EUROPEAN COMMISSION
Competition DG

CASE AT.40346 SSA Bonds

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) No 1/2003

Articles 7 and 23 Regulation (EC) 1/2003

Date: 28/04/2021

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EUROPEAN
COMMISSION

Brussels, 28.4.2021
C(2021) 2871 final

COMMISSION DECISION

of 28.4.2021

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.40346 – SSA Bonds)

(Text with EEA relevance)

(Only the English text is authentic)

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(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area[2],

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

Having regard to the Commission decision of 20 December 2018 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Articles 11 and 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating

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1 OJ, C 115, 9.5.2008, p.47. 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 EU competition law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period.

2 For the purposes of this Decision, the EEA is understood to cover the 27 Member States of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) and the United Kingdom, as well as Iceland, Liechtenstein and Norway. Accordingly, any references made to the EEA in this Decision are meant to also include the United Kingdom (UK).

3 OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[4],

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

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

Whereas:

1. INTRODUCTION

(1) The addressees of this Decision have engaged in an infringement of 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 covered at least the whole of the European Economic Area ('EEA') and consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the sector of Supra-sovereign, Sovereign and Agency bonds issued in US dollars ('USD SSA bonds').

(2) This Decision is addressed to the following legal entities ("the addressees" or "the parties"):

(a) Deutsche Bank AG, DB Group Services (UK) Limited, and Deutsche Securities Inc. (together referred to as "Deutsche Bank"):

– Deutsche Bank AG, which has its registered address at Taunusanlage 12, 60325 Frankfurt am Main, Germany ;

– DB Group Services (UK) Limited, which has its registered address at 23 Great Winchester Street, London EC2P 2AX, United Kingdom;

– Deutsche Securities Inc., which has its registered address at Sanno Park Tower, 2-11-1 Nagatacho, Chiyoda-ku, Tokyo, 100-6171, Japan.

(b) Credit Suisse Group AG and Credit Suisse Securities (Europe) Limited (together referred to as "Credit Suisse"):

– Credit Suisse Group AG, which has its registered address at Paradeplatz 8, CH-8001 Zurich, Switzerland;

– Credit Suisse Securities (Europe) Limited, which has its registered address at One Cabot Square, London E14 4QJ, United Kingdom.

(c) Crédit Agricole S.A. and Crédit Agricole Corporate and Investment Bank (together referred to as "Crédit Agricole"):

– Crédit Agricole S.A., which has its registered address at 12 Place des Etats-Unis, 92127 Montrouge Cedex, France;

– Crédit Agricole Corporate and Investment Bank, which has its registered address at 12 Place des Etats-Unis, 92547 Montrouge Cedex, France.

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[4] OJ L 123, 27.4.2004, p. 18, as amended through publication in OJ L 362, 20.12.2006, p. 1, OJ L 171, 01.07.2008, p. 3, OJ L 158, 10.06.2013, p. 74, OJ L 208, 05.08.2015, p. 3.

(d) Bank of America Corporation and Merrill Lynch International (together referred to as "Bank of America Merrill Lynch"):

– Bank of America Corporation, which has its registered address at 1209 Orange Street – Corporation Trust Center, Wilmington DE 19801, USA;

– Merrill Lynch International, which has its registered address at 2 King Edward Street, London EC1A 1HQ, United Kingdom.

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The products

(3) The products concerned by the infringement in this case, are USD SSA bonds denominated in US dollars.

(4) Before further describing the specific product it is useful to outline the wider context, organisation and functioning of the bonds industry.

2.1.1. Definition

(5) A bond is a type of debt security which enables entities to raise cash. Bonds allow one party (the issuer) to borrow money (the principal amount) from investors for a fixed term and, in return, to pay a predefined rate of interest (the coupon) to those investors in addition to repaying the principal amount at maturity. Bonds are bought by various categories of investors and can be either held by the investor until maturity or traded like other financial instruments.

2.1.2. Types of bonds

(6) Bonds are distinguished by reference to the identity of the issuer. **Government (Sovereign) bonds** are issued by central governments; **Corporate bonds** are issued by private undertakings[5]. **Supra-sovereign bonds** are issued by supranational institutions, **Sub-sovereign bonds** are issued by authorities below the level of central government and **Agency bonds** are issued by entities implicitly or explicitly supported by public authorities[6].

(7) Bonds are further distinguished by reference to the currency used. A bond issuer often issues its bonds in its domestic currency and under its domestic law, but it may equally chose to issue its bonds in a foreign currency and under the law of another jurisdiction. Government bonds are for instance typically subdivided into **Domestic Sovereign bonds**, issued by central governments in domestic currency, and **Foreign Sovereign bonds**, issued by central governments in non-domestic currency and under non-domestic law[7].

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5 Corporate bonds can be subdivided into Financials vs. Non-Financials corporate bonds. A further subdivision can occur according to the industry segment of the issuer. Financials also include covered bonds that are secured, mostly by a pool of mortgage loans that borrowers owe to the issuing bank. Since the issuer has an additional guarantee, covered bonds typically have a better rating than their senior (uncovered) equivalent.

6 See recital (55)(c) – 'Sub-sovereign' and 'Agency' are frequently overlapping categories.

7 The two largest sectors of Domestic Sovereign bonds are the European Government Bonds (EGB) – the sovereign bonds issued in euro by central government of Eurozone member states, and the US Treasuries – the sovereign bonds issued in US dollars by the United States Treasury Department.

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

(9) Financial institutions traditionally operate different bond trading desks based on the combination of the type of the issuer and the currency used. Typically, the European Government Bond ("EGB") desk trades Domestic Sovereign bonds issued in Euro by the treasury departments of the central governments of the Eurozone Member States, while the Treasury desk trades bonds issued in US dollars by the United States Treasury Department. Other desks include the Emerging Market desk[8] and the so-called SSA desk. The SSA desk, in particular, is relevant for this Decision (see recital (55)).

2.1.3. Bond markets

(10) There are primary and secondary bond markets.

(11) The primary market is the market for the purchase of bonds that are issued (sold) to market participants for the first time by, or on behalf of, the issuing entity. Bonds can be issued on the primary market by means of auctions, which is a tendering process, or syndication, which is a private placement process[9].

(12) After the initial issuance in the primary market, bonds are bought and sold between various market players, like any other negotiable instrument. The market for such transactions is known as the secondary market. This trade is organised in different trading desks in function of the type of bonds[10].

(13) The main participants in bond markets are the issuers, the end-investors, the traders and sales representatives[11] from financial institutions, and the brokers. The objective of the participants is to maximise their profit and/or minimise their costs, while controlling the market risk.

Issuers

(14) As stated in recital (5), the bond market allows issuers to raise cash from investors to fund investments. The objective for issuers is to get cheap funding (that is at a low interest rate) through highly liquid bonds[12]. The interest rate that the issuer pays will depend on a number of factors and in particular current market rates and the rating (reflecting perceived risk) of the issuer.

End-investors

(15) End-investors purchase bonds in order to invest their cash surplus in a relatively secure revenue-generating asset. The aim for end-investors is to earn a higher yield than for example on a saving account while keeping the overall risk of their portfolio fairly low.

Dealers, traders and sales representatives

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8 Emerging market bonds broadly includes bonds issued by governments and corporations from countries outside OECD member countries (for a list of OECD member countries, see www.oecd.org/about/membersandpartners/list-oecd-member-countries htm).

9 […]

10 See recital (9).

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

12 See recital (31) for an explanation of liquidity.

(16) The dealers are the financial institutions trading the bonds. Dealers set up specific desks where individual traders trade a specific type of bonds[13].

(17) The traders are the employees of the financial institutions who actually trade the bonds on a specific dealing desk[14]. They hold a 'book' or a portfolio of bonds they are ready to buy from or sell to end-investors (they sometimes call this book their 'balance sheet').

(18) The sales representatives are the interface between the traders and the end-investors. End-investors do not usually trade directly with traders but have regular contact with their sales representatives.

(19) The objective for both traders and sales representatives is to earn a maximum of revenues from trading activity while keeping the risk of their overall trading portfolio within certain limits. Traders make money by selling bonds at a higher price than that at which they bought the bonds. Trading revenue therefore depends on the amount of volume traded and on the difference between the purchase price and the sale price of the same bond (the 'price spread', see recital (26)). Additionally, traders may also make a profit from holding a particular position in a bond in their book (long or short) in anticipation of better trading conditions at a later stage[15]. They may also act as market makers. Traditionally market makers are individuals or companies which hold themselves out as able and willing to sell or buy financial products at prices determined by them generally and continuously (through firm bids and offers), rather than in respect of each particular transaction. Some traditional securities markets have official ‘designated market makers’ who are obliged to quote two-way prices and trade with counterparties. In other markets, financial insitutions and their traders can choose to take on a market making role without the same obligations.

Brokers

(20) The brokers or inter-dealer brokers (IDB) are financial intermediaries who facilitate transactions between dealers and make deal settlement easier and more reliable than a hypothetical direct dealer-dealer transaction[16]. The aim for brokers is to earn maximum revenues from trading activity with dealers. A broker's revenue is only proportional to the amount of volume traded and not to a particular spread given that the percentage fee earned by the brokers on any transaction is fairly constant.

Counterparties

(21) In the secondary market the term 'counterparties' refers to two parties, one buyer and one seller, trading with each other. This can be trader to end-investor and/or trader to trader through a broker.

2.1.4. Bond trading

Bond characteristics

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[13] See recital (9).

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

[15] See recitals (49) and (50) for an explanation of long and short positions.

[16] See recitals (35) to (41) for a fuller explanation of the services offered by brokers.

(22) At issuance, a bond's price is usually around 100%[17] of its notional amount[18]. Throughout its lifetime, the price of a bond will evolve and potentially depart from its issuing price, depending on various factors (the general interest rate evolution in the market or issuer-specific factors such as inter alia the perceived risk, the liquidity and the availability of newer issues). Eventually, at maturity, the bond price will revert back to 100%.

(23) Bonds can be traded based on an absolute price, but more commonly, this is done by reference to the corresponding yield of the bond. The yield on the bond (or yield to maturity) is a measure of the total return an investor can earn on the bond if he buys that bond today at a given price and holds it until its maturity. It includes the coupon earned and any gain from originally purchasing the bond below par (less than 100%) or loss from originally purchasing the bond above par (greater than 100%), since the bond will eventually redeem on the maturity date at its par face value (100%)[19].

(24) For a specific bond, each price has a corresponding yield. A bond's price always moves in the opposite direction to its yield: a lower price is equivalent to a higher yield and a higher price is equivalent to a lower yield[20]. The price of a bond in the secondary market at a given moment is generally determined by reference to the yield and influenced by the level of supply and demand for the bond, which can be subject to various factors such as the volume of bonds available and the price and availability of comparable bonds. A change in market interest rates, or a change in the credit quality of the issuer, may also affect the price at which a bond will trade on the market generally[21].

(25) The yield of a given bond is usually quoted by reference to the difference ('yield spread') between this yield and the yield of a comparable benchmark[22]. Typically, the higher the perceived risk of a bond (and therefore the lower the rating) the higher the spread, as investors require higher compensation in return for increased

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

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

19 In the example of footnote 18, the yield of the bond will be 3.22%. A bond purchaser buying a notional amount of USD 1 million at 99% will pay USD 990,000 now. He will then earn a yearly coupon equal to 3% of the notional amount he holds (USD 30,000), and will book a gain equal to the difference between the original purchasing price (99% of USD 1 million or USD 990,000) and the redeemed notional amount at the maturity date (USD 1 million, the gain being equal to USD 10,000).

20 In the example of footnotes 18 and 19, if the bond purchaser had bought the same bond at a price of 98%, the yield would have been 3.41%. Conversely, if the bond purchaser had bought the bond at a price of 101%, the yield would have been 2.78%.

