds *UBS Group AG* liable in its capacity as parent company with *UBS AG*, for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

#### 6.2.6. *UniCredit*

- (750) The EGB trader [...] participated in the conduct that is described in this Decision also during a time period when he was employed by *UniCredit Bank AG*.<sup>1309</sup> On this basis, the Commission holds *UniCredit Bank AG* liable for its direct participation in the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

- (751) *UniCredit Bank AG* was, during the period concerned, a wholly owned subsidiary of *UniCredit S.p.A.* The latter company is presumed to have exercised decisive influence over *UniCredit Bank AG*'s conduct on the market, and, on this basis, the Commission holds *UniCredit S.p.A.* liable in its capacity as parent company with *UniCredit Bank AG*, for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

#### 6.2.7. *Portigon (WestLB)*

- (752) The EGB trader [...] participated in the conduct that is described in this Decision also during a time period when he was employed by *WestLB AG*.<sup>1310</sup> The economic activities of *WestLB AG* have ceased, but the legal entity still exists under the name *Portigon AG*.<sup>1311</sup> On this basis, the Commission holds *Portigon AG* liable for the direct participation of *WestLB AG* (now *Portigon AG*) in an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

### 6.3. Arguments of the parties

- (753) Various parties reiterate that they cannot be held liable for the conduct of their trader because he was not very active in the chatrooms, played a passive role and/or was not interested in the anticompetitive discussions of the other participants. The parties have already raised equivalent arguments in the context of the Commission's assessment of the parties' awareness or liability for a single and continuous infringement.<sup>1312</sup> As explained in the relevant Sections of this Decision and in the description of the type of communications used, these persistent chatrooms gave the traders access to the communications, irrespective of their individual role. The individual role played by each trader in the cartel did not prevent them from being aware of the general scope and constituent elements of the cartel, nor from being liable for their participation in the anticompetitive conduct. The individual role of each party will be further assessed in the Section on the Remedies.

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<sup>1308</sup> See the contacts in Section 4 in the persistent chatrooms DBAC and CODS & CHIPS that involve UBS employees [...] and [...].

See also the occasional contacts in other chatrooms mentioned recitals (168), (184), (189), (200), (235), (275) and (283) where other UBS employees are involved ([...], [...] and [...]).

<sup>1309</sup> See the contacts in Section 4 that involve the UniCredit employee [...] ([...]).

<sup>1310</sup> See the contacts in Section 4 that involve the WestLB employee [...] ([...]).

<sup>1311</sup> Recital (67) [...].

<sup>1312</sup> See Section 5.1.2.3.

- (754) UniCredit, claims that it was unaware of its trader's contacts and that the bank cannot be held liable for the conduct of so-called rogue traders that operate for their personal interest outside their mandate.<sup>1313</sup>
- (755) Article 23(2) of Regulation (EC) No 1/2003 empowers the Commission to impose fines on undertakings where, intentionally or negligently, they have committed an infringement of the Union competition rules.<sup>1314</sup> The physical persons that are involved in the infringement do not in themselves constitute undertakings within the meaning of Union competition law, but are incorporated into the undertakings with whom they have an employment relationship and thus form an economic unit.<sup>1315</sup> Indeed, the Court of Justice of the European Union has confirmed that anticompetitive conduct on the part of an employee is attributable to the undertaking to which he or she belongs and that undertaking is, as a matter of principle, held liable for that conduct<sup>1316</sup>. It therefore falls to the undertaking (and, in turn, the relevant legal entities within that undertaking) to answer for an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (756) The argument that these traders had no authority to engage in anticompetitive contacts and acted (to some extent) outside their mandate cannot be accepted. Such authorisation to act should not be interpreted narrowly. It would imply that undertakings are only liable for the conduct of their employees if they operate within the strict remit of their mandate. This position ignores that the participation in agreements that are prohibited by the Treaty is usually clandestine and not governed by formal rules. It is rarely the case that an undertaking's representative attends a meeting with a mandate to commit an infringement.<sup>1317</sup> In this narrow interpretation, it would suffice to exclude cartel behaviour from the mandate of its employees in order to escape all liability for such conduct.
- (757) Indeed, it is settled case-law that an employee is deemed to act on behalf of his employer.<sup>1318</sup> Consequently, it is not necessary for there to have been action by, or even knowledge on the part of the management of the undertaking concerned. Action by a person who is authorised to act on behalf of the undertaking suffices.<sup>1319</sup> In this regard, the Commission notes that the traders involved in the infringement were engaged to trade EGB and that all their actions aimed to improve their trading positions for EGB, irrespective of whether these actions took the form of trading, exchanging information on pricing intentions or trading strategies with other traders.
- (758) In Union competition law, the undertaking remains liable for the anticompetitive conduct of its employees, irrespective of whether the management had authorised the employees to engage in such conduct, was aware of such conduct, or whether such

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<sup>1313</sup> [...]

<sup>1314</sup> Case C-97/08 P, *Akzo Nobel*, paragraph 54.

<sup>1315</sup> Judgment of the Court of Justice of 16 September 1999, *Jean Claude Becu*, C-22/98, ECLI:EU:C:1999:419, paragraph 26.

<sup>1316</sup> Case C-542/14, *VM Remonts v Konkurences Padome*, paragraph 24.

See also Case T-418/10, *Voestalpine*, paragraph 394; Case T-588/08, *Dole Food Company*, paragraph 581 and the case-law cited.

<sup>1317</sup> Case C-68/12, *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa*, paragraphs 26-28.

<sup>1318</sup> Case T-418/10, *Voestalpine*, paragraph 394.

<sup>1319</sup> Judgment of the Court of Justice of 7 June 1983, *Musique Diffusion française and Others v Commission*, Joined Cases 100/80 to 103/80, ECLI:EU:C:1983:158, paragraph 97; and Judgment of the General Court of 20 March 2002, *Brugg Rohrsysteme v Commission*, T-15/99, ECLI:EU:T:2002:71, paragraph 58; and Case T-588/08, *Dole Food Company*, paragraph 581.

conduct ran contrary to instructions provided. The Court of Justice of the European Union has recognised that an employee does not exert an economic force on the market that is separate from that of the employing organisation. As such the employee and the employing organisation are part of the same economic entity.<sup>1320</sup>

(759) Furthermore, and in any event, the banking industry and their trading activity in particular is characterised by a high level of recording and supervision of the activities of individual employees that handle large portfolios on behalf of their undertaking. The evidence in the form of online chats and emails on which this Decision is based was available to the banks all along, and the banks therefore could or should have been aware of the essential characteristics of the collusive scheme and the involvement of its traders. The banks cannot invoke their ignorance in respect of the conduct of their employees in the chatrooms to avoid liability for breaches of Article 101 of the Treaty and Article 53 of the EEA Agreement.

## 7. DURATION OF THE INFRINGEMENT

(760) This Decision describes communications between 3 January 2007 and 28 March 2012, and which it uses as evidence of an infringement between 4 January 2007 and 28 November 2011.<sup>1321</sup> The overall duration of the infringement for this Decision is therefore a period of almost 5 years. The persistent chatrooms, DBAC and CODS & CHIPS, were eventually closed on 6 March 2012 and 29 November 2013 respectively.<sup>1322</sup>

(761) During the infringement, each undertaking participated in the infringement for a certain period. The individual participation of an undertaking started in principle when its trader received first time or renewed access to at least one of the two persistent multilateral chatrooms that were regularly used for exchanging sensitive information in the cartel, namely DBAC or CODS & CHIPS. Nonetheless, the individual participation started earlier if there is evidence that a bank's trader already participated in other relevant anticompetitive communications, in non-persistent chatrooms in particular, before receiving access to the persistent chatrooms. The individual participation of an undertaking ended when its trader was removed from the relevant persistent chatrooms. The individual participation ended earlier if there is evidence that the trader ceased trading for the undertaking concerned before that date or otherwise ended its involvement in the anticompetitive contacts.

(762) Applying these principles, the infringement period for each individual undertaking is as follows:

- Bank of America: from 29 January 2007 until 6 November 2008;<sup>1323</sup>
- Natixis: from 26 February 2008 until 6 August 2009;<sup>1324</sup>
- Nomura: from 18 January 2011 until 28 November 2011;<sup>1325</sup>
- RBS: from 4 January 2007 until 28 November 2011;<sup>1326</sup>

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<sup>1320</sup> Joined Case 40/73 a.o., *Suiker Unie*, paragraph 539.

<sup>1321</sup> Contacts outside the period 04.01.2007-28.11.2011 are used for contextual purposes only or were not used as evidence in the SO.

<sup>1322</sup> Recitals (82)-(83).

<sup>1323</sup> Recitals (104) and [...].

<sup>1324</sup> Recitals (154) and (263).

<sup>1325</sup> Recitals (307) and (349).

- UBS: from 4 January 2007 until 28 November 2011;<sup>1327</sup>
- UniCredit: from 9 September 2011 until 28 November 2011;<sup>1328</sup>
- Portigon: from 19 October 2009 until 3 June 2011.<sup>1329</sup>

- (763) Regarding the starting date of an undertaking's individual participation in the infringement, Bank of America, Nomura and UniCredit claim that access to the DBAC and/or CODS & CHIPS chatroom(s) is insufficient. Nomura and UniCredit explain that their trader was not yet authorised to trade when he received renewed access to the persistent chatrooms, while Bank of America argues that its trader was not aware at that stage of any anticompetitive plan. They argue that participation could only have started on the date of the first proven collusive contact after they started trading for the bank.<sup>1330</sup>
- (764) The Commission, however, has explained in this Decision that being a member of a persistent chatroom gave the traders access to the collusive exchanges in which they could follow the discussions in real time or at a later stage.<sup>1331</sup> Acceptance of an invitation to be part of such chatroom harbours the expectation of mutual exchange of information that would bring anticompetitive advantages to the participating traders, certainly when the trader had had access to the chatroom before when working for another bank.
- (765) For Bank of America, it has been established that its trader ([...]) must plausibly have been aware of the anticompetitive character of the chatroom he joined.<sup>1332</sup> He had worked with other members of the CODS & CHIPS chatroom while employed by ABN-AMRO and knew that access to this chatroom was sensitive: '[...] *wants to know if everyone is cool if he's on the chat*'. He was instructed to respect the confidentiality: '*the problem with that is we cant control when [...] off the desk*', '*if told [...] I don't mind as long as [...] does not see it and even we shud ask him to log out whe he off desk*'. The Bank of America trader clearly understood the sensitive nature of the chatroom and pledged to respect the confidentiality: '*Don't worry will close the chat if I am off the desk, nothing goes out*'.<sup>1333</sup> Indeed, as can be seen from the chat of **14 February 2007**<sup>1334</sup>, the Bank of America trader shows no surprise with respect to the sensitive nature of the exchanged information. On the contrary, he actively participates in the anticompetitive discussions and contributes to the collusion by indicating his trading strategy and advising others to hold off on

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<sup>1326</sup> Recitals (101) and (349).

<sup>1327</sup> Recitals (101) and (349).

<sup>1328</sup> Recitals (341) and (349).

<sup>1329</sup> Recitals (272) and (331).

<sup>1330</sup> [...]. The Bank of America trader ([...]) received access to CODS & CHIPS on 29.01.2007 and was allowed to carry out trades. The first contact in which he actively participated and that is used as evidence for this Decision occurred on 17.04.2007.

[...]. The Nomura trader ([...]) received access to the chatrooms on 18.01.2011 and was authorised to carry out trades as from 04.03.2011. The next contact used as evidence for this Decision occurred on 05.04.2011.

[...]. The UniCredit trader ([...]) received access to the chatroom on 09.09.2011 and carried out a first trade for UniCredit on 16.09.2011. The next contact used as evidence for this Decision occurred on 26.09.2011.

<sup>1331</sup> Recitals (80), (386) and (387).

<sup>1332</sup> Recitals (595) - (597).

<sup>1333</sup> Recital (104).

<sup>1334</sup> Recital (106).

offering bonds until he has finished his trades. His absence of surprise and his active participation in the collusion further supports the conclusion that the Bank of America trader knew the purpose and nature of the CODS & CHIPS chatroom when he requested permission to join.