21 […]

22 In the case of USD SSA bonds, the benchmark will typically be a US Treasury bond with a similar maturity date.

risk.When quoting in terms of spread, the trader aims to buy at a higher or wider spread (equivalent to a lower price), and sell at a lower or narrower spread (equivalent to a higher price)[23].

(26) Bond traders may quote (or "show") either a "bid" (buy) or "offer" (sell) price (which is "one way") or both (a "two-way" price). Thus, for example, a two-way price for an Inter-American Development Bank SSA bond maturing in August 2017 could be shown as "iadb 08/17 +35/30"[24]. The difference or 'price spread' is the spread on which the trader makes a profit[25]. These prices are often shown to other traders (generally on an anonymous basis) via an inter-dealer broker's screen, and to end-investors (that is, investment funds or individuals holding or wishing to purchase or sell bonds) via the sales desks,[26] or on electronic trading platforms which can show prices from a number of financial institutions (see recital (32)).

(27) The point halfway between the bidding price and the offering price is known as the 'mid-price' or 'mid' and is an important reference point in the secondary market[27]. Mid-prices are not posted on broker screens, nor are they made visible to investors and other counterparties.

Market dynamics

(28) After the initial bond issuance through the primary market, there is typically no further interaction between issuers and other market participants, except the regular coupon payments and the paying back of the notional amount of the bond at maturity.

(29) As noted in recital (18), end-investors usually communicate their buying or selling interest via the bank's sales desk rather than directly with the traders. They may request either an individual bid or an offer, or they may request a two-way quote (simultaneous bid and offer prices for a specific bond). End-investors with established relationships with a dealer/trader may regularly receive from the sales desk an 'axe sheet' (a list of a trader's interest to buy or sell particular bonds) put together by the trader and sent to the sales desk for distribution to end-investors. The enquiries from end-investors may or may not be a direct response to the axe sheet[28].

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24 Bonds can be quoted in price terms but are generally quoted in equivalent yield terms. In this example the trader is ready to buy the bond at '+35', this means at a spread of 35, that is at a yield that is 35 basis points (0.35%) higher than the yield of the reference US Treasury (of say 2.60%), so in total 2.60% + 0.35% = 2.95%. The trader is ready to sell the same bond at '+30', this means at a yield that is 30 basis points (0.30%) higher than the yield of the reference US Treasury (again 2.60%), so in total 2.60% + 0.30% = 2.90%). [He is ready to sell the bond at a lower yield than that which he bought it as this equates to a higher price than that at which he bought it, yield being inverse to price.] Given that a higher yield corresponds to a lower price (and vice versa) the bid-price equivalent of 2.95% can be 100.42 and the offer-price equivalent of 2.90% would then be 100.67.

25 In the example above, the price spread is 100.67 – 100.42 or 0.25. This should not be confused with the yield spread, which is 2.95% - 2.90% = 0.05% or 5 basis points.

26 […]

27 For a particular bond type and for a given maturity, the spread between the bidding price and the offering price (the price spread) tends to be fairly stable in the short-medium term, as liquidity and other market factors remain fairly constant. Hence by knowing the mid-price, investors and traders can usually deduce the bid and offer prices.

28 […]

(30) For example, an end-investor will simultaneously contact the sales representatives of several banks and inform them of a trade intention for a particular bond and for a particular volume, although the end-investor is not obliged to specify the volume or if he is intending to buy or sell. The sales desk then informs the trader of the end-investor's request, and the trader makes an offer to the sales team (a price usually expressed as the yield spread), which in turn passes it on to the end-investor. On that basis a short negotiation, typically a few minutes long, takes place on the final terms. The trader is free to update their terms, based on their observation of movements in the market, until the negotiation is concluded and any resulting trade is agreed[29]. The end-investor invariably chooses to trade with the trader showing the best price, that is the lowest price (or highest yield or widest spread) in the case of a bond purchase, and the highest price (or lowest yield or tightest spread) in the case of a bond sale.

(31) End investors expect traders to provide favourable and transparent pricing and liquidity conditions for bonds within their investment universe. Liquidity describes the degree to which a security can be quickly bought or sold in the market without affecting its price. In exchange for such a service, investors are ready to pay the 'price spread' (see recital (26)). This difference between the "bid" and "offer" price, that is, the trader's profit, should not be confused with the yield spread.

(32) Trades with end-investors generally take place via the sales desk, either by phone or via electronic platforms, which could be single-dealer proprietary platforms provided by individual dealers, or multi-dealer platforms, such as Bloomberg, MarketAxess and TradeWeb, which enable end-investors to request quotes from one or several dealers electronically.

(33) Traders make pricing and other strategic decisions based on various sources of information. These include market commentary and flows from the sales desk or other desks on the trading floor; information received from brokers via telephone, chatroom or through the screens of the broker platforms; the bank's own aggregation software, or other news and market platforms such as Bloomberg and Reuters. The price at which a trader is willing to buy or sell a bond in an individual transaction may also be influenced by factors such as the identity of the counterparty (for instance, where a bank has a long-standing relationship with a particular end-investor) or the volume of the transaction[30].

(34) After a trade, a trader may find himself or herself with a long (positive balance) or short (negative balance) positions in a specific bond. He or she might decide to hold this position, subject to risk limits imposed by the employing institution. Alternatively, he or she might buy or sell the bond back (to end-investors or other traders via a broker) in order to lower or offset his or her exposure. Reducing risk in this way is a form of risk ‘hedging’, which can be carried out by an offsetting trade in the same bond or in a highly traded bond, such as a US Treasury, of similar coupon and maturity.

(35) Brokers run electronic platforms (screens) showing bids and offers placed by traders with each broker in real time. Traders have multiple screens on their desks, providing them with direct access to the major broker platforms. A typical broker screen will show the name, coupon and maturity date of a bond, the size (that is the notional

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amount, usually expressed in millions of the relevant currency) of the bid and offer for that bond and may show the yield spread relative to a benchmark bond such as a US Treasury. The bid and offer prices shown on the screen at any one time will be the best, that is most competitive, available at that time[31].

(36) A trader seeing a particular bid or offer on a broker screen may decide to "hit" the bid (thereby selling bonds to the bidder) or "lift" the offer (thereby buying bonds from the offeror), thus agreeing to trade on the terms shown on the screen. On the major broker platforms, when this occurs, the relevant bid-ask will flash, making the fact of the trade (but not the identity of the counterparties) visible to all traders[32].

(37) Alternatively, a trader interested in a potential trade shown on a broker screen could call the broker for some additional 'colour', meaning any additional facts known to the broker which may help the trader to assess the terms of that trade (for example, the volume of flows in that bond at the time, whether additional size is available or updates on bids or offers in real time). In fact, traders often hold continuous active chats on Bloomberg or other instant messaging platforms, separately with several brokers.

(38) If the trader is interested, a short negotiation will then take place off-screen (by phone or chat) in which the broker will act as an intermediary between the two traders with a view to reaching an agreement on the final price and size of the trade. The broker earns a commission on each executed trade, normally paid by the trader who 'hit' the price[33].

(39) Brokers are therefore an important source of liquidity in the market by virtue of facilitating trades between traders. Brokers do not reveal the identity of traders involved in a particular trade. The use of a broker therefore ensures anonymity for the traders and prevents them from obtaining information about a given trader's position or trading intentions, and from using that knowledge to their advantage or to trade against that trader's interests[34].

(40) The use of a broker offers other advantages as well. Brokers ensure reliable settlement of trades as they know the correct counterparty name through which trades should be executed, and carry out efficient delivery. The use of a broker's back-office infrastructure may also be simpler and easier for a trader than the execution of a trade bilaterally[35].

(41) In light of these advantages, it is generally accepted that the benefits for dealers of trading with each other via brokers outweigh the brokerage fee that the broker charges to execute each trade.

(42) While remaining competitors, two traders (A and B) can get in touch and agree to trade with each other via a broker (for example trader A sells USD 10 million of a

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31 There might be a small number of differing quotes for differing sizes of trades, giving what is termed some '*depth*', although some broker screens will only show the best bid and offer.

32 All addressees of the Decision have confirmed that they cannot reliably identify the ultimate counterparty on the other side of a trade with a broker. […]

33 […]

34 […] Obviously if two traders first agree a trade between themselves and then settle via a broker, they know each other's identity. In general, however, a broker does not reveal the dealing bank behind the trades shown on its screen and thus traders can act in the market with anonymity.

35 […]

bond to trader B). In that case, whereas both traders trade de facto with each other, technically they will not be direct counterparties, as two separate trades will be recorded by the broker: trader A selling USD 10 million to the broker, and trader B buying USD 10 million from the same broker.

(43) When negotiating to trade with each other, via a broker, traders will exchange information for the purposes of price discovery (that is, the determination of a price which suits them both) - such as the number of bonds they wish to buy or sell and the price range likely to be acceptable. This case does not concern the communications between the relevant traders in the ordinary course of their business, relating to matters such as the provision of information needed and intended to explore trading opportunities with each other as potential counterparties or as potential customers, or comments about market colour.

2.1.5. Terminology

(44) In their communications, traders use professional jargon and abbreviations to refer to prices (bid, offer or mid-prices), positions, spreads, yields and maturities. This terminology is briefly explained below[36]:

(45) *Maturity of the bond*: traders often identify the bonds they are discussing by specifying (in addition to the issuer) the month or year in which the bond matures. A KfW 05/14 or 5/14 bond, for example, refers to a bond issued by KfW that matured in May 2014, whilst the term "16s" will refer to bonds which matured at some point in 2016, but for which the traders do not need to specify the month to know that they are talking about the same bond. Traders may also refer to "3yrs" or "5yrs", which refers not to the maturity date but the remaining time to maturity of the bond. In these circumstances, traders use these terms as shorthand when it is clear to each other that they are discussing the same bond.

(46) *Volumes*: traders will refer to the actual amount of bonds that they want to buy or sell. One bond equals USD 1000 at face value. Most often, they refer to the volume as "mm", to denote millions, as in "sold 50MM AFDB 2/13" (meaning the trader sold $50 million of bonds issued by the African Development Bank maturing in February 2013).

(47) *Yield spread* (usually denominated in basis points): as noted in recital (25), the difference between the yield of two bonds, typically referring to the difference between the yield of the bond under discussion and the yield of a comparable benchmark[37]. The benchmark will typically be a Government Bond like an EGB or a US Treasury bond with a similar maturity date, or an interest rate benchmark such as the London Interbank Offered Rate ('LIBOR' or 'Libor')[38].

(48) *Prices*: the traders typically discuss prices by reference to the yield spread between the bond in question and the relevant benchmark expressed in basis points ("bps" or

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36 Traders also use trade related slang jargon when communicating with each other, which is explained where relevant in the chronological overview of events in Section 4.

37 See also footnote 24.

38 […]

"bp"), either quoting a two-way price for the bond or specifying if the price is for a bid or an offer[39].

(49) *Long*: a long position is where the trader owns the bond in question (and would realise a potential gain if the price goes up). If a trader is "long 50mm", the trader currently owns a quantity of 50 million of the bond and, depending on his or her view of the future development of the bond's price, may seek to sell off that quantity (thereby closing that position or going "flat" and booking his profit or loss), or he or she could seek to buy additional volumes and augment his or her long position and then sell off at a later date.

(50) *Short*: a trader enters into a short position when he or she has sold a volume of bonds greater than that which he or she owned, and then has to purchase bonds on the open market to close his or her position. A trader may do this as a trading tactic in the expectation that the price of the bond will go down, enabling him or her to make a profit when they buy them back, or, for example, in order to satisfy a request from an important customer.

(51) *Hedging*: the exposure to risk involved in buying or selling a bond can be reduced by an offsetting trade in the same bond or in a security with similar risk characteristics, such as a US Treasury. This is also known as '*covering*' a position. Where an offsetting trade (that is, the purchase and sale) of the same bond is made simultaneously this is known as a *back-to-back* trade – that is two separate legal transactions taking place at the same time.