- (766) These exchanges confirm that the alternative explanation given by Bank of America is not plausible and that the trader must have been aware of the sensitive character of the chatroom as from the moment he received access.
- (767) For Nomura and UniCredit, their respective traders had already been members of the chatroom(s) and participated in the infringement at their previous employers. At the time of joining Nomura and UniCredit, therefore, they were fully aware of the nature of the chatroom(s) and the infringement. The traders sought and received renewed access to the chatroom(s) immediately after changing employer. They did not wait until the date that they were allowed to trade for their new employer. Through their continued participation in the chatroom(s), the traders furthered the aims of the cartel and did nothing to bring it to the attention of the authorities.<sup>1335</sup> These traders considered it useful to continue the collusive contacts and share information irrespective of when exactly they were allowed to trade for their new employer.<sup>1336</sup> All traders wanted the cartel to continue as smoothly as possible when one of them changed employer. Each trader participated to the extent possible when changing employer and continued to receive all sensitive information available.
- (768) For Nomura, on **18 January 2011**, when its trader ([...]) is added to the chatrooms, he could make himself immediately useful for the cartel. When the WestLB trader ([...]) makes the comment that he is hit by Nomura in '20m jan 20s', the RBS trader ([...]) makes clear to the Nomura trader that he is being added to the chatroom: '*so then make yourself useful and put it on the chat ... you not on for free*'.<sup>1337</sup> The long term experience of this trader, including in the cartel, was apparently considered useful by the other participants for giving him renewed access to their cartel in preparation for his imminent authorisation by the regulatory authorities in London to trade for Nomura, which was eventually received on **4 March 2011**. Likewise, the Nomura trader considered it useful to already gain access to the communications in the persistent chatrooms while working in a bank active in both the primary and the secondary market, irrespective of whether he was himself already formally allowed to trade for the bank. Even as a passive participant, the mere receipt by an undertaking of price information, including pricing intentions, from a competitor is capable of removing, or at least reducing, strategic uncertainty about future conduct on the market in question.<sup>1338</sup> Consequently, the Commission considers that Nomura's trader ([...]) participated in the cartel on behalf of Nomura as from 18 January 2011. If that participation was on a preparatory basis only and Nomura possibly could not fully benefit from that participation in the cartel until a later date, this cannot exempt Nomura from its liability for its participation in the cartel in that period. According to the case-law of the Court of Justice of the European Union, the

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<sup>1335</sup> See footnote 1336.

<sup>1336</sup> Joined Cases C-204/00 a.o., *Aalborg Portland A/Sa.o.*, paragraph 84.

<sup>1337</sup> Recital (307).

<sup>1338</sup> Judgment of the General Court of 7 November 2019, *Campine NV and Campine Recycling NV v Commission*, T-240/17, ECLI:EU:T:2019:778, paragraph 186.

disclosure of information to one's competitors in preparation for a cartel suffices for this disclosure to fall within the meaning of Article 101 of the Treaty.<sup>1339</sup>

- (769) For UniCredit, its trader ([...]) was employed by this bank as from **1 September 2011**. Not only did he gain renewed access to the chatroom on **9 September 2011** but he entered the chatroom even before that date – on **6 September 2011** – under his old WestLB account. Such conduct equally demonstrates UniCredit trader's continued interest and participation in the cartel, irrespective of whether he was already allowed to trade at that moment. He used such access to provide informed advice within his bank and/or invested in the relationship with the other competing traders in preparation of his imminent ability to resume trading.<sup>1340</sup>
- (770) For the end date of their individual participation, various parties argue that their last individual contacts, or at least their contribution to these contacts, cannot be classified as sensitive or used to establish the end date of their individual participation in the conduct. For instance, Bank of America claims that its individual participation became sporadic towards the end of its participation and was not sensitive at all.<sup>1341</sup> Nomura and UniCredit claim that the cartel, if any, was phasing out and had come to an end by September 2011 or definitely on 28 November 2011, which is the date of the last anticompetitive contact before the traders of RBS announced that they were leaving the chatrooms.<sup>1342</sup> UniCredit argues that the cartel ended before its trader started trading for the bank, or at most shortly after he started trading on behalf of UniCredit.<sup>1343</sup>
- (771) On the basis of the evidence in its possession, for the purposes of this Decision, the Commission determines the end date of the anticompetitive conduct on 28 November 2011, and uses any contact of a later date for contextual purposes only. The Commission disagrees that the anticompetitive conduct had already come to an end on 11 July 2011 when the chatroom DBAC was no longer used.<sup>1344</sup> Abandoning the DBAC chatroom did not trigger an immediate end to the infringement. The chatroom communications continued in the CODS & CHIPS chatroom and only tapered off at the end of 2011 when the RBS traders left all persistent chatrooms.

## 8. REMEDIES

### 8.1. Capacity to impose fines

- (772) Where the Commission finds that undertakings, either intentionally or negligently, infringe Article 101(1) of the Treaty and/or Article 53(1) of the EEA Agreement, it may, by decision, impose fines upon these undertakings pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

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<sup>1339</sup> See, for example, Judgment of the Court of First Instance of 8 July 2008, *BPB v Commission*, T-53/03, ECLI:EU:C:2008:254, paragraph 178 and cited case-law.

<sup>1340</sup> Recitals (339)-(341).

<sup>1341</sup> [...]

<sup>1342</sup> [...]. The trader ([...]) joined UniCredit on [...], accessed the CODS & CHIPS chatroom on 06.09.2011 under his old WestLB account and under his UniCredit account on 09.09.2011.

<sup>1343</sup> [...]

<sup>1344</sup> Recital (770).

- (773) Article 25(1)(b) of Regulation (EC) No 1/2003 limits the Commission's power to impose fines pursuant to Article 23 of Regulation (EC) No 1/2003 to a period of five years. Time begins to run on the day on which the infringement ceases, but any action taken by the Commission for the purposes of the investigation interrupts this limitation period with effect from the date on which the action is notified to at least one undertaking which has participated in the infringement. The interruption shall apply for all of the undertakings that have participated in the infringement and shall expire at the latest on the day on which ten years have elapsed without the Commission having imposed a fine.<sup>1345</sup>
- (774) In this case, the infringement has been committed intentionally or at least negligently. The individuals involved were skilled professionals who were well aware of the commercial value and usefulness of the information disclosed and took precautions to conceal their arrangement and to avoid its detection.<sup>1346</sup> The infringement described in this Decision included elements of price fixing, market sharing and customer allocation. With respect to this type of obvious infringement, the parties cannot claim that they did not act deliberately or at least negligently.<sup>1347</sup> This is particularly so given that the anticompetitive conduct described in this Decision took place despite the existence of supervisory mechanisms within the trading desks and compliance departments whose task was to ensure the relevant bank's compliance with regulatory requirements.
- (775) Some parties deny that they committed the infringement intentionally.<sup>1348</sup> As this is an argument by which these parties are seeking a reduction of the fine, it will be dealt with in Section 8.4.2. when addressing the adjustment of the basic amount of the fine.
- (776) In any event, the facts described in this Decision demonstrate that the parties cannot have been unaware of the anticompetitive nature of their conduct, whether or not they were aware that they were infringing the competition rules. As such, the Commission is justified in concluding that the parties committed the infringement intentionally or at least negligently.<sup>1349</sup>
- (777) The Commission has, therefore, decided to impose fines on the undertakings that participated in the infringement to the extent permitted by Article 25, together with Article 23(2)(a) of Regulation (EC) No 1/2003. Where applicable, such decision is without prejudice to the application of the Leniency Notice. The calculation of the fines is further explained in Section 8.4.
- (778) Pursuant to Article 25 of Regulation (EC) No 1/2003, the Commission is prevented from imposing fines on Bank of America and Natixis for their participation in the infringement. On the basis of the evidence in the Commission's possession, the last dates on which Bank of America and Natixis were involved in the infringement were

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<sup>1345</sup> Article 25(3) and 25(5) of Regulation No 1/2003.

<sup>1346</sup> See for instance Recital (445) and the examples referred there.

<sup>1347</sup> See, for example, Judgment of the General Court of 19 May 2010, *Wieland-Werke AG v Commission*, T-11/05, ECLI:EU:T:2010:201, paragraph 140; Judgment of the Court of First Instance of 6 April 1995, *Ferriere Nord v Commission*, T-143/89, ECLI:EU:T:1995:64, paragraph 42; Judgment of the Court of 17 July 1997, *Ferriere Nord v Commission*, C-219/95 P ECLI:EU:C:1997:375, paragraph 50.

<sup>1348</sup> [...]

<sup>1349</sup> Case T-704/14 *Marine Harvest*, Judgment of 26 October 2017, EU:T:2017:753, para. 237, upheld in Case C-10/18 P *Mowi ASA*, EU:C:2020:149. See also C-681/11 *Schenker & Co. and Others*, judgment of 18 June 2013, EU:C:2013:404, para. 37 and the case law cited.

6 November 2008 and 6 August 2009 respectively.<sup>1350</sup> Bank of America's and Natixis' involvement in the infringement, therefore, ended more than five years before the start of the investigation<sup>1351</sup> and more than ten years before the adoption of this Decision. Their conduct, therefore, falls outside the limitation periods established by Articles 25(1)(b) and 25(5) of Regulation (EC) No 1/2003. As a result, this Decision does not impose fines on Bank of America or Natixis pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003.

## 8.2. Finding of an infringement

- (779) The Commission's power to impose sanctions under Article 23 of Regulation (EC) No 1/2003, and the applicable limitation periods established under Article 25 of Regulation (EC) No 1/2003, are separate from the Commission's power under Article 7 of that Regulation to find an infringement.<sup>1352</sup> Recital 11 of Regulation (EC) No 1/2003 provides that the Commission should be able to adopt decisions pursuant to Article 7(1) of Regulation (EC) No 1/2003 finding that an infringement has been committed in the past even if it does not impose a fine.
- (780) In this case, there is sufficient legitimate interest to find an infringement against Natixis and Bank of America, notwithstanding the fact that sanctions cannot be imposed on the basis of Article 25(1)(b) of Regulation (EC) No 1/2003.
- (781) First, both undertakings were involved in the same single and continuous infringement as the other banks. Consistent with settled case-law of the Court of Justice of the European Union, the Commission is entitled to adopt a decision holding an undertaking liable for an infringement of Article 101 of the Treaty if the unlawful practices formed part of a single infringement for which it could impose a fine in the absence of prescription.<sup>1353</sup>
- (782) Second, Natixis' and Bank of America's inclusion in this Decision and a description of their conduct and involvement is necessary to explain the overall functioning and the full scope of this infringement.
- (783) Third, the anticompetitive conduct that is the subject of this Decision was very serious, on account of the paramount importance of a sound EGB issuing and trading platform for the raising of funds by the Member States and for the functioning of the internal market in financial services as well as the reputation of the banking sector in the Member States that is needed for the functioning of a sound EGB issuing and trading platform. This Decision concerns collusion between traders on the primary and secondary market of Government Bonds denominated in Euro with the potential to affect the amounts of funding raised by issuers in auctions and syndications as well as the prices paid by counterparties in the secondary market, including investment and pension funds. In addition, the anticompetitive conduct took place against the background of a financial crisis during which many financial institutions had to be rescued by the capital raised publicly by means of EGB, thereby compounding the serious implications of EGB-related conduct for the issuers, the tax payers and a wide array of investors, financial institutions and their customers.

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<sup>1350</sup> See recital (762).

<sup>1351</sup> See recital (69).

<sup>1352</sup> See, for example, Joined Cases T-22 and 23/02, *Sumitomo v Commission*, ECLI:EU:T:2005:349, paragraphs 60-61.

<sup>1353</sup> Judgment of the Court of 16 September 2013, *Villeroy & Boch Austria v Commission*, T-373/10, ECLI:EU:T:2013:455, paragraph 303.

- (784) Fourth, the legal and deterrent effects stemming from a formal finding that Bank of America and Natixis participated in the anticompetitive conduct that is the subject of this Decision (irrespective of whether a fine was imposed) demonstrates the Commission’s legitimate interest in addressing this Decision to those undertakings – in particular in light of the serious and widespread implications of the infringement.<sup>1354</sup> First, the formal finding of an infringement enables the Commission to classify an undertaking as a recidivist if it repeats a similar infringement (or continues the same one) and to increase any fines imposed in those subsequent cases.<sup>1355</sup> Second, the formal finding of an infringement by a Commission Decision constitutes irrefutable proof of the infringement for the purpose of actions for damages brought before the national courts of the Member States of the European Union, which is an important matter for the enforcement of competition law. As the Court of Justice of the European Union has confirmed, the right to claim compensation for damages caused by an agreement or conduct prohibited by Article 101 of the Treaty ensures the full effectiveness of that provision. In this context, actions for damages for infringement of EU competition rules are an integral part of the system for enforcing those rules.<sup>1356</sup>
- (785) Bank of America<sup>1357</sup> and Natixis<sup>1358</sup> contest that the Commission has sufficient legitimate interest to hold them liable for an infringement for which it cannot impose a fine. Both Bank of America and Natixis refer to public versions of decisions finding infringements for conduct prescribed for fining purposes to claim that there is an established Commission practice in that regard from which the Commission cannot depart.<sup>1359</sup> Natixis argues that the Commission practice requires imputing liability only if that undertaking receives a fine for similar conduct that is not prescribed or is a recidivist and has already received a fine in a previous decision.<sup>1360</sup> Both Bank of America and Natixis make references to past decisions in which the Commission did not make a finding of an infringement against undertakings whose involvement was time-barred.<sup>1361</sup>
- (786) In addition, Natixis argues that the serious nature of the EGB infringement is not sufficient on a standalone basis to amount to a legitimate interest. Referring to the *Retail Food Packaging* decision,<sup>1362</sup> Natixis argues that the conduct in that decision was far more serious than in this case, among other things, given the proportion of market participants involved and the impact on the relevant markets. Bank of

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<sup>1354</sup> See recital (783).

<sup>1355</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (2006/C 210/02), at point 28.

<sup>1356</sup> Judgment of the Court of 14 March 2019, *Vantaan kaupunki v Skanska Industrial Solutions Oy and Others* C-724/17, ECLI:EU:C:2019:204, paragraphs 43-45.

<sup>1357</sup> [...]

<sup>1358</sup> [...]

<sup>1359</sup> Where the Court held that there was a concrete risk of further anticompetitive conduct as GVL clearly did not fully accept it was in the wrong (Judgment of 2 March 1983, *GVL*, C-7/82, ECLI:EU:C:1983:52, paragraphs 25-28); or that finding of an infringement helped to give a broader picture of the nature of the infringement and to confirm the important part played by industry associations in the functioning of the cartel. Joined Cases T-373/10 a.o., *Villeroy & Boch Austria GmbH*, paragraph 304, Case T-379/10, *Keramag Keramische Werke*, paragraph 253.

<sup>1360</sup> [...]

<sup>1361</sup> [...]

<sup>1362</sup> [...]

America argues that their trader's conduct cannot be treated as 'very serious', but, 'at best, peripheral, sporadic, and of limited duration'.<sup>1363</sup>

- (787) Bank of America's and Natixis' arguments are not capable of rebutting the Commission's conclusions, considering the very serious nature of the infringement, the paramount importance of a sound EGB issuing and trading platform for the raising of funds by the Member States and for the functioning of the internal market in financial services, as well as the reputation of the banking sector in the Member States that is needed for the functioning of a sound EGB issuing and trading platform. These, and similar factors, are consistently taken into account for assessing the gravity of an infringement,<sup>1364</sup> a circumstance relevant for deciding if there is sufficient legitimate interest to hold parties liable under Article 7 of Regulation (EC) No 1/2003.
- (788) As regards the Commission's previous decisional practice, the fact that an undertaking is fined in the same decision for additional or subsequent anticompetitive activities in the same cartel, or the fact that an undertaking has previously been fined for an anticompetitive conduct in the same product market, are indeed particular circumstances which have led the Commission to issue a decision finding undertakings liable for a breach of Article 101 of the Treaty even where it lacked the power to impose a fine. However, this does not mean that these are the only specific circumstances in which the Commission can find an undertaking liable for an infringement notwithstanding the fact that it is no longer able to impose a fine on the undertaking for such conduct under Article 23(1)(b) of Regulation (EC) No 1/2003.
- (789) In this respect, Bank of America's and Natixis' position is based on a rather partial reading of those decisions. Both the Commission and the Court of Justice of the European Union have also taken other criteria into account such as the very serious nature of the cartel, the need to find an infringement in order to explain the Commission's overall assessment of the entire cartel, the need to facilitate damages actions or prevent recidivism, and to determine the Commission's legitimate interest in finding that an undertaking has participated in an infringement of Article 101 of the Treaty.<sup>1365</sup>
- (790) Natixis's view that recidivism should only be prevented regarding undertakings who actually receive a fine or have already resumed the infringing conduct or engaged in a new one must be dismissed. Such an interpretation would limit the Commission's power to conclude that undertakings have infringed Union competition rules without imposing fines to only being able to adopt decisions against double recidivists or multiple offenders. There is no legal basis for such a restriction which would jeopardise the effective enforcement of Union competition rules, given that undertakings participating in an infringement would be able to avoid liability for such participation purely on the basis that the Commission cannot impose fines for such breach.

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<sup>1363</sup> [...]

<sup>1364</sup> See for instance Commission Decision C(2016) 8530 of 07.12.2016 in Case AT.39914 *Euro Interest Rates Derivatives*, recital (721).

<sup>1365</sup> See for instance Commission Decision C(2015) 4336 of 24 June 2015 in Case AT.39563 *Retail Food Packaging*, recital (1006), Commission Decision (2010) (AT.39092) of 23 June 2010 *Bathroom Fittings and Fittings* recitals 1177- 1179, Case C-724/17 *Skanska*, paragraphs 43, 45 et al.

- (791) Further, the Commission’s previous decisional practice does not generate any legitimate expectations for addressees of subsequent decisions. For example, the legal context and practical consequences of Commission decisions have evolved. All the Decisions mentioned by Natixis<sup>1366</sup> and Bank of America<sup>1367</sup> predate the transposition by the Member States of Directive 2014/104/EU of the European Parliament and of the Council.<sup>1368</sup> In this context, it is more likely that the cartel victims obtain damages from cartelists, who are jointly and severally liable towards them (with the exception of the immunity applicant). The absence of a finding of the infringement regarding certain undertakings whose involvement can be established to the requisite legal standard, might affect their customers’ ability to successfully claim damages compared to other victims, and the cartelists who are liable for fines could be exposed to a larger share of damages. In matters where the Commission exercises its discretion, its approach in pursuit of public interest goals, such as ensuring enforcement, deterrence and advance policy developments, such as private enforcement of competition law may evolve.
- (792) Bank of America argues that the Commission is prevented from making a finding of an infringement against it because there is no genuine danger of the anticompetitive conduct being repeated since: (i) the alleged infringement had come to an end ten years prior to the adoption of the SO; (ii) only a single trader was involved in the alleged conduct and this trader has not worked for Bank of America for over a decade; (iii) Bank of America personnel have been prohibited from using multilateral chatrooms since 2013; (iv) compliance training is mandatory for Bank of America traders; and (v) Bank of America has implemented extensive measures to detect and deter the type of conduct alleged.<sup>1369</sup>
- (793) The aforementioned arguments must be dismissed. First, irrespective of the date of the end of activity of their trader, Bank of America is still active on the financial markets, so the risk of similar anticompetitive conduct being repeated still exists, be it for the same financial product or a different one. Second, the prohibition to use multilateral chats does not prevent traders from cooperating through other means, whether electronic or through direct communication. Contrary to Bank of America’s contention, since then, Bank of America has been the addressee of another Commission decision<sup>1370</sup> for its involvement in a cartel concerning a similar product that took place after Bank of America’s involvement in this case. The claim that there is no danger that the bank engages in similar conduct because of compliance

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<sup>1366</sup> [...] Commission Decision of 24 June 2015 in Case AT.39563 - *Retail Food Packaging*, recital 1006, Commission Decision of 23 June 2010 in Case COMP/39092 - *Bathroom Fittings and Fixtures*, recital 1179, Commission Decision of 11 November 2009 in Case COMP/38589 - *Heat Stabilisers*, Commission Decision of 1 October 2008 in Case COMP/39181 - *Candle Waxes*, recital 617, Commission Decision of 3 May 2006 in Case COMP/F/38.620 - *Hydrogen Peroxide and Perborate*, recital 369, Judgment of the Court of Justice of 25 July 2018, - *Orange v Commission*, C-123/16 P, ECLI:EU:C:2018:590, paragraph 51.

<sup>1367</sup> [...]

<sup>1368</sup> Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (Civil Damage Directive’), OJ L 349, 5.12.2014, p. 1–19.

<sup>1369</sup> [...]

<sup>1370</sup> Commission Decision C(2021) 2871 of 28.04.2021 in case AT.40346-*Supra-sovereign, Sovereign and Agency bonds denominated in USD*.

and detection measures put in place is therefore incorrect. Third, compliance training and detection measures for cartel conduct does not affect the Commission's legitimate interest in finding an infringement against Bank of America. The Commission has consistently considered that the mere adoption of a compliance programme does not automatically justify a reduction of fines. A compliance programme does not affect the Commission's interest in establishing the existence of an infringement which took place before or despite a given compliance programme, even when it is no longer possible to impose a fine. Finally, when banks are merging or otherwise change structure<sup>1371</sup>, it cannot be excluded that employees that have not been subject to the same scrutiny engage in similar conduct.

- (794) Bank of America also claims that, when seeking to establish a legitimate interest to find it liable under Article 101 of the Treaty, the Commission must respect the principle of legal certainty and the rights of defence of the addressee. It explains that because of the length of time that has passed, Bank of America is not able to access exculpatory evidence which could have been used in its defence nor is it able to contextualise the communications on which the Commission relies in the SO. Bank of America claims that its inability to access possible relevant documents and testimonies from the relevant period constitutes a ground for annulment of the Decision.<sup>1372</sup>
- (795) This argument must be dismissed. First, in putting forward these claims, Bank of America relies on case-law which describes situations in which the Commission, during the administrative procedure, had not made available evidence in the case file which could have been useful to the addressee of the SO.<sup>1373</sup> Such a situation does not apply in this case. Second, documentary evidence in this case is set out in written chatrooms and Bank of America has had access not only to the extracts retained in evidence for this Decision, but to the complete set of the exchanges of its trader therein during the infringement period. There are no missing parts in CODS & CHIPS, the chatroom relevant to Bank of America's liability for the infringement. Third, Bank of America has failed to identify the kind of information that could have become unavailable or the reasons for such unavailability. According to settled case-law, undertakings have the duty to ensure the proper maintenance of information, enabling details of their activities to be retrieved in order to have the necessary evidence available in the event of legal or administrative proceedings.<sup>1374</sup> Finally, contrary to its claim of not being able to explain the communications in the SO, Bank of America has, based on these communications, put forward alternative explanations in its response to the SO.
- (796) Bank of America argues that the Commission has failed to demonstrate that it was party to the agreements or concerted practices that infringe Article 101(1) of the

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<sup>1371</sup> See for instance the merger of Bank of America with Merrill Lynch in 2008.

<sup>1372</sup> [...]

<sup>1373</sup> See for instance Judgment of 14 September 2017, *LG Electronics and Koninklijke Philips Electronics v Commission*, C-588/15 P and C-622/15 P, EU:C:2017:679, paragraph 49.

<sup>1374</sup> See for instance Judgment of 16 December 2003, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie v Commission*, T-5/00 and T-6/00, EU:T:2003:342, paragraph 87. The General Court has ruled that this duty applies to all undertakings in all situations (see judgment of 12 July 2018, *Pirelli v Commission*, T-455/14, EU:T:2018:445, paragraph 91). See also Judgment of the General Court of 9 April 2019, *Qualcomm, Inc. and Qualcomm Europe, Inc. v European Commission*, T-371/17, ECLI:EU:T:2019:232, paragraphs 136 and 137, upheld on appeal C-466/19 P, ECLI:EU:C:2021:76, paragraph 114.

Treaty and Article 53 of the EEA Agreement and that Bank of America did not participate in a single and continuous infringement. Therefore, the Commission cannot show a legitimate interest to find an infringement against Bank of America. To the extent that ‘infringement’ refers to anticompetitive conduct by others (for which Bank of America cannot be held responsible), those would be separate and different infringements.<sup>1375</sup> Bank of America further argues that its inclusion is not necessary to better explain the overall functioning and the full scope of the infringement.<sup>1376</sup>

- (797) These arguments must be dismissed. First, Bank of America's claims relate to the Commission's assessment in finding a single and continuous infringement and not to the Commission's legitimate interest in finding an infringement against it. Bank of America's arguments are therefore dismissed on that basis (see section 5.1.2). Second, the SO preliminarily concluded that all parties, including Bank of America, participated in a single and continuous infringement. The frequency with which their trader participated in the chats in the CODS & CHIPS chatroom and the sensitivity of the information exchanged in those communications has been described in the main body of the SO, as well as in its Annex. In *Toshiba*,<sup>1377</sup> the General Court held that an Annex to the SO with references to a series of events ‘*which demonstrate the various stages of infringing conduct of the cartel participants*’ does allow parties to understand the usefulness of alleged contacts and enables them to provide a defence. Accordingly, it emerges from a plain reading of the SO and its Annex that Bank of America was party to the agreement or concerted practices that infringe Article 101(1) of the Treaty and Article 53 of the EEA Agreement.
- (798) Third, the Bank of America trader was a party to multilateral chats in the CODS & CHIPS chatroom and participated in all of the types of anticompetitive conduct identified in this Decision.<sup>1378</sup> The Bank of America trader actively participated in the CODS & CHIPS chatroom and his interaction with other players reinforced the mutual interdependence between the traders in sustaining their collusive behaviour and maximising the benefits resulting from the anticompetitive conduct. The sharing of commercially sensitive information by the Bank of America trader within that multilateral chat increased the information available to other participants and therefore reduced uncertainties in the market for all of them. The higher the number of participants sharing sensitive information the higher the chances for the cartel to be successful. The inclusion of Bank of America is necessary for the Commission to explain the overall functioning and the full scope of the cartel.
- (799) Finally, exchanges within the chatrooms are based on mutual trust and on the expectation of receiving similar disclosures over time. The exchanges on 29 January 2007 show that the participants, including the trader of Bank of America, were aware that they were not allowed to disclose information outside the CODS & CHIPS chatroom and that only trusted participants were allowed to join. Irrespective of the fact that the trader of Bank of America did not have access to the DBAC chatroom,

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<sup>1375</sup> [...]

<sup>1376</sup> [...]

<sup>1377</sup> Case T-8/16, *Toshiba Samsung Storage Technology*, paragraph 145.

<sup>1378</sup> See also paragraphs (113) and (529) of the SO.

See also the overview of anticompetitive contacts in Annex to this Decision.