(52) *Sourcing liquidity*: where a trader carries out two separate legal transactions, such as purchasing additional bonds from another trader in order to fulfil a large buy order from a customer. As noted in recital (31), liquidity reflects the degree to which an asset or security can be bought or sold without affecting its price. It should be noted that the term can also be used in the sense of hedging or reducing risk – thus a subsequent sale of bonds to another trader after fulfilling a sell order from a customer (in order to reduce the risk of holding a large number of the bonds) can also be seen as '*sourcing liquidity*'[40].

(53) An *axe sheet*: shows the interest that a trader shows in buying or selling a particular financial security that is already in his book. When a broker or a salesperson of the bank asks the traders whether he has any axes, they are enquiring whether he has any interest in buying or selling a bond. A *runs sheet* also includes positions that a trader is willing to buy or sell.

(54) A *comps list*: is a list produced by a trader/trading desk in the context of a new issue of bonds, showing prices for comparable bonds with similar characteristics (maturity, yield) to that of the new issue.

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39 For a two-way price, see for example recital (131), in which the phrase "*I am going 28/25*" indicates that for this specific bond the trader intends to post a bid price of 28 and an offer price of 25 (both prices expressed as the yield spread between that bond and a benchmark bond, in basis points).The higher spread indicates the lower absolute price (which the trader is willing to pay), whilst the lower spread indicates the higher price (the price at which the trader is willing to sell). By contrast, see for example recital (116) for discussions in which the trader specifies whether the price he is quoting is a bid ("i bid +2") or an offer ("have shown them at -1 ½") price.

40 See, for example, recitals (243)-(247).

2.2. SSA Bonds

(55) The specific bond category affected by the collusive behaviour described in this Decision is SSA bonds denominated in US dollars. SSA bonds form an umbrella category of different bonds that are traded by the dealers in a specific and separate trading desk (the SSA desk). SSA bonds are traded over the counter ('OTC'), without any central exchange. The bonds traded by the SSA desks generally include the following types of bonds[41]:

(a) Supra-sovereign bonds: issued by supranational institutions whose mandate extends across national borders, such as the European Investment Bank ("EIB") or the Inter-American Development Bank ("IADB");

(b) Foreign Sovereign bonds: issued by central governments under a law different from their domestic law, and/or in currencies other than the government's own domestic currency[42];

(c) Agency (sub-sovereign) bonds: issued by government or government-related entities below the level of the national central government, such as provincial, regional or municipal governments (for example, the Länder of Germany or the provinces of Canada), or by institutions like government-owned banks, infrastructure development bodies, export financiers or social security facilities, generally subject to an implicit or explicit guarantee by the sovereign (for example, KfW Entwicklungsbank ('KfW')[43] or Caisse d'Amortissement de la Dette Sociale ('CADES')[44])[45].

The conduct referred to in this Decision involves all three types of bond.

(56) SSA bonds typically tend to be issued on the primary market by means of syndication. The conduct described in this Decision does not relate to the primary market, however, but rather to the subsequent trade on the secondary market of these SSA bonds denominated in US dollars ("USD SSA").

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41 See recital (9) […].

42 Sovereign bonds included in the SSA umbrella (Foreign Sovereign bonds) can hence be distinguished from the more prevalent domestic Government or Domestic Sovereign bonds issued by central governments under their own laws and in their own currency, which are not the subject of this Decision (see also recital (7)). The SSA category also excludes Sovereign bonds (issued in all currencies) falling into the category of emerging markets.

43 KfW Entwicklungsbank, a development bank owned by the German government and based in Frankfurt.

44 Caisse d'Amortissement de la Dette Sociale, a sinking fund established by government order in 1996 for the purpose of redeeming French social security debt.

45 Some institutions may broadly group Sub-sovereign bonds issued by sub-national governments (as opposed to pure agencies such as KfW) as belonging to the Sovereign category (the second "S" in SSA, rather than in the "A" category); this distinction does not, however, alter the fact that these bonds clearly come within the SSA umbella.
Bonds issued by US Agencies and Sub-sovereigns are generally traded on different desks and by different traders; they are hence excluded from the scope of this Decision. The Commission's file does not contain any evidence in relation to instruments which can be reliably identified as issued by an issuer established in the United States.
In this case, USD SSA bonds traded by the SSA desks exclude "high-yield" bonds, that is, bonds with a rating below the "Investment Grade" limit, commonly set at BBB- in a scale ranging from AAA to C (D being "default"). USD SSA bonds will therefore include bonds with a rating equal to AAA, AA+, AA, AA-, A+, A, A-, BBB+, BBB and BBB-.

2.2.1. *Actors*

(57) Based on the above description of the bonds industry, the following actors can be distinguished on the USD SSA bonds market.

Issuers

(58) The issuers of USD SSA bonds are Supra-sovereign, Sovereign and Agency public institutions[46]. In recent years, the largest issuers in the USD SSA market have typically been the European Investment Bank ("EIB") and the German development bank Kreditanstalt für Wiederaufbau ("KfW"). The volumes they issue for a specific bond are usually between 3 and 5 million USD[47]. Other major issuers of USD SSA bonds in US dollars include various international development banks such as the International Bank for Reconstruction and Development ("IBRD") and the Inter-American Development Bank ("IADB"); and Agencies such as the French Caisse d'Amortissement de la Dette Sociale ("CADES"), the Dutch Bank Nederlandse Gemeenten ("BNG") and the Spanish Instituto de Crédito Oficial ("ICO")[48].

End-Investors

(59) The two most important types of end-investors for USD SSA bonds are the Central Banks and the Treasury units of various banks. The end-investor split by region is typically Asia (45%), Middle East & Africa (20%), Europe (20%) and US (10%).

(60) For Central Banks, USD SSA bonds are a higher-yielding investment alternative to US Treasury bonds. The spread or additional yield of an USD SSA bond compared to its equivalent US Treasury is the key factor for any investment decision. Bank Treasury Units are the units managing short-to-mid-term liquidities of a bank. They invest in USD SSA bonds, as an alternative to Libor-related investments in USD[49]. The spread or additional yield of an USD SSA bond compared to the equivalent USD Libor rate is the main factor for any investment decision.

Dealers and traders

(61) The dealers are the financial institutions trading the USD SSA bonds. Dealers set up specific desks for trading USD SSA, where individual traders trade this type of bond. The undertakings subject to the present proceeding were all, at the time of the infringement, active as USD SSA bond dealers.

(62) Although there are no official market makers in the USD SSA bond market, the trading desks of the larger dealers perform a market making function in that they are generally ready to quote two-way bid and ask prices and to deal at those prices, although they are not obliged to do so at all times. USD SSA bond traders can also take (unhedged) positions in particular bonds, subject to limits imposed by their

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46 See recital (55).

47 As of March 2017, the EIB had an outstanding volume of bonds amounting to ca. EUR 470 billion, with USD-denominated bonds accounting for ca. USD 143 billion (EUR 133 billion) or 28% of that total, the largest proportion after bonds denominated in EUR. As of the same date, KfW had outstanding bonds amounting to ca. EUR 375 billion, 37% of which were denominated in USD (USD 150 billion or EUR 140 billion), also the highest proportion after bonds denominated in EUR.

48 A list of, and further statistics concerning major USD SSA issuers, including annual issuance volumes, are available under ID 228.

49 Libor stands for 'London InterBank Offered Rate', a rate at which banks can borrow from each other in a specific currency (in this case, the USD) for a specific period.

employing financial institutions at individual and desk level, with a view to benefitting from anticipated price changes.

(63) Whether acting as market makers or proprietory traders, USD SSA bond traders can trade directly with their competitors or indirectly via brokers. As noted in recital (40), traders may choose to settle a trade via a broker even when they have negotiated directly with another trader.

Brokers

(64) USD SSA bond transactions are facilitated through brokers or inter-dealer brokers (IDB)[50]. Major brokers active in the USD SSA market via electronic trading platforms at the time included Icap, Tullet Prebon and BGC Partners.

2.3. Market value

(65) The total outstanding volume of USD SSA bonds as of 20 January 2021 was approximately EUR 795 billion[51]. The US dollar represents the second most common currency in which SSA bonds are denominated, after the euro.

2.4. Undertakings subject to the present proceeedings

(66) The undertakings subject to the present proceedings were all, at the time of the infringement, active as dealers of USD SSA bonds on the secondary market.

2.4.1. Bank of America Merrill Lynch

(67) Bank of America Merrill Lynch (hereinafter also referred to as "BAML") is the marketing name for the global banking and global markets businesses of Bank of America Corporation. Bank of America Corporation is a banking and financial services undertaking headquartered in the United States of America that is active in the EEA and beyond.

(68) The subsidiary Merrill Lynch International, registered in the United Kingdom, carries out trading activities including the trading of USD SSA bonds and was the employing entity of the traders [BAML employee] from […][52], [BAML employee] from […][53] and [BAML employee] from […][54], although [the latter] was suspended from his role as a trader on 25 November 2015[55].

(69) Merrill Lynch International (hereinafter also referred to as “MLI”) is a wholly-owned indirect subsidiary of Bank of America Corporation.

2.4.2. Crédit Agricole

(70) Crédit Agricole hereinafter also referred to as "CA") is an important banking and financial services undertaking, headquartered in France, that is active in the EEA and beyond.

(71) Crédit Agricole carries out corporate and investment banking activity via Crédit Agricole Corporate and Investment Bank ("CACIB"). CACIB (London Branch) was

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52 […]
53 […]
54 […]
55 […]

the employing entity of USD SSA bond traders [Crédit Agricole employee] from […][56] and [Crédit Agricole employee] from […][57].

(72) CACIB is a nearly wholly owned subsidiary of Crédit Agricole SA, a joint stock company established in France[58].

2.4.3. Credit Suisse

(73) Credit Suisse (hereinafter also referred to as "CS") is an important banking and financial services undertaking, headquartered in Switzerland, that is active in the EEA and beyond.

(74) The Credit Suisse entity responsible for trading USD SSA bonds throughout the period of the infringement was Credit Suisse (Securities) Europe Limited ("CSSEL"), which was the employing entity of the trader [Credit Suisse employee] […][59].

(75) CSSEL is an indirect wholly owned subsidiary of Credit Suisse Group AG, the ultimate parent company of the Credit Suisse group[60]. CSSEL has been an indirect wholly owned subsidiary of Credit Suisse Group AG throughout the last ten years.

2.4.4. Deutsche Bank

(76) Deutsche Bank (hereinafter also referred to as "DB") is an important banking and financial services undertaking, headquartered in Germany, that is active in the EEA and beyond.

(77) Deutsche Bank AG is the ultimate parent company of Deutsche Bank. The wholly owned subsidiary DB Group Services (UK) Limited employed traders [Deutsche Bank employee] from 6 July 2009 to 30 June 2014[61], [Deutsche Bank employee] from June 2010 to August 2010 (when he was an intern) and July 2011 to April 2015; and [Deutsche Bank employee] from 1 March 2014[62]. […]. While he was based in Japan from June 2008 to March 2014, […] was employed by Deutsche Securities, Inc., an indirectly wholly owned subsidiary of Deutsche Bank AG[63].

3. PROCEDURE

(78) On 4 August 2015, Deutsche Bank applied for immunity under Section II of the Notice on immunity from fines and reduction of fines in cartel cases (hereinafter "the Leniency Notice")[64] […]. By decision of 4 December 2015, the Commission granted Deutsche Bank conditional immunity pursuant to point 8(a) of the Leniency Notice[65]. […].

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56 […]
57 […]
58 Crédit Agricole SA has owned approximately 97% of the shares of CACIB at all times during the last ten years. As of 31 December 2016, Crédit Agricole SA owned 97.8% of the shares of CACIB. […].
59 […]
60 […]
61 […] resigned on 1 April 2014 and was placed on gardening leave, with resignation effective on 30 June 2014.
62 […] was still employed by Deutsche Bank at the time of its immunity application in August 2015.
63 […]
64 OJ C 298, 8.12.2006, p. 17.
65 […]

(79) The Commission sent requests for information ("RFI"), pursuant to Article 18(2) of Regulation (EC) No 1/2003, on 4 December 2015[66] and 6 September 2016[67] to BAML, CACIB, Credit Suisse and other undertakings[68].