Bank of America is liable for the anticompetitive conduct of its trader in the CODS & CHIPS chatroom at the time when the Bank of America trader was part of it.<sup>1379</sup>

- (800) Similarly, Natixis argues that its inclusion in the Decision is not necessary for the Commission to explain the overall functioning and the full scope of the cartel. Natixis argues that the Commission has done so in instances where the relevant undertakings were engaged in infringing conduct both before and after the application of the limitation period in cases where either an undertaking's infringing conduct extended across a broader geographic area than shown solely by non-time-barred conduct or to demonstrate the full time period of a whole undertaking's involvement in the infringing conduct.<sup>1380</sup> According to Natixis, the presence and participation of the other banks is sufficient for the Commission to explain the infringement in its entirety.<sup>1381</sup>
- (801) These arguments must be dismissed. The inclusion of Natixis in the Decision is necessary for the Commission to explain the overall functioning and the full scope of the cartel since the Natixis trader participated in the conduct from the very beginning, when working for another bank, and actively participated in both chatrooms, namely CODS & CHIPS and DBAC. The anticompetitive communications in which the Natixis trader was involved covered all four categories of conduct, they were frequent and sensitive and involved multiple participants. The inclusion of Natixis is equally necessary for the Commission to show that the anticompetitive conduct of its trader continued regularly throughout the relevant period and was not separated by gaps in time resulting from the trader changing banks several times from ABN-AMRO/RBS to Natixis, and subsequently to WestLB and UniCredit.
- (802) Natixis also refers to the particular circumstance of having cooperated with the Commission investigation by means of a leniency application. According to Natixis, undertakings would lose all incentives to cooperate with a Commission investigation if that cooperation cannot be rewarded and instead, even though it would not be eligible for a fine, it would still be the subject of a formal decision establishing its participation in the infringement. At the same time, Natixis informed the Commission during the administrative investigation that it would argue on the prescription of its conduct but added that this should not be interpreted in any way as a denial of liability.<sup>1382</sup>
- (803) This argument must be dismissed. Natixis could not have any legitimate expectations in this regard. First, the Leniency Notice does not contemplate immunity from liability, but only immunity from fines and reduction of fines.<sup>1383</sup> Even the immunity applicants who disclose the cartel's existence to the Commission are addressees of a formal decision finding their participation in an infringement, which is capable of triggering recidivism in a following case and which facilitates damages claims in civil proceedings before national courts. There is no reason or legal basis for the

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<sup>1379</sup> See Section 4 and the overview of anticompetitive communications in the Annex to the Decision.

<sup>1380</sup> Commission Decision C(2015) 4336 of 24.06.2015 in Case AT.39563 *Retail Food Packaging*, recital 1006, Commission Decision (2008) of 01.10.2008 in Case AT.39181 *Candle Waxes*, recital 617, Commission Decision (2010) of 23 June 2010 in CASE AT. 39092 *Bathroom Fittings and Fixtures*, recital 1179.

<sup>1381</sup> [...]

<sup>1382</sup> [...]

<sup>1383</sup> Points (8) and (23) of the Leniency Notice.

Commission to be more favourable towards an undertaking that is the third to apply for immunity and/or leniency under the Leniency Notice (like Natixis) than to the immunity applicant, who is the first to apply for immunity under the Leniency Notice.

- (804) Second, undertakings come forward for leniency after mature reflection (in particular if they come third) and with insider knowledge of their own behaviour, including the duration of their participation. A plain reading of Article 23(2)(a) of Regulation (EC) No 1/2003 would have led to the conclusion that the conduct was time-barred for fining purposes and this objective factor could have been taken into account by the company at any stage. Natixis must have been aware of this risk. By the time that Natixis applied for leniency, the Commission already knew of its participation in the chatroom from other sources and Natixis was aware of this. Applying for leniency cannot be a means for Natixis to escape its liability.

### **8.3. Termination of the infringement**

- (805) Where the Commission finds that an infringement of Article 101 of the Treaty has been committed, 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.
- (806) The last evidence of an infringement in this Decision dates back to 2011 and for two undertakings the last evidence of their individual participation in the infringement dates back more than ten years before the adoption of this Decision, preventing the Commission from imposing fines on those two undertakings. Despite these elements, it is not possible to declare with absolute certainty that the infringement has ceased for all of the participants. 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.

### **8.4. Setting of the fines**

- (807) For the undertakings that are subject to Article 23(2)(a) of Regulation (EC) No 1/2003, the Commission sets the fines in accordance with its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 ('the Guidelines on fines').<sup>1384</sup>
- (808) The Guidelines on fines provides that a two-step methodology should be used.<sup>1385</sup> First, the Commission determines a basic amount of the fine for each undertaking.<sup>1386</sup> Second, the Commission adjusts the basic amount on the basis of an overall assessment which takes account of all the relevant circumstances.<sup>1387</sup> The basic amount can be increased or reduced if either aggravating or mitigating circumstances are found.<sup>1388</sup> The Commission sets the fines at a level sufficient to ensure deterrence.<sup>1389</sup>

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<sup>1384</sup> OJ C 210, 1.9.2006, p. 2. According to point 37 of the Guidelines on fines the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in their point 21.

<sup>1385</sup> Point 9 of the Guidelines on fines.

<sup>1386</sup> Point 10 of the Guidelines on fines.

<sup>1387</sup> Point 27 of the Guidelines on fines.

<sup>1388</sup> Points 28 and 29 of the Guidelines on fines.

<sup>1389</sup> Point 30 of the Guidelines on fines.

(809) Finally, the Commission takes into account the legal maximum of the fine that may be imposed<sup>1390</sup>, the Leniency Notice<sup>1391</sup> and any claim for inability to pay.<sup>1392</sup> The Commission will use rounded figures in its fining calculation.<sup>1393</sup>

#### 8.4.1. *Basic amount*

(810) 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 in the EEA.

##### 8.4.1.1. Value of sales

###### *Principle*

(811) The value of sales is used as a starting point to calculate a variable and additional component of the basic amount of the fine. The Commission normally uses the value of the sales made during the last full business year of participation in the infringement.<sup>1394</sup> If the last year is not sufficiently representative, the Commission may choose another time period that is representative.

###### *Application in this case*

(812) Financial products such as EGB do not generate sales in the usual sense, as they are both bought and sold by the dealers and revenues are derived from the difference between the purchase price and the sale price of each bond acquired and then sold by the traders.

(813) It is therefore appropriate in this case to calculate a proxy for the value of sales as the starting point for determining the basic amount of the fines.

(814) 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'.<sup>1395</sup> These methods reflect trading profits netted against trading losses and therefore do not adequately reflect the economic importance of the infringement or the relative weight of each undertaking in the infringement. Rather, they are comparable to a measurement of profit from trading activities and thus do not constitute an appropriate proxy for the value of sales under the Guidelines on Fines.<sup>1396</sup> 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 and may not create sufficient deterrent effect. The Commission considers that,

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<sup>1390</sup> Points 32 and 33 of the Guidelines on fines.

<sup>1391</sup> Point 34 of the Guidelines on fines.

<sup>1392</sup> Point 35 of the Guidelines on fines.

<sup>1393</sup> Point 26 of the Guidelines on fines.

<sup>1394</sup> Point 13 of the Guidelines on fines.

<sup>1395</sup> 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) and 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).

<sup>1396</sup> Case T-105/17, *HSBC*, paragraph 322.

in light of the nature of EGB and the trading thereof, the same considerations apply in this case.

- (815) Instead, it is appropriate to use the notional volume and value of the EGB that the parties traded during their individual period of involvement in the cartel as a starting point for the specific proxy for the value of sales in this case. The notional amounts better reflect the economic importance of the infringement as well as the relative weight of each undertaking therein, similarly to the use of turnover in other economic sectors, since the nominal amounts give an indication of the share of each of the parties in the trade of the products concerned by the infringement and thus also give an indication of the scale of the infringement by each of the parties.<sup>1397</sup>
- (816) Whilst this case involves primary and secondary trading, the Commission only bases its proxy for the value of sales on the notional amounts of EGB traded by each party on the secondary market during the relevant period of individual involvement<sup>1398</sup>, as this is the activity that all parties had in common and it avoids the risk of the same revenue being counted twice as part of the fining calculation.
- (817) For the purposes of the fining calculation in this Decision, the Commission takes as a reference the relevant annualised notional amounts traded by each party in EGB transactions entered into with counterparties located in the EEA<sup>1399</sup> during the months corresponding to that party's individual participation in the infringement. The Commission takes into account the sum of the broker trades executed via inter-dealer brokers located in the EEA and the client trades with EEA counterparties, for all maturities, for the relevant months.<sup>1400</sup> For rounding purposes, the months that partly fall outside the period of individual participation are not taken into account.<sup>1401</sup>
- (818) Portigon did not provide any data on its notional amounts traded in the secondary market. The Commission therefore used the best information available in order to determine the relevant annualised notional amounts traded. To do this, as WestLB (currently Portigon AG) was active as Primary Dealer only in Germany,<sup>1402</sup> the Commission first selected the notional amounts allocated to WestLB by the Bundesrepublik Deutschland - Finanzagentur GmbH (the German Debt Management Office) during Portigon's infringement period.<sup>1403</sup> The total amount allocated by the

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<sup>1397</sup> In application of Point 6 of the Guidelines on fines.

See also, T-105/17 *HSBC*, paragraph 322.

<sup>1398</sup> See Section 2.3 for the undertakings and the relevant EGB desks.

See Section 7 for the periods of individual participation.

<sup>1399</sup> 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, in line with the RFI sent by the Commission on 20 March 2017, which defined an EEA counterparty under point (ix) of section 1 Definitions/Instructions.

<sup>1400</sup> See recital (72) and footnote 72 for reference to the relevant request for information of 20.03.2017 and the corresponding replies. See also paragraph (689) of the Statement of Objections,

<sup>1401</sup> One exception to this rounding principle would be if the period of individual participation does not include any full month. For example, if the infringement period of one party lasts from 12 to 29 April 2009, then the notional amounts traded in April 2009 are taken into account and multiplied by 12 to obtain the annualised notional amounts. If the infringement period of another party lasts from 12 April to 14 May 2009, then the notional amounts traded in April and May 2009 are taken into account and multiplied by 6 to obtain the annualised notional amounts.

<sup>1402</sup> [...]

<sup>1403</sup> [...]

Finanzagentur to WestLB through primary market auctions during the infringement period (19 October 2009 to 3 June 2011) was EUR [...]. Subsequently, in order to estimate from this primary market data notional amounts traded by WestLB in the secondary market, the total amount allocated by the Finanzagentur to WestLB was multiplied by the average ratio of: (1) the notional amounts traded by the other parties on the secondary market to (2) the nominal value allocated to the other parties on primary market auctions during their respective infringement period. This ratio is [...].<sup>1404</sup> The estimate of the notional amounts traded by WestLB in the secondary market during the infringement period is therefore EUR [...]. The precise figure is included in Portigon’s individual confidential Annex 2 to this Decision.

- (819) While 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, since the time period of individual involvement is different for most parties, and sometimes relatively short, and given the high volatility of the bid-ask spread over the infringement 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 notional amounts traded during the period of individual involvement in the cartel are annualised by a factor in function of the duration of the individual participation by dividing the total amount by the number of months of participation and subsequently multiplying this monthly average by 12. The precise figure is included in the individual confidential Annex 2 to this Decision.

*Table 5: Annualised notional amounts traded*

<b>Undertaking</b>	<b>Bandwidth (EUR)</b>
NatWest (RBS)	[...]
Nomura	[...]
Portigon (WestLB)	[...]
UBS	[...]
UniCredit	[...]

- (820) These annualised notional amounts traded reflect the relative weight of each undertaking in the infringement, irrespective of the period of individual participation, but may lead to disproportionate fines if the particularities of the financial industry and the EGB industry in particular are not taken into account.
- (821) The particularity of the financial industry, and EGB trading in particular, is that these products are constantly traded on the secondary market. They are traded for a price that is expressed as a percentage of the notional amount and the revenue on those

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The Commission informed Portigon about its intention to use data from the Finanzagentur as best available information for any possible calculation of the value of EGB trades and Portigon replied that it considered this data plausible and that it did not raise any objection to the Commission using them as the basis for calculating the value of its EGB trades. [...]

<sup>1404</sup> This ratio was calculated based on the data provided by the other parties in their replies to the Commission’s request for information of 20 March 2017. [...]

For example, during its alleged infringement period, party A was allocated EUR 1 800 000 000 in primary market auctions and traded a total of EUR 15 000 000 000 in notional amounts in the secondary market. The ratio (secondary / primary) would then be  $(15\,000\,000\,000 / 1\,800\,000\,000) = 8.33$ . For Party B, the amounts are EUR 2 000 000 000 and EUR 19 380 000 000 respectively. The ratio would then be  $(19\,380\,000\,000 / 2\,000\,000\,000) = 9.69$ . The average ratio is  $(8.33 + 9.69) / 2 = 9.01$ . The figures in this example are illustrative only.

transactions is reflected in the difference between the purchase price and the sale price of each bond acquired and then sold by the traders. This price difference is also known as the bid-ask spread.

- (822) It is appropriate, and consistent with the Commission’s decisional practice in relevant financial cases,<sup>1405</sup> to take into account the bid-ask spreads related to the price spread levels of EGB for the purposes of calculating the fines in this Decision. More specifically, the Commission adjusts or discounts the annualised notional amounts of EGB traded on the secondary market by a factor that takes account of the bid-ask spread levels inherent to this market. The adjustment or discount factor<sup>1406</sup> ensures that the fines are set at a level which not only reflects the economic importance of the infringement but also respects the principle of proportionality whilst creating a sufficient deterrent effect.
- (823) The Commission applied a specific adjustment factor for each party, because the evolution of the bid-ask spread levels of EGB showed a high volatility and discrepancy across issuing countries, maturities and throughout the infringement period.<sup>1407</sup>
- (824) For each party, the adjustment factor corresponds to 50% of an appropriate bid-ask spread (the ‘final bid-ask spread’).<sup>1408</sup> Trading and/or interest revenues are not included in the estimation.<sup>1409</sup>
- (825) The final bid-ask spread is calculated for each party as the simple average of daily bid-ask spreads computed for each working day of each party’s infringement period.

$$\begin{aligned}
 \textit{Final bid-ask spread} (\%) = & \quad (\textit{Daily bid-ask spread})_{\textit{first working day}} \\
 & + (\textit{Daily bid-ask spread})_{\textit{second working day}} \\
 & + \dots \\
 & + (\textit{Daily bid-ask spread})_{\textit{last working day}} \\
 & \quad \quad \quad \underline{\hspace{10em}} \\
 & \quad \quad \quad \textit{Total working days}
 \end{aligned}$$

- (826) Each daily bid-ask spread is calculated individually for each party and consists of the weighted average of the bid-ask spread level of 32 representative bonds<sup>1410</sup> to which 32 specific weights are assigned.<sup>1411</sup>

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<sup>1405</sup> See AT.39924 – *Swiss Franc Interest Rate Derivatives* (Bid Ask Spread Infringement) (Commission Decision of 21 October 2014, C(2014) 7602); AT.40135 – *Forex-Three Way Banana Split* (Commission Decision of 16 May 2019, C(2019) 3521) and 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).

<sup>1406</sup> The adjustment factor mirrors the discount factor. For instance, an adjustment factor of 1,4% is equivalent to a discount factor of 98.6% (100% - 98.6% = 1.4%).

<sup>1407</sup> Bid-ask spread levels were for example on average wider during the bond crisis period in 2011.

<sup>1408</sup> 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, he or she can execute the transactions by, at the same time, buying at the bid price and selling at the ask price, the bid price being lower than the ask price. Although, conceptually, the revenues made by the bond trader amount to the full bid-ask spread when considering the two transactions together, it follows that, when one considers each of the two transactions individually, the revenues amount to the notional amount multiplied by half the bid-ask spread.

<sup>1409</sup> Bonds traders also generate trading revenues and earn interest revenues generated by the coupon simply by holding bonds in their books. These revenues could in principle be added to the adjustment factor and reduce the discount given.

$  \begin{aligned}  \text{Daily bid-ask spread, day 1} = & \text{Bond 1: bid-ask spread level * weight} \\  & + \text{Bond 2: bid-ask spread level * weight} \\  & + \dots \\  & + \text{Bond 32: bid-ask spread level * weight}  \end{aligned}  $
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- (827) The 32 representative EGB were selected from eight issuing countries spread over four maturity ranges.<sup>1412</sup> The representative sample of eight issuing countries included Belgium, France, Germany, Greece, Ireland, Italy, Portugal and Spain.<sup>1413</sup> EGB were selected with a remaining maturity of 2, 5, 10 and 30 years, for the 0-3 years, the 3-7 years, the 7-10 years and above 10 years maturity ranges respectively. Those maturities are very common in the bond market and are widely considered as the ‘benchmark’ maturities by the investor community.<sup>1414</sup> They also correspond to the ones published by the majority of the DMOs in their yearly issuance calendar.<sup>1415</sup>
- (828) The bid-ask spread data for these 32 representative bonds were collected from the Bloomberg BGN composite price source<sup>1416</sup>, resulting in 32 individual bid-ask spread data points for each working day of the infringement period. For each party and for each working day of their respective infringement period, the Commission calculated a daily bid-ask spread consisting in a weighted average of these 32 data points. The 32 weights used to calculate the daily bid-ask spreads are specific for each party and are derived from each party’s specific breakdowns of notional amounts traded per issuing country and per maturity that were provided by each party in their replies to the Commission’s requests for information of 20 March 2017

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<sup>1410</sup> For the purposes of calculating the daily bid-ask spread on any given day, the Commission relied on the weighted average of the bid-ask spread level of 32 representative bonds. However, as can be seen from Tables 3-6 of Annex 2, the Commission updated the pool of representative bonds relied on to take account of the duration of the infringement (for example, as can be seen from Table 3 with respect to Germany-issued bonds with a maturity of 0-3 years, the Commission relied on Bond DBR 4 ½ 07/04/09 for calculating the daily bid-ask spread for the period from 4 January 2007 – 31 December 2007. However, for the period 1 January 2008 – 31 December 2008, it calculated the bid-ask spread on the basis of DBR 5 ¼ 07/04/10 and so on).

<sup>1411</sup> Contrary to a simple average where all elements are assigned the same weight (for example 1/10 for the average of 10 elements), in a weighted average, each element has a specific weight (for example: 30% for element 1, 5% for element 2, ...), the sum of all weights being equal to 100%.

<sup>1412</sup> The Commission explained the selection of representative bonds, bid-ask spread data and weights to the parties concerned in a letter of 06.11.2020, as clarified on 09.12.2020. See Recital (75).

<sup>1413</sup> France was taken as a proxy for France, the Netherlands, Austria and Finland because the similarity of the rating throughout the infringement period. Other Eurozone Member States during the time of the infringement were not selected because there were no EGBs traded (Luxembourg) or the notional amounts traded were very limited (Cyprus, Estonia, Malta, Slovenia and Slovakia).

<sup>1414</sup> For example, the futures contracts on German bonds that are typically taken as reference for the pricing of bonds and that are widely used as a hedging tool by traders have as underlying asset German bonds with maturities of 2 years (Schatz futures), 5 years (Bobl futures), 10 years (Bund futures) and 30 years (Buxl futures).

<sup>1415</sup> See for example:  
<https://www.deutsche-finanzagentur.de/en/institutional-investors/primary-market/auction-results/> for auctions by the German DMO;  
[http://www.dt.mef.gov.it/en/debito\\_publico/dati\\_statistici/riepilogo\\_emissioni/riepilogo\\_emissioni\\_bt\\_p/](http://www.dt.mef.gov.it/en/debito_publico/dati_statistici/riepilogo_emissioni/riepilogo_emissioni_bt_p/) for auctions by the Italian DMO.

<sup>1416</sup> Bloomberg Generic Price (BGN) is a real-time composite price for corporate and government bonds, based on executable and indicative quotes from multiple dealers. It indicates available consensus-forming prices. (see <https://www.bloomberg.com/professional/product/pricing-data>). Historical BGN prices are end-of-day prices.

and 27 March 2018<sup>1417</sup> Each weight represents the average of the share of each issuer and each maturity in the notional amount traded by each party throughout their respective periods of participation in the infringement. Consequently, the 32 weights remain constant throughout each party's infringement period.

- (829) Portigon did not provide a breakdown of notional amounts traded in the secondary market per issuing country or per maturity. The Commission therefore used the best information available in the calculation of Portigon's daily bid-ask spreads and of Portigon's final bid-ask spread. In this respect, the Commission relies on the breakdown data provided by the other parties and aggregated those breakdowns as if the other parties traded one common portfolio. The resulting breakdowns per issuing country and per maturity are therefore a weighted average of the breakdowns of the other parties.
- (830) A detailed overview of the representative bonds and the weights used to calculate the daily bid-ask spreads have been provided to the relevant parties in Annex 2 to this Decision.
- (831) The adjustment factor was rounded down to the third digit in percentage terms. The precise figure is included in the individual confidential Annex 2 to this Decision.

*Table 6: Adjustment factors*

<b>Undertaking</b>	<b>Bandwidth (%)</b>
NatWest (RBS)	[...]
Nomura	[...]
Portigon (WestLB)	[...]
UBS	[...]
UniCredit	[...]

- (832) Based on the notional amounts in Table 5 and the adjustment factors in Table 6, the proxy for the value of sales is the following.

*Table 7: Value of sales*

<b>Undertaking</b>	<b>Proxy for value of sales (EUR)</b>
NatWest (RBS)	[...]
Nomura	[...]
Portigon (WestLB)	[...]
UBS	[...]
UniCredit	[...]

*Arguments of the parties concerning the procedure*

- (833) Some parties argue that the Commission has given insufficient reasoning for the fines calculation in the SO and in the subsequent clarification of 6 November 2020.<sup>1418</sup> The Commission allegedly has not disclosed the basis on which it has determined that the bonds in its calculation are representative. The Commission also did not explain the value of sales proxy to be applied to the other parties.<sup>1419</sup> They claim that this lack of reasoning violated their rights of defence and some add that

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<sup>1417</sup> Recital (72). If a party was not able to provide any data on its notional amounts traded in the secondary market, the best information available is used in order to determine the relevant breakdowns of notional amounts traded per issuing country and per maturity.

<sup>1418</sup> Recital (75).

<sup>1419</sup> [...]

the clarification of 6 November 2020 should have been given in a supplementary SO instead of a letter.<sup>1420</sup>

- (834) The Commission considers that these allegations are unfounded. The calculation methodology for the proxy for the value of sales has been explained to the parties thoroughly and the parties have been able to provide their views on it so that those observations could be taken into account in the final decision.<sup>1421</sup> The SO sets out the reasons why the Commission needs to apply a specific proxy for the value of sales based on the notional amounts of EGB traded by the parties during their individual periods of involvement in the cartel and informed the parties concerned of the notional amounts used for such calculation. The SO informed the parties that the notional amounts would then be reduced with an adjustment factor that could be obtained from evidence on file or publicly available data related to the estimated price spread levels of EGB.<sup>1422</sup> After having heard the arguments of the parties concerning such an approach in response to the SO and at the oral hearing, the Commission set out clearly in a letter of 6 November 2020 the evidence and methodology used for calculating the estimated spread levels and the related adjustment factor (Communication on the proxy for the value of sales).<sup>1423</sup> Upon request, the Commission provided further explanations, which were shared with all parties.<sup>1424</sup> The Communication on the proxy for the value of sales did not contain any new objections, but enabled the parties concerned to ascertain the reasons for the Commission's choice of an adjustment factor for the proxy of the value of sales, the underlying figures retained in their regard and the resulting amount of their respective proxy, as well as giving them the opportunity to comment.
- (835) It is settled case-law that the Commission fulfils its obligation to respect the undertakings' right to be heard on the fines methodology if it indicates expressly in the SO that it will consider whether it is appropriate to impose a fine on the undertakings concerned and sets out the principal elements of fact and of law that may give rise to a fine, such as the gravity and the duration of the alleged infringement and the fact that it has been committed intentionally or negligently.<sup>1425</sup> At the stage of the SO, the Commission is not required to take a final decision on the exact amount of the fine that it intends to impose nor on the final method for determining the amount of the fines that it intended to apply.<sup>1426</sup>
- (836) The fact that such clarification is given by letter has been endorsed by the General Court in the *Campine* case.<sup>1427</sup> The Court considered in that case that the claim that the Commission has violated the rights of defence by giving insufficient explanation on the fines methodology applied was even less justified in light of the explanation that was given by letter, enabling the parties concerned to submit observations and taking into account that the parties concerned effectively submitted such

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<sup>1420</sup> Recital (553).

<sup>1421</sup> [...]

<sup>1422</sup> [...]

<sup>1423</sup> Recitals (75) and (823).

<sup>1424</sup> Footnotes 78 and 1412.

<sup>1425</sup> Judgment of 15 March 2006, T-15/02 *BASF v Commission*, EU:T:2006:74, paragraph 48 and the case-law cited. See also Case T-240/17, *Campine*, paragraph 355.

<sup>1426</sup> Case T-240/17, *Campine*, paragraph 360.

<sup>1427</sup> Case T-240/17, *Campine*, paragraph 359.

observations.<sup>1428</sup> This Decision is consistent with the methodology explained in the Communication, while duly taking into consideration the allegations made by the addressees in response to the Communication.<sup>1429</sup>

- (837) The right to be heard does not imply that the party concerned must be given the opportunity to express its views orally. Thus, the exercise of the right to be heard does not necessarily require an oral hearing, since the opportunity to provide comments in writing also allows that right to be observed.<sup>1430</sup> The responses to the SO and the observations on the Communication that were sent to DG Competition were shared with the cabinet of the responsible Commissioner, DG Competition's hierarchy, other Commission services involved, including the Chief Economist, and the Hearing Officer and the competent authorities of the Member States ahead of the meeting of the Advisory Committee. DG Competition organised State of Play meetings with all parties.<sup>1431</sup> None of the parties that claimed that only being able to submit observations in writing insufficiently allowed them to exercise their right of defence referred the matter to the Hearing Officer.

*Arguments of the parties concerning the appropriateness of the methodology*

- (838) Second, on substance, various parties disagree with the methodology for calculating a proxy for the value of sales. They claim that using notional amounts and a uniform price spread level discount factor is inaccurate and arbitrary; that it breaches the principle of equal treatment; and that it ignores the best available figures. These parties also argue that their (adjusted) trading revenue data better reflect the value of sales.<sup>1432</sup>
- (839) The Commission disagrees and maintains that its approach gives a better reflection of the value of sales and therefore of the economic importance of the infringement than any alternative approach proposed by the parties based on their revenues. Trading revenue involves, in essence, taking into account both profitable and loss-making transactions during the infringement period, and constitutes a figure which is comparable to the profit derived from trading activities. Such a limitation would run counter to the logic applied in the methodology in the Guidelines on Fines when it set the basic amount of the fine by reference to the value of sales, namely to reflect the economic significance of the infringement and the size of the involvement of the undertaking concerned.<sup>1433</sup> The proxy aims to measure the economic activity of an undertaking in the sector concerned and not how successful this undertaking was in that activity.
- (840) For the notional amounts, some parties take issue with the Commission's approach to take all EGB traded into account for setting the fines. They claim that only some EGB were discussed and that many EGB trades taken into account for setting the fine are not directly or indirectly related to the infringement.<sup>1434</sup>

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<sup>1428</sup> Case T-240/17, *Campine*, paragraph 358, for an analogy with an intention to increase the amount of the fine.