(80) Through the RFIs, the Commission first requested the parties to identify, list and preserve audio and electronic communications of certain USD SSA bond traders, and subsequently requested the parties to clarify the content of certain extracts of these communications. The banks however claimed they were unable to respond to a large proportion of the questions, and more specifically unable to interpret the communications, because they no longer employed the relevant trader(s) or the persons that had worked with them and were allegedly unable to contact them[69].

(81) Between 21 and 24 November 2016, the Commission carried out announced inspections at the premises of BAML and Credit Suisse in London. These inspections resulted in the discovery of additional contemporaneous evidence which was added to the Commission's file.

(82) […][70]. […][71]. […][72] […][73]. […][74] .

(83) On 15 March 2017, the Commission sent out another round of RFIs to the undertakings concerned, requesting data concerning trade volumes of USD SSA bonds during the relevant period, details on the corporate structure of the undertakings, and turnover. The parties replied over the course of June, July and August 2017[75].

(84) By decision of 20 December 2018, the Commission initiated proceedings pursuant to Article 2(1) of Regulation 773/2004 against Deutsche Bank, Credit Suisse, Crédit Agricole and BAML. On 21 December 2018, the Commission issued a Statement of Objections (hereinafter the "SO") to Deutsche Bank, Credit Suisse, Crédit Agricole and BAML.

(85) Deutsche Bank, Credit Suisse, Crédit Agricole and BAML were given access to the Commission's case file. Each party 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 only at the Commission's premises[76].

(86) All addressees of the SO made known in writing to the Commission their views on the objections raised against them[77]. They also presented their views orally during an oral hearing that was held in Brussels on 10 and 11 July 2019.

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68 The other undertakings are unnamed because they are not addressees of this Decision. See Judgment of the Court of First Instance of 12 October 2007, *Pergan Hilfsstoffe füf Industrielle Prozesse GmbH v Commission*, T-474/04 , ECLI:EU:T:2007:306, paragraphs 78 and 80.

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(87) On 12 November 2019, the Commission sent a further round of RFIs to the undertakings concerned, requesting clarification on notional amounts of USD SSA bonds traded, and the parties replied over the course of November and December 2019[78].

(88) On 6 November 2020 the Commission sent a letter to all parties providing further details on the fines methodology with particular attention to the calculation of the proxy to the value of sales. One of the parties responded to the letter on 4 December 2020 and the remaining three parties submitted their observations on 8 January 2021[79].

4. DESCRIPTION OF THE EVENTS

(89) Section 4.1 provides a general overview of the cartel, including its organisation, general characteristics, scope and participants as well as the chronological overview of the events taken into account for this Decision.

(90) Section 4.2 sets out, in chronological order, a selection of chatroom and phone communications between the parties that took place between 19 January 2010 and 12 March 2015.

(91) The evidence used for the description of events in this Decision are: (i) contemporaneous records of communications between the traders involved in the infringement, (ii) corporate statements of the immunity applicant, (iii) replies to RFIs including annexes, and (iv) evidence gathered during the announced inspections. This Decision also relies on the explanations provided by the immunity applicant, the other parties and other market participants in relation to these contemporaneous documents and the functioning of the business. The individuals involved in the infringement operated in a working environment in which a considerable volume of their communications was recorded. The main evidence relied on are various Bloomberg communications (whether part of persistent 'chatrooms' or ad hoc chat conversations) and, to a lesser extent, audio recordings of telephone conversations[80]. A persistent chat is one with a closed membership, which remains in existence even when none of the participants is logged on and where members can access and read the history and content of the chatroom which occurred in their absence. By contrast, a normal Bloomberg non-persistent chat is initiated by one trader inviting one or more others to chat, and is closed when the conversation ends. In order for the same individuals to communicate on a different occasion, a new chatroom must be opened.

4.1. Basic principles of organisation of the cartel

4.1.1. Organisation

(92) The traders involved in the vast majority of contacts ([...], initially for Deutsche Bank and thereafter for BAML; [...], initially for BAML and thereafter for Crédit Agricole; and [...] for Credit Suisse) all lived and worked in London and frequently met in person on social occasions. In addition, they were virtually in daily contact with each other during trading hours via the use of Bloomberg persistent and non-persistent chatrooms. They were traders in USD SSA bonds and traded with each other on a

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79 See also recital (917). […].

80 […]

regular basis in order to hedge or take positions and maintain a level of liquidity in the bonds. These trades were usually negotiated between the individual traders directly, and then executed via a broker.

(93) On 6 July 2009, [...] began working at Deutsche Bank[81]. Evidence in the Commission's file demonstrates that [he] was already in regular contact with [...] concerning the trading of USD SSA bonds even before [the latter] started working at BAML[82]. [...] also engaged in regular chatroom communications with traders already working at BAML in 2009[83].

(94) Just days after beginning work at BAML on […], [...] created on 12 January 2010 a persistent chatroom in which the only members were he and [...][84]. […] after beginning work at Credit Suisse on […], [...] created another persistent chatroom into which he invited [Deutsche Bank employee] and [BAML employee] as the only other members. A large proportion of the evidence in the Commission's file originates in this trilateral chatroom in which [...] (whilst at Deutsche Bank), [...] ([…]) and [...] (at Credit Suisse) participated and shared information[85]. In parallel, each of the three remained in regular bilateral contact with all of the others, either within another such persistent chatroom (in the case of [...] and [...]) or through occasional non-persistent Bloomberg chats (primarily the case with the pairs of [...] and [...], and [...] and [...]). On 25 February 2013, [Deutsche Bank employee] and [Deutsche Bank employee] discussed the fact that new Deutsche Bank bank policy prevented them from using chatrooms with traders from other banks[86]. But [...] (now at Crédit Agricole) and [...] (at Credit Suisse) continued to use the now bilateral chatroom. Both also remained in regular contact with [...] (at Deutsche Bank and then BAML) via recurring non-persistent chats[87].

(95) A large proportion of the chat communications in the Commission's file demonstrate that [...], [...] and [...] typically entered the chatrooms at or close to the beginning of the trading day, stayed logged in throughout the day, and exited the chatroom towards the end of the day (they also often met for lunch, after-work drinks or frequent events sponsored by brokers)[88]. Upon entering the chatroom, the traders would typically begin by disclosing the bonds and/or volumes of trades they made, or offers or bids submitted, at the end of the previous day or the very beginning of

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81 […]

82 […]

83 […]

84 PCHAT-0x100000135B8E1 (["…"]), created on 12.01.2010. […].

85 PCHAT-0x2000001313671 ("DB/CA/CS $ CHAT"), created on 20.05.2010. […].

86 See recital (473).

87 The ["…"] chatroom was discontinued on […]. However, […], […] joined a new bilateral persistent chatroom administered by […]: PCHAT-0x10000026CC636 (["…"]). […]. This chatroom was, however, discontinued on 25.02.2013, due to the restrictions imposed by Deutsche Bank on its traders' membership in persistent chatrooms with competing traders. [Deutsche Bank employee] also withdrew from the trilateral chatroom identified in footnote 85, although [Crédit Agricole employee] and [Credit Suisse employee] continued to communicate on that channel.

88 This pattern repeats itself throughout the period. Further, in response to […], the participants (other than the immunity applicant) have provided the Commission with tables indicating all calendar dates throughout the relevant period on which the traders had any form of communication the addressees were able to identify. The lengthy responses show that they were in contact on the majority of days on which they were likely to have been in the office. […].

the current one. The traders then maintained a running commentary of at least some of their trading activity at intervals throughout the day.

(96) This group of traders acknowledged their status as a tight-knit group well-known among traders in the City of London, even using or adopting a nickname derived from their […] ([…]) ethnic origin: "[…]"[89].

(97) Certain additional traders, namely [...] ([…])[90], [...] (Deutsche Bank)[91] and […] (Deutsche Bank)[92] were involved in the conduct on a more occasional basis, sometimes effectively stepping into the shoes of [...] or [...] when one of them was not present on the trading floor of his respective bank so that the conduct could continue uninterrupted. These traders were aware of the close relationship between the core "[…]" traders[93].

(98) Although these traders were employed by competing undertakings, they operated in an atmosphere of mutual trust and cooperation. At the latest by December 2010, [...] of Deutsche Bank introduced the bank's Tokyo-based [...] to [...] (BAML) and [...] (Credit Suisse) and informed [Deutsche Bank employee] that he could rely on [them] for help during the periods [Deutsche Bank employee] filled in for [him][94]. [Deutsche Bank employee] then created another persistent chatroom in which he could communicate with both [BAML employee] and [Credit Suisse employee] (with [Deutsche Bank employee] also a member of the chatroom)[95].

4.1.2. Participants

(99) The traders concerned were employed by BAML, Credit Suisse, Deutsche Bank and Crédit Agricole[96]. The traders that appear in the evidence that forms the basis for this Decision are the following:

Table 1: List of undertakings and traders involved (in the relevant period)

Undertaking (Parent company)	Employee	Period of Employment	Employing legal entity	Period of Participation in Infringement

[89] […]. The name seems to be based on […]. The group nickname does not always seem to have referred exclusively to […], but rather seems to have at times included other USD SSA traders of […] working in London at the time. […].

[90] See recitals (143)-(145), (150)-(152), (285)-(287).

[91] See recitals, (153)-(156), (161)-(164), (176)-(179), (263)-(264), (430)-(433), (473).

[92] See recitals (444)-(445).

[93] […]

[94] […]

[95] PCHAT-0x2000001CA9EA7 ("$SSA"), created on 16.12.2010. […].

[96] For the purposes of this proceeding, these financial institutions are hereinafter referred to as 'banks'.

Bank of America Corporation	[...] [...] [...]	[…] […][97] […]	Merill Lynch Merrill Lynch Merrill Lynch	[…][98] […][99] […][100]
Crédit Agricole SA	[...]	[…][101]	CACIB	[…][102]
Credit Suisse Group AG	[...]	[…]	CSSEL	[…][103]
Deutsche Bank AG	[...]	[…]	DB Group Services	[…][104]
	[...]	[…]	Deutsche Securities, Inc.	[…][105]
		[…]	DB Group Services	
	[…]	[…]	DB Group Services	[…][106]
		[…]	DB Group Services	

4.1.3. Scope of the cartel

(100) The conduct related to trades of USD SSA bonds on the secondary market. It directly affected the outcome of negotiations between the traders concerned and specific counterparties, as well as the conditions of trading on the USD SSA bond market generally to the extent the traders' strategies were not targeted to specific customers but to the market as a whole.

(101) The geographic scope of the cartel was at least EEA-wide. USD SSA bonds are financial products issued by numerous European and international institutions, as well as European and other central, regional and municipal governments. They are placed on the secondary market by dealers where they are traded on a worldwide basis. The traders concerned all worked for large multinational financial institutions doing business worldwide but with a physical presence in the EEA. The evidence in the Commission's file contains numerous references to customers located both within and outside the EEA.

4.1.4. General characteristics of the cartel

(102) In the cartel, the parties exchanged sensitive commercial information that allowed them to coordinate their conduct, thereby gaining an advantage vis-à-vis customers and competing traders when trading USD SSA bonds on the secondary market with the overall aim to benefit their trading revenues.

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97 […]
98 See recitals (558) and (572).
99 See recitals (116) and (443).
100 See recitals (143) and (287).
101 See footnote 97.
102 See recitals (451) and (576).
103 See recitals (193) and (576).
104 See recitals (116) and (551).
105 See recitals (153) and (473).
106 See recital (444).