<sup>1429</sup> Case T-240/17, *Campine*, paragraph 340.

<sup>1430</sup> Case T-380/17, *HeidelbergCement AG and Schwenk Zement KG*, paragraph 634; Judgment of the General Court of 29 November 2017, *Bilde v Parliament*, T-633/16, ECLI:EU:T:2017:849, paragraphs 100 and 101 and the case law cited.

<sup>1431</sup> Recital (76).

<sup>1432</sup> [...]

<sup>1433</sup> See in that respect, Case T-105/17, *HSBC*, paragraphs 322-323.

<sup>1434</sup> [...]

- (841) The Commission’s approach in the fining methodology is, however, consistent with its finding with respect to the scope of the single and continuous infringement.<sup>1435</sup> The Commission has established a single and continuous infringement regarding EGB covering the entire EEA. In this regard, while some EGB may have been discussed more extensively than others, no EGB were explicitly excluded from their discussions. Indeed, as [...] (RBS) noted on 9 September 2010, when a new trader was added to the DBAC chatroom: ‘[...] *these are a couple guys in the market that work on 30yrs*’ ‘*we just try to help each other when we can*’.<sup>1436</sup> Moreover, discussion about specific EGB can have an impact on the pricing and strategies for other EGB not explicitly discussed. Certain EGB, in particular recently issued German bonds with 2, 5, 10 or 30 year maturity often act as benchmark for the price of others.<sup>1437</sup> The EGB investor community (endcustomers and, by extension, the traders) have generally an investment universe that encompasses EGB from all countries and often adopt strategies that favour the exposure to one issuing country or one maturity range relative to another one (for example an investor will be ‘*long France vs. short Spain*’ or ‘*long 2 years vs. short 10 years*’). In that sense, bonds are often exchanged for others in so-called ‘cross-trades’.
- (842) For the adjustment factor, many parties wrote in their responses to the SO that the Commission should not use a uniform factor as this would lead to unequal treatment.<sup>1438</sup>
- (843) The evolution of the bid-ask spread levels of EGB showed a high volatility and discrepancy across issuing countries, maturities and throughout the infringement period. Taking into account that the period of individual participation in the infringement was different for each party, and that some parties only participated in the infringement towards the end of infringement period, it is more appropriate in this specific case not to use a uniform adjustment factor but to apply a specific and different adjustment factor for each party that takes into account the bid-ask spread level for the issuing countries and maturities of EGB traded in the period of their participation to the infringement.<sup>1439</sup>
- (844) With regard to the selection of the representative EGB described in recital (827), some parties argue that the selected bonds are not representative, in particular the bonds selected for the above 10 years maturity range, which are almost exclusively bonds with a remaining maturity of 30 years.<sup>1440</sup>
- (845) As described in recital (827), EGB were selected with a remaining maturity of 2, 5, 10 and 30 years, for the 0-3 years, the 3-7 years, the 7-10 years and above 10 years maturity ranges respectively because those maturities are very common in the bond market and are widely considered as the ‘benchmark’ maturities by the investor community. With regard to the above 10 years maturity range, the fining methodology only includes bonds with a remaining maturity of 30 years that are ‘on-the-run’ bonds or bonds that have been issued recently, that are traded more

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<sup>1435</sup> Recitals (416) and (465)-(467).

<sup>1436</sup> Recital (294).

<sup>1437</sup> This price reference is often expressed as a yield spread. For example, a French 10 year bond will quote at ‘Bund+30’, meaning that the French bond will have a yield that is 0.30% higher than the yield of the benchmark German 10 year bond.

<sup>1438</sup> [...]

<sup>1439</sup> Recital (823).

<sup>1440</sup> [...]

frequently, and, as such considered as more representative. Moreover, more frequently traded bonds have narrower bid-ask spreads. In contrast, a bond with a remaining maturity of 15 or 20 years is often a 30 year bond that has been issued 10 or 15 years earlier. Those bonds are traded less frequently and consequently have wider bid-ask spreads. In this case, bonds with remaining maturities shorter than 30 years do not necessarily have narrower spreads.

- (846) For the EGB chosen in the maturity ranges, UBS indicated that in the 7-10 years maturity range, the maximum years-to-maturity of the EGB chosen by the Commission was higher than 10 years and that the Commission should choose bonds with years-to-maturity that never exceed 10 years.<sup>1441</sup> This claim is valid, and the set of representative bonds has been adapted within the 7-10 years maturity range.
- (847) For the weighting, Nomura, UBS and UniCredit contend that the Commission should do the weighting by maturity on an issuer-by-issuer basis.<sup>1442</sup> They also claim that the use of constant weights ignores the variation in the relative weights per maturity and per issuer over time. UBS suggested that the Commission should reset the weights used on a yearly basis while Nomura suggests daily resets.<sup>1443</sup> Finally, Nomura argue that Commission should not round the weightings percentages.<sup>1444</sup>
- (848) The Commission rejects these claims. For the reasons set out in recitals (812) to (813), financial products such as EGB do not generate sales in the usual sense requiring the Commission to apply a specific proxy for the value of sales. The Commission has determined this proxy on the basis of data provided by the addressees and public information which it regards as relevant and appropriate.<sup>1445</sup> In this respect, the use of a weight matrix computed from the crossing of weights per issuing country and the weights per maturity was considered the best approach based on the data provided by the parties: the notional traded amounts per issuing country and the notional traded amounts per maturity.
- (849) Moreover, the methodology described in recitals (815) to (832) is clear and consistent. The selection of representative bonds for each party, after taking into account the observations of the parties on maturities and rounding of weightings as set out in recitals (846) and (847), and the use of daily Bloomberg BNG bid-ask spreads enable a consistent, transparent and feasible determination of the proxy for the value of sales. The level of detail inherent to each element is appropriate for an efficient, credible and comprehensible calculation of the proxy for the value of sales. The Commission has calculated the weightings for each party on the basis of an overall average of the amounts traded per issuer and per maturity by that party across the infringement period. Such average takes account of fluctuations in the parties' portfolios and thus is a valid calculation methodology for the period as a whole. The Commission however accepts that it is not necessary to round the weightings and has used exact weighting percentages in its calculations.<sup>1446</sup>
- (850) The alternative approaches put forward by Nomura, UBS or UniCredit set out in recital (847), significantly complicate the methodology, by adding extra layers of

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1441 [...]

1442 [...]

1443 [...]

1444 [...]

1445 Case T-105/17, *HSBC*, paragraph 321.

1446 See Annex 2.

detailed data gathering and calculations over thousands of trades, but do not enhance the reasonable methodology in any meaningful way and do not demonstrate that the Commission's approach to the fining calculation is inappropriate in the circumstances of the case. The Commission also needed to adopt an approach that was appropriate for all parties taking account of the information in its possession. Absent objective differences in the parties' respective situations, the Commission cannot apply different methodologies for different parties.

- (851) Some parties claim that the spreads derived from Bloomberg BGN prices do not reflect the spreads actually earned by the parties, as those prices are based on executable and indicative quotes that allegedly are only a starting point and may be revised depending on trade and counterparty specific factors.<sup>1447</sup> Some parties also argue that Bloomberg BGN prices are end-of-day prices and are consequently not indicative of actually executed intra-day prices.<sup>1448</sup>
- (852) As no intra-day bid and ask prices are available from the addressees for the period 2007-2011,<sup>1449</sup> the Commission considers that the historic BGN bid and ask prices retrieved from Bloomberg are the best figures available that, being determined at the same moment (end of day) and hence allowing for the computation of a reliable bid-ask spread, enable a fair and equitable reflection of the parties' true values and economic importance.
- (853) Some parties claim that in their market making activities traders face pricing risk when holding open positions, so that they might incur a loss and do not earn the bid-ask spread. They argue that the Commission's methodology overlooks that traders may choose to hedge their open positions and hedging trades are done at no or negative spreads.<sup>1450</sup>
- (854) The way traders choose to hedge and manage the risk linked to the open positions in their portfolio should not be taken into account. 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. Thus, if a trader feels uncomfortable with filling a customer's order – because he feels that seeking liquidity for that order might be costly or that the resulting open position might be challenging to offload – he will quote a relatively unattractive price (a low bid price or a high ask price) that reflects those expectations and takes his/her own portfolio risk into account. Should the customer accept these terms of trade then the trader has been compensated for the risk by a wider than normal spread. Furthermore, if accepting a customer order would put his/her portfolio beyond his authorised risk limits, a trader can also refuse to quote. Finally, a trader is not obliged to hedge an open position immediately and can hold a specific bond until he finds another end customer to trade with and so close his positions and earn the spread on both sides of the trade. To that end, traders aim at building a wide network of end customers which facilitates the building and offloading of their open positions whilst earning trading revenues. Those features are inherent in the competitive nature of the trading activities. The value of sales is therefore considered

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1447 [...]  
1448 [...]  
1449 [...]  
1450 [...]

to be best measured by the volume of the notional amount traded adjusted by a factor reflecting the spread earned.

- (855) Portigon argues that the ratio used by the Commission to estimate its total notional amounts traded on the secondary market is arbitrary and artificial and that the Commission should base its calculation on trades that actually occurred. Portigon also argues that the weightings used by the Commission to compute the adjustment factors are inappropriate, as they do not reflect the trading activity of WestLB on the secondary market during the infringement period. Portigon further claims that the best available information for this trading activity is its own statement in its response to the SO that West LB almost exclusively traded German bonds in the secondary market.<sup>1451</sup>
- (856) Given Portigon's failure to provide a breakdown of the notional amounts that it traded in the secondary market per issuing country or per maturity, the Commission was required to rely on the best available alternative information to compute an estimate of Portigon's secondary market data and an estimate of its adjustment factor, that is the figures provided by the German Debt Management Office as well as the breakdown per issuing countries and per maturity provided by other parties. An unsubstantiated statement in reply to the SO that Portigon almost exclusively traded German bonds in the secondary market<sup>1452</sup> does not prove that the Commission erred in using the best facts available for estimating an adjustment factor for Portigon and does not allow the Commission to use other facts. These claims are therefore rejected.

#### 8.4.1.2. Gravity

##### *Principle*

- (857) 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 to the duration of the infringement. The basic amount of the fine will be set to a proportion of the value of sales, in function of the degree of gravity of the infringement, multiplied by the number of years of the infringement.<sup>1453</sup>
- (858) The Guidelines on Fines provide as a general rule that the proportion of the value of sales taken into account for gravity 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.<sup>1454</sup> In assessing the gravity of the infringement, the Commission will have 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.<sup>1455</sup>

##### *Application in this case*

- (859) In its assessment of the gravity in this case, the Commission takes into account the facts as described and assessed above, and in particular the following circumstances:

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<sup>1451</sup> [...]

<sup>1452</sup> The fact that WestLB was only active in German auctions in the primary market does not imply that WestLB only traded German bonds in the secondary market. EGB from a specific country can be traded by many traders, not only traders who are designated Primary Dealer in that country.

<sup>1453</sup> Point 19 of the Guidelines on fines.

<sup>1454</sup> Points 21 and 25 of the Guidelines on fines.

<sup>1455</sup> Point 22 of the Guidelines on fines.

- (a) the addressees of this Decision have been involved in several types of anticompetitive conducts, namely the alignment and coordination of trading and bidding strategies, including strategies on the levels of overbidding, and the collusive exchange of forward looking commercially sensitive information on their trading activities, positions, prices, volumes, customers and strategies.<sup>1456</sup> These elements amounted to price fixing arrangements, collusive exchanges of information, market sharing and customer allocation;<sup>1457</sup>
  - (b) the types of conduct set out in point (a) constitute a cartel conduct and are by their very nature among the most harmful restrictions of competition under Articles 101 of the Treaty and 53 of the EEA Agreement, justifying a proportion at the higher end of the scale.<sup>1458</sup> The participants colluded to set up a horizontal scheme designed to restrict competition in the EGB sector;
  - (c) the cartel arrangements permeated the whole EGB industry, and involved collusion with respect to both the primary and secondary market; and
  - (d) the cartel arrangements covered EGB issued in the whole of the then Eurozone, which constitutes a substantial and essential part of the EU, and the cartel arrangements related to EGB transactions worldwide, and therefore covered the entire EEA.
  - (e) the cartel arrangements related to a Euro-based product that is used for raising public funding and took place at the time of a very serious financial crisis, when many financial institutions, including some involved in these proceedings, had to be rescued by public funding.<sup>1459</sup>
- (860) 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 18%.
- (861) For UniCredit, the gravity factor is reduced by one percentage point. Whilst the conduct permeated the whole EGB industry on the primary and/or secondary market and whilst the UniCredit trader was thus aware of the anticompetitive conduct relating to both the primary and the secondary markets, it must be taken into account that the trader of UniCredit was not active on the primary market. During his time of employment for UniCredit, he was only trading EGB on the secondary market. The information exchanged was useful to him on the secondary market only and it has not been established that he passed the information on to colleagues that were active on the primary market.

*Arguments of the parties concerning the gravity of the fine*

- (862) Various parties claim that the Commission has mischaracterised the impact and gravity of the infringement.<sup>1460</sup> They claim that the vast majority of anticompetitive instances are unlawful information exchanges only, without explaining how they amount to price fixing or market sharing. Other claims are related to market colour and pro-competitive effects, namely that (i) there is a positive impact on competition of exchanging market colour on liquidity and prices, (ii) there is a lack of legal

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<sup>1456</sup> See also Annex 1: all addressees were involved in various categories of conduct that are explained in recitals (496)-(544).

<sup>1457</sup> See, for example, recitals (500), (502), (514), (574) and (583).

<sup>1458</sup> Point 23 of the Guidelines on Fines.

<sup>1459</sup> [...]. [...]

<sup>1460</sup> [...]

clarity as to when exchanging market colour becomes anticompetitive, and (iii) many instances were also intended to reduce market uncertainty in a pro-competitive way. Other claims are related to context namely that (i) it was the club of traders and not banks who acted, and did so, at most, negligently; (ii) the Commission was selective in choosing the relevant contacts and that these contacts were disparate, ad hoc chats in between a stream of market colour, of varying intensity and affecting only some EGB; (iii) the discussions were in the context of an auction mechanism and the DMOs could exercise countervailing buyer power; (iv) this was not an institutionalised secret scheme; and (v) the banks concerned had limited market positions and the conduct could not have had a significant impact on public funding.

- (863) These arguments have already been addressed elsewhere in this Decision when parties argued that the restriction was not very serious. It has been established in Section 5.1.3. that the conduct in the various categories of conduct encompassed price fixing and/or market sharing and customer allocation.<sup>1461</sup> It also has been established in Section 5.1.2 that the various contacts served a common plan and that all EGB could be directly or indirectly affected.<sup>1462</sup> It is irrelevant if the conduct took place in a context of wider exchanges of market colour and bilateral trades. The Commission does not have to quantify the impact of the conduct on public funding, but takes into account that the existence of collusion when EGB are issued and 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.

#### 8.4.1.3. Duration

- (864) 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 full months of participation in the infringement.<sup>1463</sup>
- (865) The duration for each party is explained in Section 7 and Table 8 sets out the duration multipliers corresponding to the duration of participation of each undertaking that is subject to a fine pursuant to Article 23(2)(a) of Regulation No 1/2003.

*Table 8: Duration*

<b>Undertaking</b>	<b>Start date – End date</b>	<b>Duration multiplier (in years)</b>
NatWest (RBS)	4 January 2007 – 28 November 2011	4.83
Nomura	18 January 2011 – 28 November 2011	0.83
Portigon (WestLB)	19 October 2009 – 3 June 2011	1.58
UBS	4 January 2007 – 28 November 2011	4.83

<sup>1461</sup> Section 5.1.3. Restriction of competition.

<sup>1462</sup> Section 5.1.2. Single and continuous infringement.

Section 8.4.1.1. Value of sales.

<sup>1463</sup> Full months as from the start date, discounting any days exceeding the last full month. For example, for an infringement between 4 January 2007 and 28 November 2011, the duration multiplier is calculated on the basis of full months from 4 January 2007 – that is: from 4 January 2007 to 3 November 2011 (i.e. 58 months).

UniCredit	9 September 2011 – 28 November 2011	0.17
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- (866) Nomura argues that for the calculation of the fine it should be taken into account that its trader ([...]) [...].<sup>1464</sup> It has already been established that [...] continued to participate in the infringement and exchange information with his competitors as of 18 January 2011 [...].<sup>1465</sup> The fact that [...] cannot exempt Nomura from its liability for its participation in the cartel as of 18 January 2011.

#### 8.4.1.4. Variable amount

- (867) Based on the criteria explained above, the variable component of the basic amount for the undertakings that are subject to a fine pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 is:

*Table 9: Variable amount*

Undertaking	Value of sales (EUR)	Gravity (%)	Duration multiplier (years)	Variable amount (EUR)
NatWest (RBS)	[...]	18	4.83	[...]
Nomura	[...]	18	0.83	[...]
Portigon (WestLB)	[...]	18	1.58	[...]
UBS	[...]	18	4.83	[...]
UniCredit	[...]	17	0.17	[...]

#### 8.4.1.5. Additional amount

- (868) The Commission adds an additional amount to the basic amount of the fine in order to deter undertakings from even entering into infringements.<sup>1466</sup> This additional amount is a sum between 15% and 25% of the value of sales on the basis of the same criteria listed above with respect to the variable amount.<sup>1467</sup> Taking into account these criteria, the Commission sets the percentage to be applied in this case at the same level as the gravity percentage established at recital (860) above (that is, 18% for all addressees that are subject to a fine and reduced by one percentage point for UniCredit because its trader was only active on the secondary market).
- (869) Based on the criteria explained above, the additional amount for the addressees that are subject to a fine is:

*Table 10: Additional amount*

Undertaking	Additional amount (EUR)
NatWest (RBS)	[...]
Nomura	[...]
Portigon (WestLB)	[...]
UBS	[...]
UniCredit	[...]

<sup>1464</sup> [...]

<sup>1465</sup> Recital (768).

<sup>1466</sup> Unlike the variable amount, the additional amount is not multiplied in function of the duration of participation.

<sup>1467</sup> Point 25 of the Guidelines on Fines.

- (870) Nomura argues that an additional amount is not appropriate in this case because deterrence is already considered in the calculation of the value of sales.<sup>1468</sup> UBS argues that other cartel cases in the financial sector that took place around the same time as the facts in this case have already had a sufficient industry wide deterrent effect. This has led the financial sector to adopt and enhance effective compliance measures forestalling the need for extra deterrence.<sup>1469</sup> Portigon also argues that for deterrence purposes there is no need for an additional amount in this case.<sup>1470</sup>
- (871) In all cartel cases, an additional amount is imposed even if the variable amount has already been calculated on the basis of the value of sales obtained during the relevant infringement. The additional amount serves to deter undertakings from even entering a cartel and this is a different deterrence purpose than the value of sales.<sup>1471</sup>
- (872) The banks are responsible for the conduct of their traders. The fact that this case discloses yet another cartel in the financial sector demonstrates that there is still need for more deterrence, irrespective of any actions the banks have taken to avoid that this or similar conduct happens again.<sup>1472</sup> The existence of other cartels in the financial sectors does not make the cartel in this case any less serious.

#### 8.4.1.6. Conclusion

- (873) Based on the criteria explained above, the basic amount of the fines to be imposed for the addressees that are subject to a fine is:

*Table 11: Basic amount of the fines*

<b>Undertaking</b>	<b>Variable component (EUR)</b>	<b>Additional amount (EUR)</b>	<b>Basic amount (EUR, rounded)</b>
NatWest (RBS)	[...]	[...]	[...]
Nomura	[...]	[...]	[...]
Portigon (WestLB)	[...]	[...]	[...]
UBS	[...]	[...]	[...]
UniCredit	[...]	[...]	[...]

#### 8.4.2. Adjustment of the basic amount

- (874) The Commission may adjust the basic amount for aggravating and/or mitigating circumstances.<sup>1473</sup> In this specific case, the Commission does not take into account

<sup>1468</sup> [...]

<sup>1469</sup> [...]

<sup>1470</sup> [...]

<sup>1471</sup> Section 8.4.3. Deterrence.

<sup>1472</sup> Under settled case law, the Commission is not required to take into account a competition law compliance programme put in place by the undertakings before or after the infringement, see, in this respect, Judgment of the Court of 28 June 2005, *Danks Rørindustri A/S and Others v Commission*, C-189/02 P, ECLI:EU:C:2005:408, paragraph 373, Judgment of the Court of 18 July 2013, *Schindler Holding Ltd and Others v Commission*, C-501/11 P, ECLI:EU:C:2013:522, paragraph 144, Judgment of the General Court of 16 September 2003, *Hansa Metallwerke AG and Others v Commission*, T-375/10, ECLI:EU:T:2013:475, paragraph 196, Judgment of the General Court of 12 December 2007, *BASF and UCB v Commission*, T-101/05, ECLI:EU:C:2007:380, paragraph 52.

<sup>1473</sup> Point 27 of the Guidelines of fines.

any aggravating circumstance.<sup>1474</sup> The fact that a party is not active in the primary market has already been taken into account in the gravity factor.<sup>1475</sup>

- (875) Various addressees of this Decision have argued that the Commission should take into account mitigating circumstances. They argue that their participation in the conduct and/or their awareness of the sensitivity and anticompetitive character of the exchanges was substantially more limited than that of other parties. These claims have already been rejected elsewhere in this Decision, where the addressees claimed that in the specific circumstances and context of this case they cannot be held liable for the alleged peripheral and/or short time involvement in the conduct of an employee who acted outside his mandate and/or who was not aware of the sensitivity of the information exchanged and/or who was not aware and/or had no intention to contribute to a common plan to restrict competition.<sup>1476</sup> Some parties once again refer to a change of culture and/or the dismissal of key employees, but these arguments have already been rejected elsewhere in this Decision and can, in any event, not lead to a fines reduction for a more limited participation during the events.<sup>1477</sup> If and to what extent these claims constitute a mitigating circumstance will be assessed separately for the parties that ask for a fines reduction on this basis.<sup>1478</sup>

#### 8.4.2.1. Nomura

- (876) Nomura claims that its traders had a substantially limited involvement and were not involved in all categories of conduct used by the Commission for organising the various contacts, or at least not for the full duration of its participation.<sup>1479</sup> One trader ([...]) only traded for a limited time period when he had access to the chatrooms and the other trader ([...]) allegedly never traded.
- (877) The Guidelines on Fines recognise the limited role of an undertaking as a mitigating circumstance only if there is evidence that the involvement in the infringement was indeed substantially limited and that, during the period in which it was party to the offending agreement, it actually avoided applying it by adopting competitive conduct in the market. Evidence shows that Nomura's involvement was not substantially limited and that Nomura was involved to some extent in every category of the conduct described.<sup>1480</sup> If and to the extent that some categories were less prominent in that period, compared to other periods, this cannot lead to the conclusion that Nomura's participation was substantially more limited in that period compared to the conduct of the other participants. The argument that one trader ([...]) [...] has already been dismissed in this Decision.<sup>1481</sup> The fact that the other trader ([...]) [...] was possibly less directly involved in trading also cannot undo the fact that he actively

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<sup>1474</sup> Point 28 of the Guidelines on fines.

<sup>1475</sup> Recital (861).

<sup>1476</sup> See Section 5.1.1.3. Agreements and concerted practices – Arguments of the parties; Section 5.1.3.3. Restriction of competition – Arguments of the parties; Section 5.1.2.3. Single and continuous infringement – Arguments of the parties; Section 6.3. Addressees – Arguments of the parties; and Section 7. Duration of the infringement.

<sup>1477</sup> [...]

<sup>1478</sup> Bank of America and Natixis make similar claims in their responses to SO, but cannot benefit from mitigating circumstances because the Commission is prevented from imposing a fine on them.

<sup>1479</sup> [...]

<sup>1480</sup> See the overview of anticompetitive contacts in Annex 1.

<sup>1481</sup> Recitals (768) and (866).

participated in the information exchanges. The mere claim that [...] cannot undo the presumption that he must have taken the information exchanged into account for his business activities.

(878) In view of the above, Nomura's claim for mitigating circumstances is therefore rejected.

#### 8.4.2.2. UBS

(879) UBS claims that only few of its traders were involved in the conduct, representing only a fraction of its overall business. No managers or supervisors have been implicated in the conduct. Moreover, after mid-2010, UBS claims that its participation in the relevant conduct was limited to only a single trader, [...].<sup>1482</sup> The fact that undertakings are liable for the conduct of their employees has already been addressed in the Decision.<sup>1483</sup> The facts clearly demonstrate that the conduct of the employees of UBS was not substantially more limited than that of the other undertakings involved in the anticompetitive conduct.

(880) In view of the above, UBS' claim for mitigating circumstances is therefore rejected.

#### 8.4.2.3. UniCredit

(881) UniCredit claims that the participation of its trader ([...]) was different than that of all other traders. Its trader participated in only one of the forms of anticompetitive conduct (the secondary market) for a short duration. There are only few examples of his participation in the contacts and UniCredit contests that these prove an infringement. Its trader was only on probation and had no authority to act on the primary market. His previous conduct at other banks cannot form a basis for attributing liability to UniCredit.

(882) On that basis, UniCredit argues that it cannot be held liable for participation in the cartel or that its participation was substantially more limited.

(883) The Commission disagrees that the conduct of the UniCredit trader is fundamentally different from the conduct of the other traders. [...] was a trader at the origin of this cartel and was heavily involved all along while at ABN-AMRO, Natixis and WestLB. When working for UniCredit, he tried to continue what he had been doing before.<sup>1484</sup> As explained in Section 5.1.2.2., UniCredit is liable for the entirety of the single and continuous infringement during the period of its participation.