(103) For analytical purposes, the cartel conduct can be presented in the following categories:

(1) Coordination on prices quoted to specific counterparties: the parties agreed on the prices they would bid and/or offer to specific clients when they were (or potentially would be) in direct competition with each other for trades[107];

(2) Coordination on prices to show to the market generally: the parties agreed on the prices they would show for specific bonds to the market (which included customers, brokers and competing traders) generally at a given time, either on the broker screens or in response to incoming customer requests[108];

(3) Exchange of current, or forward-looking commercially sensitive information on their trading activities and trade flows in the secondary market: the parties freely discussed information gained from internal sources of each bank in relation to the real-time strategies and activities of specific clients, upcoming flows and syndications in a manner that went beyond what was necessary for the legitimate negotiation of specific USD SSA trades[109];

(4) Exchange, confirmation and alignment of trading and pricing strategies: the parties disclosed their recent prices or current pricing strategies for specific bonds and maturities in terms of spreads or prices throughout the trading day, allowing each other to adjust and align their strategies and protect each other[110]; and

(5) Coordination of trading activity: the parties agreed to refrain from bidding or offering, or to remove (or "kill") a bid or offer from the market (typically from a broker screen) when they might come into competition with or otherwise interfere with one another, for a particular time window on account of another trader's announced position or trading activity. They also agreed to split trades between each other and amalgamate or reduce their respective positions to meet a specific customer's demands (as disclosed between them)[111].

(104) The different categories of conduct described for analytical purposes were interrelated and often overlapping. Coordination on prices or trading activity, for example, would inevitably be accompanied by an exchange of specific information on respective pricing or trading intentions. At least one trader from each party participated in some or all of these categories during the overall duration of the cartel which ran from at least 19 January 2010 until 24 March 2015.

(105) As noted in recital (103), the parties entered into arrangements on pricing, both for specific individual trades and to show to the market generally. They also exchanged information on pricing and trading strategy which enabled each of them to act on the market with the benefit of knowledge that was not available to other, non-collaborating competitors.

(106) Information on the actual mid-price of other traders, for example, may help a trader to understand how competitive his own pricing is.

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107 See recitals (614), (645)-(647).
108 See recitals (614), (653)-(655).
109 See recitals (615), (656)-(674).
110 See recitals (615), (675)-(680).
111 See recitals (616), (681)-(686).

(107) Knowledge of volumes being traded is another important element in the pricing of the bonds as prices are usually weighted by volumes (that is, one USD SSA bond equals USD 1000). The volumes are important as they directly influence the benefit they generate to dealers (see recital (19)). Information on volumes recently sold to or bought from customers (whether identified or not) by another trader provides a valuable insight into current trading patterns and possible demand or supply on the market, which may influence prices.

(108) The knowledge of a competitor's positions (short or long) is important as it allows the trader to determine the appropriate time to sell bonds and therby make a profit by either buying or selling bonds (see recitals (49) and (50)).

(109) Yield spreads are another important element in the pricing of the bonds. Comparing bonds issued by the same sovereign across tenors and comparing similar bond tenors across sovereign issuers enable traders to determine the relative value of, and set prices for, a specific bond in relation to these reference points (see also recitals (25) and (47)). Knowing the yield spread being quoted by a competitor assists a trader in relative price setting.

(110) Thus the coordination and the exchange of information in private, multilateral or bilateral chatrooms and on an extensive and recurring basis on prices, spreads and volumes in the secondary market, as well as the coordination of trading strategies accompanied and enabled pricing coordination.

(111) The information may have been, depending on the specific instance, either of immediate commercial value or of commercial value for a period of minutes (for the most liquid USD SSA bonds), hours or days (for the least liquid) after it had been shared, or until it had been superseded by new updated information that overrode it[112].

4.2. Chronological overview of events

(112) The Commission's file contains communications of the traders from persistent and non-persistent chatrooms and, to a limited extent, phone recordings. A number of the communications reference phone calls between two of the traders, recordings of which are not available[113]. The evidence also indicates that at least some of the traders communicated via other channels as well, and met in person regularly, including socially and on business trips[114]. Evidence from these other channels is not available.

(113) Despite these limitations, the Commission's file contains hundreds of communications between traders that were provided to the Commission by the immunity applicant[115] or obtained during inspections. In order to enable the addressees to understand the Commission's findings and assist their reading of the evidence, this Decision presents instances of collusive behaviour beginning in January 2010[116] and ending in March 2015[117]. The contacts mentioned in the

112 See Section 2.1.4 for the market dynamics.
113 See, for example, recitals (173) and (208). Other audio recordings were available – see, for example, recitals (237) and (397).
114 See recital (821).
115 […]
116 See recital (116).
117 See recital (576).

chronological overview of this Decision show the pattern of conduct in the relevant period[118]. This chronological overview contains extracts of communications from persistent chatrooms and bilateral chats but these communications were typically much longer and these extracts[119] should be interpreted in the context of the entire exchange of information between the participants[120].

4.2.1. 2010

(114) On 6 July 2009, [...] began working at Deutsche Bank[121]. Evidence in the Commission's file demonstrates that [he] was already in regular contact with [...] concerning the trading of USD SSA bonds even before [...] started working at BAML[122]. [...] also engaged in regular chatroom communications with traders already working at BAML, including [...][123].

(115) On **[…]**, [...] began working at BAML[124]. From this point on, the majority of the communications between BAML and Deutsche Bank involve [...] and [...]. At times, however, [...] (BAML) or [...] (Deutsche Bank, Tokyo), would be involved, particularly when either [...] or [...] were not on their respective desks. A further Deutsche Bank trader, […] could also stand in for [...].

(116) On **19 January 2010[125],** […] (Deutsche Bank) and […] (BAML) discuss and exchange current or forward-looking commercially sensitive information (including on pricing) for various bonds, including German and Italian sovereign bonds and KfW bonds.

19 January 2010	03:31:57 – 08:44:01
BAML ([...])	*"just got an order from custy to sell 100mm germs… where do you see correct bidside"*
DB ([...])	*"+3"*
BAML ([...])	*"ah ok… i bid the guy 2.5"*
DB ([...])	*"even thast should be fine"*
	[…]
DB ([...])	*"being asked to bid germand"*
BAML ([...])	*"feck how many"*
DB ([...])	*"100-150mm"*
BAML ([...])	*"feck… what kind of custy"*
DB ([...])	*"middle east cb… i bid +2"*

118 See recital (92). The SO of 21 December 2018 contained an Annex which listed these extracts together with additional extracts which the Commission also considered to contain instances of collusive behaviour. One of these additional extracts, that of 11 October 2013, is described in recital (530).

119 In the reproductions of chatroom communications included in this Decision, the time of the communication indicated is identical to the time indicated in the original contemporaneous document. In the chatroom communications provided to the Commission by Deutsche Bank, the line-by-line communications between the traders are indicated in Eastern Standard Time/Eastern Daylight Time (EST/EDT). […].

120 In the context of access to file, the parties were granted access to the entire chatroom communications existing in the Commision's file, including those parts not quoted in this Decision, and had the opportunity to make their views know with regard to the entire documents.

121 […]

122 […]

123 […]

124 […]

125 […]

BAML ([...])	*"that's where i bought mine taking into a/c the money i lost on the fecking hedge"*
	[...]
DB ([...])	*"being asked to offer Germany now… where youwant to offer… could be ipto 50mm"*
BAML ([...])	*"-1.5 i was showing to sales"*
DB ([...])	*"ok let me show it"*
BAML ([...])	*"obviously I give you juice if any joy"*
DB ([...])	*"ok showing it… have shown them at -1 ½"*

(117) The above exchanges on German sovereign bonds take place at intervals over several hours. [BAML employee] begins by telling [Deutsche Bank employee] that he has received an order to place a bid for 100 million of German bonds and asks [Deutsche Bank employee] what he thinks the "correct" bid price should be ("*where do you see correct bidside*"). [Deutsche Bank employee] replies ("*+3*") and [BAML employee] replies that he has already placed a bid at +2.5, which [Deutsche Bank employee] thinks should also be fine. Later, [Deutsche Bank employee] reveals that he is also now being asked to bid for German bonds and reveals to [BAML employee] the size of the contemplated bid ("*100-150mm*"), the type of customer (a Middle Eastern central bank) and his bid price ("*+2*").

(118) Still later, [Deutsche Bank employee] reveals he is now being asked to offer German bonds and, knowing [BAML employee] is holding these type of bonds, agrees to show the customer the bonds owned by [BAML employee] at the price set by [BAML employee] *("-1.5 i was showing to sales"* "*ok let me show it*").

(119) BAML[126] claims that the discussions between the two traders take place within the context, firstly, of the need for traders to source liquidity in order to deal with customers (namely to either obtain or sell on bonds as necessary) and, secondly, of 'price discovery'. As far as sourcing liquidity is concerned, the only instance in which this is relevant is the final exchange, in which [Deutsche Bank employee] reveals that he has been asked to offer up to 50 million of the bonds and asks [BAML employee], whom he knows has already bought 100 million, what price he wants to offer at. In BAML's words: "*Through this discussion, [Deutsche Bank employee] is able to source inventory to fulfil the customer's request*". They argue that if he had not been able to source the bonds at a certain price, he might have offered them at a higher price or not offered them at all. However, this does not justify an agreement between the traders on the price that each of them shows to the customer.

(120) As concerns the earlier exchanges, when each trader was either being approached for the same potential trades or had hedged elsewhere, BAML claims[127] that: "*traders need to communicate with other traders and market participants not only to source liquidity for customer trades but also to have a better sense of the prices and availability of bonds when they are pricing customer trades or preparing to quote in anticipation of an enquiry*". However, this cannot constitute legitimate market discovery or discussion on market colour, as it involves sharing very specific information between competitors about the details of trading approaches including

126 […]
127 […]

direction, amount and type of customer before jointly determing a price to show to the customer.

(121) In the exchange below from the same date, [BAML employee] reveals to [Deutsche Bank employee] that he has been asked to bid for certain KfW bonds and again asks [Deutsche Bank employee] for pricing advice ("*WHAT THE RIGHT BIDSIDE*").

19 January 2010	07:18:30 – 07:28:21
BAML ([...])	*"YOU GOT ANY KFW 4 3 ½ 05/14… 4.75 05/14"*
DB ([...])	*"yeah… i have some"*
BAML ([...])	*"THOUGHT SO… WHAT THE RIGHT BIDSIDE… oops… got an a/c[128] looking to sell"*
DB ([...])	*"i got the same inquiry… i am making +5 to flat"*

(122) [Deutsche Bank employee] reveals he has received the same inquiry and discloses to [BAML employee] his intended bid ("*i got the same inquiry… i am making +5 to flat*"), hence revealing his pricing intention to [BAML employee] in relation to a customer requesting price quotes from both of them for the same trade (thus in circumstances in which [Deutsche Bank employee] and [BAML employee] are supposed to be in direct competition). In this context, [Deutsche Bank employee's] disclosure of his intended bid price to [BAML employee] means that the customers, who are looking for the best price to sell the bonds, may not be getting the best competitive trade deal (in the absence of the exchange [BAML employee] may have offered a different bid price).

(123) Again, BAML[129] asserts that the discussion between the traders took place within the context of potentially sourcing liquidity and price discovery. It states that [Deutsche Bank employee], when asked for the right bid price: "*gives a two-way market and does not give a direction*". However, first of all, this is irrelevant as [Deutsche Bank employee] discloses that he has had the same approach from the potential customer. Secondly, it is not correct to claim that: "*There is no discussion or collusion on the prices to be shown to the customer*" as, in response to the information given by [BAML employee], [Deutsche Bank employee] both confirms that he has had the same customer enquiry and the price he has quoted. Thirdly, BAML's hypothesis that there was "*real likelihood of customers having contacted several other dealers for quotes,*" is also irrelevant because the fact that a customer might have asked several traders for quotes does not justify price discussions between two of those traders.

(124) Still on the same date, the two traders discuss pricing on Italian sovereign bonds maturing in 2033, and ICO 2.5 9/12 bonds.

19 January 2010	08:53:15 – 08:55:23
DB ([...])	*"bidding on 8mm italy 33… where oyu got them marked?"*
BAML ([...])	*"+85"*
DB ([...])	*"too wide man… they were +74 bid on the 15th"*
BAML ([...])	*"+80?... ah .. better update my mark then"*
DB ([...])	*"you need my spreadsheet!"*
	12:08:31 – 12:09:54

128 a/c = account, customer.
129 […]

BAML ([...])	*"where you got ico 2.5 09/12 marked ... got an a/c looking for offrside"*
DB ([...])	*"swaps +35 on the bid... not seen them for a while"*

(125) In relation to the Italian bonds, [Deutsche Bank employee] informs [BAML employee] that he is bidding and asks him where he has them 'marked' (what price he would bid at that time). [BAML employee] gives him an answer ("+85") but [Deutsche Bank employee] protests that this price is too wide, explaining that he had observed a bidding price of +74 on the 15th (four days before). This is a piece of market intelligence shared by [Deutsche Bank employee] of which [BAML employee] is unaware, but which allows him to adjust his price levels (presumably bringing them in closer alignment with those of his competitor). It is therefore an exchange of internal views on pricing, with [Deutsche Bank employee] using the older information as a way of reinforcing his view. In relation to the ICO bonds, a similar exchange takes place, in which this time it is [BAML employee] looking for pricing advice for an account looking for offers.

(126) BAML argues[130] that [BAML employee's] marked bid price for the Italian bonds is simply an internal valuation price and: "*not a price that he is currently bidding to a particular customer*". BAML's view is, however, contradicted by the confirmation by other addressees of this Decision[131] that a 'marked price' can, depending on the context, refer to a current bid or offer price and that in this discussion it is clear that both queries about: "*where you got…marked*" are within the context of current immediate trades and relate to current prices and customer enquiries, as illustrated by [BAML employee's] explanation with regard to his subsequent query ("*where you got ico 2.5 09/12 marked*"), namely:"*got an a/c* [account/customer] *looking for offrside*".

(127) On **1 February 2010**[132], […] (Deutsche Bank) and […] (BAML) have the following exchange in a persistent chatroom:

1 February 2010	11:03:21 – 11:04:47
DB ([...])	*"you bing asked to bif kfw 01/11?... i just got the same gig"*
BAML ([...])	*"yep... what you showing"*
DB ([...])	*"103.95"*
BAML ([...])	*"gonna show the same.. [...]"*

(128) In this communication, a customer has approached both Deutsche Bank and BAML with a request for a bid for KfW 01/11 bonds. Instead of showing independent competitive prices to the customer, the two traders colluded to show the customer the same price. None of the addressees has put forward an alternative explanation for this communication.

(129) On **8 February 2010**[133], […] (Deutsche Bank) and […] (BAML) have the following exchange in a persistent chatroom.

8 February 2010	04:12:18 – 04:24:39
DB ([...])	*"where you marking spain 2 09/12..being asked to bid 25mm"*

130 […]

131 […]. See also recitals (720)-(724).

132 […]

133 […]

BAML ([...])	*"i am bidding htme* [i.e. them] *as well"*
DB ([...])	*"i bid +100 to 3 yrs"*
BAML ([...])	*"ok i will show the same..should be well ok there"*
DB ([...])	*"yeah…Spain cds in 7 this morning"*
BAML ([...])	*"a/c just come back on spain and said they want +95"*
DB ([...])	*"not got a response… you might as well just rpt [repeat] … doubt anyone else even bidding"*
BAML ([...])	*"they said they are seeing 95 away..i said they shouldgo and hit it"*

(130) In this communication, [Deutsche Bank employee] and [BAML employee] agree on the price level each will show to a client for an enquiry in Spain 09/12 bonds. Both traders were bidding in the market for the bonds and [Deutsche Bank employee] suggests that developments in Spanish CDS (credit default swaps) should support their agreed price. Instead of showing independent competitive prices to the market, the two traders colluded to "show the same" price to the customer. Later, [BAML employee] informs [Deutsche Bank employee] that the client is asking for a better price ("*said they want +95*"). [Deutsche Bank employee] replies that he has not heard back from the client and suggests [BAML employee] simply repeat his offer as there is unlikely to be anyone else competing for the trade ("*not got a response… you might as well just rpt*"). None of the addressees have put forward an alternative explanation for this communication.

(131) On **24 February 2010**[134], […] (Deutsche Bank) and […] (BAML) had the following exchange concerning CADES 10/14 bonds in a persistent chatroom.

24 February 2010 09:47:14 – 09:51:08	
BAML ([...])	*"where u buy cades 10/14..i was aske those"*
DB ([...])	*"27 3/4"*
BAML ([...])	*"pretty punchy man..i was offering them at 27 in […]*[135] *...got a 29 bid for 20 mm that was it"*
DB ([...])	*"you long them?"*
BAML ([...])	*"nah he had a bidder for 20mm so I htouth if I lose 20mm @ 27 not a bad hedge for my long… I'll remove my offer"*
DB ([...])	*"yeah cool…I am going 28/25 in […]"*

(132) In this communication, [BAML employee] is taking [Deutsche Bank employee's] interests into account with regard to CADES 10/14 bonds by withdrawing his offer from a broker's screen in order to benefit [Deutsche Bank employee][136]. [BAML employee] tells [Deutsche Bank employee] he will withdraw his offer in order to avoid creating the impression that there is more than one seller in the market (which would reduce [Deutsche Bank employee's] chances of successfully exiting from his position as a buyer might trade with [BAML employee]). [Deutsche Bank employee] accepts [BAML employee's] offer to remove his price and reveals the two-way price (bid price and ask price) he plans to offer on a broker screen ("*yeah cool…I am going*

134 […]
135 […] is a broker.
136 […]

28/25 in […][137]"). Instead of competing with [Deutsche Bank employee] on the offer side, [BAML employee] has restricted the number of price offers in the market.

(133) BAML argues[138] that [BAML employee's] removal of his offer price from the brokers screen is not anticompetitive behaviour as: "*This discussion concerns activity in the brokers screens only"* and: "*to the extent that inter-dealer brokers and broker screens facilitate trading to enable dealers to serve customers, dealers are not competing with each other…because they are also looking to trade with each other*". Moreover: "*broker screens relate to small 'social' trades only*". Instead, BAML argues that [BAML employee's] decision to withdraw his offer is made entirely independently of his conversation with [Deutsche Bank employee] and that [BAML employee] is less interested in selling CADES 10/14 and "*was only speculatively exploring whether he could sell these bonds at a particular price that would work as a hedge against another position*", whereas [Deutsche Bank employee] has a position in the bonds and: "*will be actively seeking to sell in the […] broker screen".*

(134) These arguments should be rejected. BAML acknowledges that [BAML employee] had received information from the broker […] that there was another trader looking to buy 20 million – the volume he wished to sell as a hedge. Whether 20 million is regarded as a social size or not, it was a meaningful volume for [BAML employee] and at least one other trader. And whilst sometimes traders were each other's customers via trades made through interdealer brokers at prices on screens[139], they were also competitors, which is clearly the case in this instance, in which there is no suggestion of the two were trading with each other. While the traders were exchanging information, [BAML employee's] offer had not yet been 'lifted', meaning accepted by a counterparty, as his price, despite being shown on the […] screen (and thus the best offer price at the time via […]), was so far not attractive enough – as reflected by the fact that [Deutsche Bank employee] had recently bought at a better price.

(135) BAML's interpretation, namely that [BAML employee's] stated interest to sell CADES bonds in order to hedge a position was less important than that of [Deutsche Bank employee], is implausible. BAML's interpretation is, firstly, not supported by any evidence; and, secondly, is contradicted by BAML's own assertion that their traders sought to source liquidity: "*by locating counterparties with whom to off-set, or hedge, the positions resulting from their customers' trades*"[140]. BAML's statement that: "*[BAML employee] does not influence [Deutsche Bank employee's] price because even though [BAML employee] was offering at 27, and did not receive any interest, [Deutsche Bank employee] indicates that he is going to offer at a higher (ie less competitive) price of 25*" is no valid justification for [BAML employee's] withdrawal. [BAML employee] may not "*influence*" [Deutsche Bank employee's] desire to sell at a higher price, but he clearly acts to facilitiate it. By withdrawing his own offer price from the […] screen, [BAML employee] forgoes (for the time being) his efforts to sell CADES at 27 in order to enable his friend [Deutsche Bank employee] to have a chance at selling them at the less attractive price of 25.

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137 […] is believed to refer to […], which may be shorthand for the broker […], formerly known as […].

138 […]

139 Broker screen prices and their influence within the market are discussed in detail in recitals (725)-(730).

140 […]. See also recital (688).

(136) The same communication also contains the exchange of trading strategies, including sensitive pricing information on Italian 01/15 sovereign bonds (from 03:14:19 to 03:18:28), IADB 09/12 (from 04:33:59 to 4:43:22) and SFEFR 06/12 bonds (from 04:45:10 to 4:48:00)[141]. The exchange of price levels is sensitive information which helps traders understand how competitive their own pricing is.

(137) As regards [BAML employee's] query to [Deutsche Bank employee] at 03:14:19: "*asked to bid Italy 4.5 01/15 50 mm just now…where u got those marked*" and [Deutsche Bank employee's] response: "*+93 to 5yrs*", BAML's claim[142] that this marked price: "*is only indicative of the bond's value and not where [Deutsche Bank employee] would actually bid or offer to a customer*" does not take account of the fact that [Deutsche Bank employee] gives only one, and not a two-way, price and moreover, as noted in recitals (720)-(724), is at odds with the explanations of other addressees' of this Decision on the meaning of "*where u got those marked*" in the context of potential trading by one or both of the traders involved in the exchange.

(138) As regards the short exchanges regarding a customer approach to [Deutsche Bank employee] for IADB and then SFEFR bonds, BAML contends[143] that [Deutsche Bank employee's] queries to [BAML employee] for pricing information on the IADB bonds are "*price discovery*" and that the information is probably available in the market. However, whatever the source of [BAML employee's] information, the two traders have exchanged information on the presence of a customer who is seeking to trade (and could approach [BAML employee]) and on the prices which [Deutsche Bank employee] is currently bidding to that customer. The same holds for the exchange on pricing of the SFEFR bonds, which BAML argues[144] is "*liquidity sourcing*" by [Deutsche Bank employee]. This is contradicted by the fact that [BAML employee] informs [Deutsche Bank employee] that he is short 15 million in the bonds only after [Deutsche Bank employee] discloses an approach involving a potential 90 million sale and the primary focus of the exchange, and [Deutsche Bank employee's] interest, is the pricing of the bonds to the customer.

(139) On **8 March 2010**[145], […] (Deutsche Bank) and […] (BAML) coordinate trading on an Lbank[146] bond.

8 March 2010	09:38:58 – 09:40:28
DB ([...])	*"being asked to offer 20mm lbank 01/12…trying to get them to look at your ones instead"*
BAML ([...])	*"yeah doing the same thing"*
DB ([...])	*"you seeing it yeah?"*
BAML ([...])	*"yes sir"*
DB ([...])	*"where you want me to show the lbanks..like +68?"*
BAML ([...])	*"yeach cool"*

(140) [Deutsche Bank employee] reveals to [BAML employee] that he is being asked how much he is offering for 20mm of the relevant bonds, whilst he knows that [BAML

141 […]
142 […]
143 […]
144 […]
145 […]
146 Landeskreditbank Baden Wuerttemberg state development agency.

employee] is long on these bonds ("*trying to get them to look at your ones instead*"). Instead of making his own price he asks [BAML employee] to agree the price to be shown to the client[147]. [BAML employee] replies that he is also seeing the inquiry, and agrees with [Deutsche Bank employee] the price [Deutsche Bank employee] will show ("*+68*").