(884) UniCredit's argument that the conduct in this cartel '*largely*' concerned the primary market, accepts that the conduct also encompassed (at least in part) trading on the secondary market.<sup>1485</sup> The argument that [...], while on probation at UniCredit, was only active on the secondary market has been taken into account in calculating the gravity factor (reduced by one percentage point) as explained in Section 8.2.6. Being authorised to trade only on the secondary market, [...] may have been less able to contribute to discussions on the primary market. The facts nevertheless demonstrate that he tried to be involved in the discussions and to receive as much information as possible that could be interesting and useful for his trading on the secondary

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<sup>1482</sup> [...]

<sup>1483</sup> Recitals (732)-(759).

<sup>1484</sup> Recitals (342)-(350).

<sup>1485</sup> [...]

market.<sup>1486</sup> The extent to which his contributions were useful or successful does not determine his role in the cartel.

(885) [...]’s awareness of the single and continuous infringement while working at UniCredit has been addressed in Section 5.1.2.2.

#### 8.4.2.4. WestLB (Portigon)

(886) Portigon claims that a symbolic fine should be sufficient, taking into account the specific circumstances of this case.<sup>1487</sup>

(887) Portigon confuses the specific circumstances of the case with the specific circumstances of the undertaking. The specific circumstance of the case is that the cartel took place in the financial services sector. This has been duly taken into account in the calculation of the proxy for the value of sales.<sup>1488</sup> The specific circumstances of the undertaking are addressed separately.<sup>1489</sup>

(888) Portigon further claims that WestLB was only active on the primary market in Germany.<sup>1490</sup> As a consequence, its trader ([...]) was allegedly rather passive in discussions on the primary market concerning other countries. Also in general, including in discussions on the secondary market, his contribution to the discussion was allegedly rather passive, not very meaningful and incapable of restricting competition. The information exchanged on bids and volumes often did not match the prices effectively paid and the volumes effectively obtained. Portigon also refers to many contacts where its trader did not participate.<sup>1491</sup>

(889) The evidence in this Decision, however, does not support a substantially more passive role of the WestLB trader in comparison to other participants. [...] was at the origin of the cartel and was heavily involved while at ABN-AMRO and Natixis. He continued his participation while at WestLB and actively contributed in the discussions in DBAC and CODS & CHIPS<sup>1492</sup>. WestLB was only active on the primary market in Germany, but the WestLB trader contributed where he could. His contribution was not less serious. He still received all of the information and he and WestLB compromised its discovery by not bringing the existence of the cartel to the attention of the authorities. The circumstance of trading for a smaller undertaking is automatically reflected in the value of sales and does not constitute a mitigating circumstances that should be rewarded by a reduction of the fine. The extent to which his contributions were useful or successful does not determine his role in the cartel.

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<sup>1486</sup> Recital (342)-(350).

<sup>1487</sup> [...]

Portigon refers to the example of Treuhand AG in Case AT.37858 – *Organic Peroxide*, though, in that case, Treuhand was a facilitator and the first facilitator ever fined by the Commission in a cartel case.

Portigon refers to AT.36888 – *Fussball Weltmeisterschaft 1998*, though, this was not a cartel case.

<sup>1488</sup> See Section 8.4.1.1.

Similar methodologies have been applied in Case AT.39861 – *Yen Interest Rate Derivatives*, Case AT.39914 – *Euro Interest Rate Derivatives*, AT.39924 – *Swiss Franc Interest Rate Derivatives*, AT.40135 – *Forex*, AT.40346 – *SSA bonds*.

<sup>1489</sup> See Section 8.4.4. Application of the 10% turnover limit.

<sup>1490</sup> [...]

<sup>1491</sup> [...]

See also recital (632).

<sup>1492</sup> See the overview of anticompetitive contacts in Annex 1.

#### 8.4.3. *Deterrence*

- (890) The Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, the Commission may increase the fines to be imposed on undertakings which have a particularly large turnover beyond the sales of goods and services to which the infringement relates.<sup>1493</sup>
- (891) In view of the values of sales in this case, and in particular the application of a specific proxy for the value of sales including a reduction factor that takes into account the particularities of the market and avoids over-deterrent fines, the Commission considers that it is not necessary to increase the fines further for deterrence purposes.

#### 8.4.4. *Application of the 10% turnover limit*

- (892) Pursuant to Article 23(2) of Regulation (EC) No 1/2003, the fine imposed on each undertaking participating in the infringement must not exceed 10% of its total turnover relating to the last available business year preceding the date of the Commission decision.
- (893) The fine imposed in this Decision do not exceed 10% of the total turnover for any of the parties, with the exception of Portigon AG.<sup>1494</sup> Portigon is winding down the activities of the WestLB undertaking and its net turnover in the last available business year preceding the date of this Decision is negative. The fine of Portigon AG is, therefore, reduced to EUR 0.

#### 8.4.5. *Application of the Leniency Notice*

- (894) The Commission applies its Leniency Notice to the immunity and leniency applications it has received from RBS, UBS and Natixis respectively.<sup>1495</sup>

##### 8.4.5.1. NatWest (RBS)

- (895) NatWest (including all entities mentioned in this Decision) is granted immunity from fines in this case. NatWest applied for a marker on 29 July 2015, followed up by a full immunity application and was granted conditional immunity on 27 January 2016 pursuant to point 18 of the Leniency Notice.<sup>1496</sup> NatWest was the first undertaking to submit evidence and information which enabled the Commission to carry out a targeted inspection or find an infringement of Article 101 of the Treaty in connection with the cartel. Throughout the administrative investigation, NatWest fulfilled its cooperation obligations under points 12 and 13 of the Leniency Notice.

##### 8.4.5.2. UBS

- (896) UBS is granted a reduction of 45% of the fine that otherwise would have been imposed.
- (897) UBS applied for a reduction of a fine on 29 June 2016 and continued to provide information thereafter.<sup>1497</sup> The Commission informed UBS on 31 January 2019 that immunity from fines was not available in this case, but that it intended to grant UBS a reduction of the fine within the band of 30% to 50% because it was the first

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<sup>1493</sup> Point 30 of the Guidelines on fines.

<sup>1494</sup> See the replies to the request for information of 03.02.2021, mentioned in footnote 72.

<sup>1495</sup> See recitals (68)-(71).

<sup>1496</sup> Recitals (68)-(69).

<sup>1497</sup> Recital (70). See point 23 of the Leniency Notice.

undertaking to submit evidence which represents significant added value with respect to the evidence previously in the Commission's possession.<sup>1498</sup>

- (898) In this Decision, the Commission evaluates the final position of UBS.<sup>1499</sup> The Commission still considers that UBS is entitled to a reduction of fines within the band of 30% to 50%. UBS has provided evidence with significant added value in this case and its contribution has assisted the Commission investigation. There are no indications that UBS did not fulfil its cooperation obligations.<sup>1500</sup>
- (899) In order to determine the level of reduction within that bandwidth the Commission takes into account the time at which the evidence was submitted and the extent to which it represents added value.
- (900) As for the time of submission, although reasonably timely, the Commission nevertheless notes that the evidence provided by UBS was submitted more than four years after the conduct had taken place and five months after having received a request for information from the Commission.
- (901) As for the extent to which UBS' application and cooperation represented significant added value, [...]. However, many of the contemporaneous communications from the chatrooms provided by UBS had already been identified and provided to the Commission by the immunity applicant. The evidence provided by UBS, therefore, chiefly served to corroborate the evidence already provided by the immunity applicant, and provide additional explanations on what parts of the contacts were anticompetitive and why. UBS also provided extensive background information on the operation of the EGB market. The information was credible and UBS did not alter or change its interpretation in view of the arguments of other parties.
- (902) UBS also claims that the Commission must take into account that the undertaking has cooperated with the Commission in other cases and that the undertaking was willing to settle this case.<sup>1501</sup> However, the Leniency Notice does not envisage any further reduction for this purpose and the Commission practice also does not reward cooperation in other cases outside the Leniency Notice. There is no right to a settlement or a reward for the mere willingness to settle a case.
- (903) The Commission therefore concludes that, taking all these elements into account, UBS is entitled to a 45% reduction of the fine that would otherwise have been imposed.

#### 8.4.5.3. Natixis

- (904) On 30 September 2016, Natixis applied for a reduction of a fine and continued to provide information thereafter.<sup>1502</sup>
- (905) Natixis was the second undertaking to submit evidence which represents significant added value with respect to the evidence previously in the Commission's possession. [...]. The evidence and explanations provided by Natixis strengthened the Commission's ability to prove the cartel. However, there is no need to set the exact percentage of the reduction to be applied when the Commission is in any way time-

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<sup>1498</sup> Recital (73). See points 20, 24 and 25 of the Leniency Notice.

<sup>1499</sup> Point 30 of the Leniency Notice.

<sup>1500</sup> Point 12 of the Leniency Notice.

<sup>1501</sup> [...]

<sup>1502</sup> Recital (71). Pursuant to point 23 of the Leniency Notice.

barred to impose a fine on Natixis.<sup>1503</sup> Natixis claims that its cooperation must be rewarded differently, but these arguments have been addressed and rejected in the section establishing the Commission's legitimate interest to find that Natixis committed an infringement.<sup>1504</sup>

#### 8.4.6. *Inability to pay*

(906) None of the undertakings participating in the infringement made use of the possibility of point 35 of the Guidelines on fines for requesting the Commission to take account of the undertaking's inability to pay a fine in a specific social and economic context.<sup>1505</sup>

#### 8.4.7. **Conclusion: final amount of fines**

(907) Based on the methodology chosen and explained in Section 8.4, the final amount of the fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 is as follows:

*Table 12: Final amount of fines*

<b>Undertaking</b>	<b>Fine amount (EUR)</b>
NatWest (RBS)	0
Nomura	129 573 000
Portigon (WestLB)	0
UBS	172 378 000
UniCredit	69 442 000

HAS ADOPTED THIS DECISION:

#### *Article 1*

The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement regarding EGB covering the entire EEA, which consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the EGB sector:

- Bank of America Corporation and Bank of America, National Association participated from 29 January 2007 until 6 November 2008, with respect to the CODS & CHIPS chatroom;
- Natixis S.A. participated from 26 February 2008 until 6 August 2009;
- NatWest Group plc and NatWest Markets plc participated from 4 January 2007 until 28 November 2011 and NatWest Markets N.V. participated from 17 October 2007 until 28 November 2011;

<sup>1503</sup> Pursuant to Article 25(1)(b) and (5) of Regulation (EC) No 1/2003. See recital (778).

<sup>1504</sup> Recitals (802)-(804).

<sup>1505</sup> Portigon requested a symbolic fine, reduced under point 37 of the Guidelines on fines, on the basis of the specific circumstances of being an undertaking that is wound down, but Portigon's negative net turnover and related reduction of its fine to EUR 0 (see recital (893)), makes this request irrelevant.

- Nomura Holdings, Inc. and Nomura International plc participated from 18 January 2011 until 28 November 2011;
- Portigon AG participated from 19 October 2009 until 3 June 2011.
- UBS Group AG and UBS AG participated from 4 January 2007 until 28 November 2011;
- UniCredit S.p.A. and UniCredit Bank AG participated from 9 September 2011 until 28 November 2011;

### *Article 2*

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

- NatWest Group plc, NatWest Markets Plc and NatWest Markets N.V jointly and severally liable: EUR 0
- Nomura Holdings, Inc. and Nomura International plc jointly and severally liable: EUR 129 573 000
- Portigon AG: EUR 0
- UBS Group AG and UBS AG jointly and severally liable: EUR 172 378 000
- UniCredit S.p.A. and UniCredit Bank AG jointly and severally liable: EUR 69 442 000

The fines shall be credited, in euros, within six months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT  
1-2, Place de Metz  
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000  
BIC: BCEELULL  
Ref.: EC/BUFI/AT.40324

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.<sup>1506</sup>

### *Article 3*

The undertakings listed in *Article 1* shall immediately bring to an end the infringements 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.

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<sup>1506</sup> 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).

*Article 4*

This Decision is addressed to

Bank of America Corporation  
1209 Orange Street  
Corporation Trust Center  
DE 19801 Wilmington  
United States of America

Bank of America, National Association  
100 North Tryon Street  
NC 28202 Charlotte  
United States of America

Natixis S.A.  
30 Avenue Pierre Mendès-France  
75013 Paris  
France

NatWest Group plc  
36 St Andrew Square  
EH2 2YB Edinburgh  
United Kingdom

NatWest Markets N.V.  
Claude Debussylaan 94  
1082 MD Amsterdam  
The Netherlands

NatWest Markets Plc  
36 St Andrew Square  
EH2 2YB Edinburgh  
United Kingdom

Nomura Holdings, Inc.  
1-13-1 Nihonbashi, Chuo-ku,  
Tokyo 103-8645  
Japan

Nomura International plc  
1 Angel Lane  
EC4R 3AB London  
United Kingdom

Portigon AG  
Völkinger Straße 4  
40219 Düsseldorf  
Germany

UBS AG  
Bahnhofstrasse 45  
8001 Zurich  
Switzerland

UBS Group AG  
Bahnhofstrasse 45  
8001 Zurich  
Switzerland

UniCredit Bank AG  
Arabellastrasse 12  
81925 München  
Germany

UniCredit S.p.A.  
UniCredit Tower  
Piazza Gae Aulenti no. 3  
Tower A  
20154 Milano  
Italy

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

Done at Brussels, 20.5.2021

*For the Commission*

*(Signed)*

*Margrethe VESTAGER  
Executive Vice-President*