(141) BAML asserts[148] that the Lbank bonds held by [BAML employee] are in fact different to the Lbank 01/12s that the customer is seeking (presumably [Deutsche Bank employee] knows this from earlier exchanges). The specific Lbank bond, however, is not relevant to the interaction between the traders, as there is no justification for competing traders exchanging sensitive information regarding their separate pricing intentions for customers, irrespective of the bond in question. BAML also asserts that: "*[Deutsche Bank employee] is trying to provide a good service to the customer by sourcing an alternative Lbank bond that is likely to be attractive to the customer*" and that "*[Deutsche Bank employee] necessarily discusses with [BAML employee] the price at which [BAML employee] would be prepared to sell the Lbanks that he holds*". As regards the fact that two traders, both of whom have been approached by the same customer, agree on the price to offer the customer, BAML states that: "*Although [BAML employee] may have received the same enquiry* [which he confirms he has], *we do not know what price [BAML employee] or [Deutsche Bank employee] is actually showing to the customer"* as, BAML maintains, the price of +68 "*has only been agreed in relation to the potential bilateral trade between [Deutsche Bank employee] and [BAML employee], should [Deutsche Bank employee] win the customer trade"*. However, [Deutsche Bank employee] has explicitly asked [BAML employee]: "*where you want me to show*", which can only mean to the customer. BAML's final contention that, without the agreement with [BAML employee] (or others readily available), [Deutsche Bank employee] would not have been able to offer anything: "*thereby reducing the customer's choices"* makes no sense when it is obvious that [BAML employee] had received the same approach and would have offered a price. [Deutsche Bank employee] and [BAML employee] have already reduced two of the (unwitting) customer's choices to one.

(142) The same communication also contains exchanges of sensitive information concerning the traders' current or future pricing intentions on SFEFR 09/14 bonds (from 03:09:27 to 03:10:59), IADB 3 04/14 bonds (from 03:15:30 to 03:16:13), EIB 4 5/8 05/14 bonds (from 03:16:59 to 03:17:17), CADES 10/14 and 03/15 (from 03:24:56 to 03:25:38), SFEFR 06/12 (from 03:33:24 to 03:41:42) and IADB 04/11 and 06/11 (from 04:22:54 to 04:28:01)[149]. Here, BAML maintains their argument that, to the extent that these exchanges involve disclosures of "marked" prices, these are not current prices which might be shown to customers. In reality, however, the exchanges are within the context of current customer approaches and pricing decisions and notably without any suggestion of trading and/or liquidity sourcing between the traders themselves.

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147 […]
148 […]
149 […]

(143) On **10 March 2010**[150], […] (Deutsche Bank) and […] (BAML) have an exchange in a persistent chatroom in which they agree to bid the same level for "ned[151] 02/12" bonds to a counterparty that has approached both of them.

10 March 2010	06:08:42 – 06:36:05
DB ([...])	*"where you think ned 02/12 are?"*
BAML ([...])	*"+37 bid… no?... L+19 bid"*
DB ([...])	*"not seen it in ages… being asked to maybe bid some"*
BAML ([...])	*"he is here too… what are u bidding?"*
DB ([...])	*"lets both bid same level… +37?"*
BAML ([...])	*"ok… we split the ticket if we trade if you want"*
DB ([...])	*"perfect"*
DB ([...])	*"calling… we are buying these… at +36… will send you details when I have them"*
BAML ([...])	*"tx… size?"*
DB ([...])	*"122mm in total..so 61mm each"*

(144) The above exchange begins with [Deutsche Bank employee] asking [BAML employee] what he thinks the right price for "*ned 02/12*" would be under current market conditions. [BAML employee] indicates a bid price of "+37" and [Deutsche Bank employee] notes he has been approached to make a bid on these bonds. [BAML employee] then reveals he has received a similar inquiry, the timing of which allows the traders to conclude that the same customer has approached both of them ("*he is here too*"). The traders then agree to submit the same bid, and to "*split the ticket*" if one of them wins the trade. This is an agreement to execute a bilateral trade under which the one who has made the trade with the client will buy half the amount of the client trade from the other, in order for both [Deutsche Bank employee] and [BAML employee] to make a profit out of the trade[152].

(145) The strategy appears to be successful, albeit not at the original price agreed by the traders. Minutes later, from 06:21:25 a phone call takes place between the two, subsequent to which at 06:30:45 [Deutsche Bank employee] informs [BAML employee] that he has made a trade at +36 and that the two will be splitting 122mm in total.

(146) BAML argues[153] that: "*The NED bond appear to be a less liquid/less frequently traded as [Deutsche Bank employee] comments 'not seen it in ages'*". Having made that assumption, they argue that a long position will be difficult to: "*lay off in the market*" and the traders then agree to split the ticket and share the risk: "*so that they are able to bid a better price to the customer*". Indeed, they conclude, the agreement to split enables [Deutsche Bank employee] to bid a higher price (meaning a lower yield spread of +36) and the Commission's assumption that both traders make a profit: "*is not necessarily correct*".

(147) BAML's summary of the exchange is contradicted by the contemporaneous evidence. [BAML employee] and [Deutsche Bank employee], having discovered that

150 […]
151 "ned" = Nederlandse Financieringsmaatschappij; or State of Netherlands sovereign.
152 […]
153 […]

they are both being approached by the same potential customer, agree to bid the same price of +37 *before* [BAML employee] suggests splitting the trade. The agreement on prices comes before any potential risk and/or profit sharing. Moreover [Deutsche Bank employee's] subsequent disclosure that they are actually paying a slightly higher price is clearly as a result of negotiation with the customer. The two traders clearly aimed for the best price they could, acting together, and were bid up slightly. The fact that in the end they had to pay marginally more does not justify the fact that, in acting jointly vis à vis a customer who had approached them separately, they reduced the number of prices available to the customer. There is no suggestion from either of them that they were considering refraining from bidding in the absence of their interaction.

(148) On **11 March 2010**[154], […] (Deutsche Bank) and […] (BAML) discuss in a persistent chatroom an approach to [...] by a potential client concerning "*neds*"[155].

11 March 2010	09:15:38 – 09:18:15
DB ([...])	*"being asked to offer 5mm neds..where shall we show?..63.5?"*
BAML ([...])	*"+62…+63"*
DB ([...])	*"ok showing at 63"*

(149) [Deutsche Bank employee] asks [BAML employee] for input on the price he should show to the customer. [BAML employee] replies, and then adjusts his reply until the two agree that [Deutsche Bank employee] should show at +63. Whilst it is not clear whether [Deutsche Bank employee] is proposing to trade on behalf of [BAML employee] or whether they are discussing the price they will each offer to customers at that time, the price to be shown to [Deutsche Bank employee's] customer is fixed at 63 by mutual agreement with [BAML employee][156]. None of the addresssees of this Decision have put forward an alternative explanation for this communication.

(150) Also on **11 March 2010**[157], […] (BAML) and […] (Deutsche Bank) have the following exchange concerning "*ned 15*" and "*ned 12*" bonds in a non-persistent chatroom.

11 March 2010	03:27:48 – 04:51:57
BAML ([...])	*"66/64 to sales today?... 66/63?"*
DB ([...])	*"morning 66/63 looks good to me"*
BAML ([...])	*"done"*
DB ([...])	*"and i will show the ned 12 at +32?"*
BAML ([...])	*"that is what I have don… if I trade anything I ll split… with u"*
DB ([...])	*"perfect!... you see ned 15 are 65 bid in [...] … happy days!"*

(151) In this exchange, [BAML employee] and [Deutsche Bank employee] agree on the prices they will show to the market for what appears to be 'Neds' of two different maturities. [BAML employee] opens the communication by asking what two-way price the traders should submit to each of their respective sales desks for the 'Ned' 15 bond mentioned at the end of the extract. The traders agree that 66/63 is the right price. Immediately thereafter, [Deutsche Bank employee] reveals the price he plans

154 […]
155 […]
156 […]
157 […]

to show for a 'Ned' maturing in 2012 (quite possibly the same "*less liquid*" bond being traded on 10 March 2010). [BAML employee] indicates he has shown the same price and offers to split any trade he makes on that bond (at that agreed price) with [Deutsche Bank employee]. Finally, [Deutsche Bank employee] points out that a bid of 65 has arisen on a broker screen, indicating that the "*66/63*" price discussed earlier may relate to this bond.

(152) BAML states that the second communication of 11 March 2010[158] (and presumably also the initial communication between [BAML employee] and [Deutsche Bank employee] are within the context of a new issue of Nederlandse Waterschapsbank five year bonds for which Deutsche Bank and BAML (Merrill Lynch International) were lead managers. They argue that the agreement between [BAML employee] and [Deutsche Bank employee] is to "*offer strong bid prices of 66 to investors in order to support the price of the bond in the market, which is beneficial for investors seeking to sell the new bond in the market*". However, they offer no explanation for the agreement between the traders on prices for the NED 12 (presumably a comparison bond[159]) or the agreement to split trades. At that time, the regulatory framework within which lead managers were allowed to support a new issue in the secondary market was based on Commission Regulation (EC) No 2273/2003[160], as set out in the relevant regulations of the UK Financial Services Authority ("UK FSA")[161]. These set out strict time limits, identification amongst the lead managers of a stabilisation manager and periodic public reporting requirements. There is no evidence that any of these rules were adhered to by Deutsche Bank or BAML and furthermore no evidence that any support of the new issue was necessary. BAML itself acknowledges that there was strong investor interest in the new bond. In addition to agreeing secondary market prices for the new bond, [Deutsche Bank employee] and [BAML employee] are eliminating competition between each other in relation to the trading of a comparable bond and agreeing that they will share the revenues from trading in that bond.

(153) On **22 March 2010**[162], […] (Deutsche Bank) contacts […] (BAML) in a non-persistent chatroom with a request to help him price an EIB bond.

22 March 2010	10:45:57 – 11:22:43
DB ([...])	*"[Deutsche Bank employee]] told me to ask you for advice"*
BAML ([...])	*"sure"*
DB ([...])	*"I am being asked to bid 50MM of EIB 3.125 6/14… do you think 93.5 is a right level?"*
BAML ([...])	*"let me check… that level looks fine man"*
DB ([...])	*"thanks very much. did you use to work with [Deutsche Bank employee]?"*
BAML ([...])	*"no never worked with himm just met him through the market..and became good friends"*

158 […]

159 See recital (54).

160 Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2001, p. 33).

161 Also see recital (733).

162 […]

BAML ([...])	*"also don't hesitate to contact me dude..me and [Deutsche Bank employee] are very close friends"*
DB ([...])	*"yeah he told me the same."*

(154) The above communication involves an exchange of current or forward-looking information concerning pricing intentions for an EIB bond. [Deutsche Bank employee] is in London for two weeks and filling in for [Deutsche Bank employee], and is uncertain of how to price a bid for an EIB bond with a maturity of June 2014. He therefore asks [BAML employee] for advice on how to price, thereby revealing that [Deutsche Bank employee] has instructed him to do so and indicating the relationship of trust he and [BAML employee] share. For his part, [BAML employee] checks [Deutsche Bank employee's] proposed bidding level internally and confirms his view that [Deutsche Bank employee's] proposed price is "*fine*" and tells [Deutsche Bank employee] he should not hesitate to contact him for more advice.

(155) BAML argues[163] that "*[BAML employee] is simply assisting [Deutshe Bank employee] with price discovery, by advising on a sensible price level, for example, based on the bond's fair value, or at a level at which [Deutsche Bank employee] might be able to lay off risk in the market*". However, this ignores the fact that [BAML employee] and [Deutsche Bank employee] are supposedly competing traders. They are simply continuing the exchanges with [BAML employee] already engaged in by [Deutsche Bank employee]. Both traders benefit from this exchange: [Deutsche Bank employee] has received advice from a more experienced trader on how to price his bid, whilst [BAML employee] has gained information on how an important competitor will be pricing bids for a specific bond on the market at the time. This information helps the participating traders to understand how competitive their own pricing is.

(156) A similar exchange between [Deutsche Bank employee] and [BAML employee] took place on the following day, **23 March 2010**[164], in relation to a proposed bid for CADES bonds maturing in February 2011. More specifically, [BAML employee] gives [Deutsche Bank employee] advice on the appropriate price for a bid of CADES 2/11. BAML[165] declares that only [Deutsche Bank employee] has received the customer enquiry and, in any case, does not win the trade. This is irrelevant, as there is no justification for competing traders exchanging pricing intentions or similar sensitive pricing information. The customer could have potentially contacted [BAML employee], who was aware through this exchange of information of the customer's interest and a competitor's pricing.

(157) On **25 March 2010**[166], […] (BAML) and […] (Deutsche Bank) again assist each other concerning the prices being shown to the market for NED bonds, and discuss on which broker screen each will place his identical bid price.

25 March 2010	04:23:19 – 05:06:20
BAML ([...])	*"you doin a ned bid"*
DB ([...])	*"yeah 2 secs..just rolling my stuff"*

163 […]
164 […]
165 […]
166 […]

BAML ([...])	*"ok bud…i am gonna be +54 for nds..thats 1+48…48.25 to be precise"*
DB ([...])	*"sweet…where you gonna bid?"*
BAML ([...])	*"[...]"*
DB ([...])	*"I will bid the same in [...]"*

(158) [BAML employee] informs [Deutsche Bank employee] what his bid price will be and [Deutsche Bank employee] asks which broker he will be using to inform the market (via the broker's screen price). He then responds that he will show the same price via a different broker. The two traders have therefore reduced the number of competing prices in the market and allocated the brokers between them.

(159) BAML makes a number of claims with regard to this chat[167]. Firstly it states: "*This communication does not involve prices being shown to investors as it relates only to prices on broker screens"* and "*does not represent a price made to investors*". This is in line with BAML's argument[168] that: "*prices offered via inter-dealer brokers and on broker screens do not reflect prices that will be offered to investors".* Noting that brokers screens display only the 'best' bid and offer prices for a specific bond at any time[169], BAML asserts that, as [BAML employee] and [Deutsche Bank employee] are both interested in buying, putting up bids in two separate broker screens maximises their chances of the bid being seen by a trader with an opposing interest and "*actually increases the number of bids being shown*", which allegedly would be beneficial for the market. Finally, BAML contests the statement that the traders have allocated the brokers between them on the grounds that brokers are not customers of the traders (despite the fact that brokers gain revenues in the form of commissions from traders) and that they do not represent distinct segments of the market as traders have access to multiple screens.

(160) BAML's arguments should be rejected for the following reasons. First, its assertion that prices on brokers' screens do not reflect prices offered to investors is not only at odds with that of other addressees of the Decision[170], but also with its own subsequent explanations[171] that prices on interdealer brokers screens feed into prices offered to investor customers[172]. Secondly, BAML's justification for the exchange of sensitive information and agreement on prices by the two traders is untenable even on its own terms. The suggestion that showing a price on multiple screens is beneficial for the market is, for example, contradicted by the fact that, also according to BAML, traders have access to and can view multiple broker screens. Showing the same price on two screens does not therefore maximise the chance of being seen. Finally, in the absence of their exchange and agreement, both traders might have approached the same broker and the better of their bid prices would have been shown to the market (if it were better than other third party bids). In reality, they have agreed a price between them, which they presumably believe has a chance of being shown to the market, and approached two different brokers with the aim of having the same price on two screens. They are therefore reducing the number of different

167 […]
168 […]
169 See recital (35).
170 See recitals (725) and (728), as well as footnote 488.
171 […]
172 See also recitals (725)-(730).

prices potentially available to other third party traders and, via those traders, to other market participants including investor customers.

(161) On **31 March 2010**[173], […] (BAML) advises […] (Deutsche Bank) on the pricing of two bonds in a non-persistent chatroom.

31 March 2010	05:19:20 – 00:20:43
DB ([...])	*"sold 50MM AFDB 2/13"*
BAML ([...])	*"which bond dude?"*
DB ([...])	*"AFDB 1.625 2/13"*
BAML ([...])	*"you own any?"*
DB ([...])	*"no"*
BAML ([...])	*"they are 14 bid in the screen..is this your bid? Too tight move it back to 16 and try to get them from an a/c at 15 area"*
DB ([...])	*"ok thanks for the advice"*
DB ([...])	*"been asked to bid 50MM of sfef 3.375 5/14"*
BAML ([...])	*"hmm i am long this one"*
DB ([...])	*"…+82.5 is ok?"*
BAML ([...])	*"? way too tight…86/83 is where i have the 2 way"*
DB ([...])	*"oh ok"*

(162) For each bond, [BAML employee] advises [Deutsche Bank employee] to bid at a less aggressive price in the brokers screen and [Deutsche Bank employee] accepts the advice without reservation, implying that he will act accordingly[174]. BAML again contends[175] that: "*[BAML employee] has not received an enquiry on this bond*" so that he is not competing with Deutsche Bank for the trade. Again, the fact that the customer has not (yet) approached BAML, does not justify this exchange of pricing information.

(163) The following day, **1 April 2010**[176], […] (BAML) again gives advice to […] (Deutsche Bank) on trading strategy and pricing for a SFEFR (French agency) bond in a non-persistent chatroom.

1 April 2010	07:51:35 – 07:59:16
DB ([...])	*"i am being asked to offer SFEFR 2.875 9/12..thinking of showing +97..what do you think?"*
BAML ([...])	*"one moment..09/12?"*
DB ([...])	*"sorry..9/14"*
BAML ([...])	*"09/14 you mean..yes you own the right? with swaps they should be wider..show +98"*
DB ([...])	*"ok..traded away at +99..did you get the inquiry?"*
BAML ([...])	*"no i did not see it"*
DB ([...])	*"Asian CB"*
BAML ([...])	*"yeah i know the one"*
DB ([...])	*"the SFEFR buyer"*

173 […]
174 […]
175 […]
176 […]

BAML ([...])	*"yep..usual Asian cb"*

(164) As well as asking for (and accepting) pricing advice, [Deutsche employee] also indicates that the client is an Asian central bank and a "*SFEFR buyer*" to [BAML employee], which apparently is enough information for [BAML employee] to know exactly which client it is[177]. Even before the client's identity is discussed, which shows that the traders had a common understanding of identifying certain recurring clients, the exchange between the traders influences [Deutsche Bank employee's] pricing.

(165) On **6 April 2010**[178], […] (Deutsche Bank) and […] (BAML) engage in the following exchanges over a period of several hours in a persistent chatroom.

6 April 2010	02:36:20 – 03:02:46
DB ([...])	*"being asked to offer 20mm eib 2.75 15… where are these things at?"*
BAML ([...])	*"yo.those shold be around..although i sold all mine"*
DB ([...])	*"where you reckon on the offer side?"*
BAML ([...])	*"good question …i would hsow at +25… actually thats too tight… +27"*
DB ([...])	*"where you marking neds at the moment?"*
BAML ([...])	*"+55… sold 50mm @ 53 on thurs… but then got hit @ 55 in 19mm in bookies…taken the sellers out now i think"*
DB ([...])	*"is that you +55 bid in […]?"*
BAML ([...])	*"yeppp"*
DB ([...])	*"calling"*

(166) In the above extract, [Deutsche Bank employee] asks [BAML employee] for information concerning how to price an EIB bond maturing in 2015, and Neds of a maturity which is not explicitly disclosed in the chat, but which must be known to both traders in order for them to discuss on price, and is likely to refer to the most recently issued Neds bond. [BAML employee] then discloses some pricing information concerning recent trades he has made in Neds. [Deutsche Bank employee] then sees a bid for Neds on a broker screen ('[…]', probably referring to […][179]) and asks [BAML employee] if it is his bid, in light of the information [BAML employee] has just shared. [BAML employee] acknowledges it is his bid, and [Deutsche Bank employee] then indicates he is calling [BAML employee][180]. None of the parties has advanced any alternative explanation for this extract.

(167) Later in the same chat, [Deutsche Bank employee] and [BAML employee] exchange information on marking of specific bonds.

6 April 2010	06:06:36 – 06:34:54
DB ([...])	*"where you got italy 10/12 marked?"*
BAML ([...])	*"+97"*
DB ([...])	*"where are iadb 20's marked?*

177 […]
178 […]
179 Broker electronic trading platform.
180 […]

BAML ([...])	*"10's+20"*
DB ([...])	*"where you got sek 09/14 marked?"*
BAML ([...])	*"+118"*
DB ([...])	*"ok cool"*

(168) In the above extract, [Deutsche Bank employee] asks [BAML employee] for further advice on the pricing of a series of bonds[181]. It is clear that "*marked*", in both these extracts from the same day, refers to current prices and not end-day or end-month valuations. For example, [Deutsche Bank employee] asks [BAML employee] where he is marking *'neds'* and [BAML employee's] response of '+55' is, as he confirms, the bid price currently being shown, on his behalf, on the […] broker's screen. Competing traders do not normally disclose current prices to each other[182].

(169) Later in the same chat, [Deutsche Bank employee] and [BAML employee] agree on a bid price for 50mm of KfW 15's.

6 April 2010	07:21:20 – 07:22:02
DB ([...])	*"how many kfw 15 you short?... sending out some bids"*
BAML ([...])	*"i will take 50mm if you get them"*
DB ([...])	*"where you want to bid?... i was gonna bid +26"*
BAML ([...])	*"+26"*
DB ([...])	*"ok cool"*

(170) In the above extract, [BAML employee] has a short position[183] in certain KFW bonds, which he might wish to cover by bidding for the bonds on the market. [Deutsche Bank employee] is aware of [BAML employee's] short position and also intends to submit bids for the same bonds. [Deutsche Bank employee] and [BAML employee] then agree on the price [Deutsche Bank employee] will bid. They further agree that [BAML employee] will then buy a volume worth 50 million to cover his position if [Deutsche Bank employee] makes a trade. Thus, [BAML employee] will be able to cover his position without submitting a bid in competition with [Deutsche Bank employee][184].

(171) BAML states[185] that when [Deutsche Bank employee] asks [BAML employee] his position in KFW bonds and explains that he is: "*sending out some bids*", that he is sending out his "*runs*", that is: "*indicating his prices and trading interests as a general advertisement to customers* ". BAML also claims that it was: "*very common in the SSA bond market for a dealer to add another dealer's trading interests to his runs in case the first dealer has a customer with a complementary interest*". Finally: "*there is no reduction in competition in this case: it is likely that [BAML employee] is also sending his own runs, including his interest to buy KfW 15, to his own customers*".

(172) These arguments are unconvincing. Even if [BAML employee] was advertising his interest in KFW bonds to his own customers, this does not detract from the fact that the two traders have agreed the price that they will pay for the bonds. This agreement

181 […]
182 See recitals (105) and (106).
183 See recital (50) for an explanation of a short position.
184 […]
185 […]

took place before [Deutsche Bank employee] sent out his runs list to customers and therefore also involved an exchange of not publicly available information on trading positions and pricing strategies. It did not take place in the context of a transaction between the traders as both were short and could have bought independently in the market. Sending coordinated price lists did not widen the overall customer base in an interlinked market; rather it reduced the number of competitive prices in the market.

(173) Subsequently, [BAML employee] and [Deutsche Bank employee] agree the price they will each show to a customer with an interest in selling a volume of "*ont 19s*"[186]. The exchange appears to result in a telephone call between the two traders. No recording of this call has been retrieved. In this chat, a client is looking to sell bonds and contacts both Deutche Bank and BAML for a quote. By agreeing on the price to show to the customer, the customer is disadvantaged as he is not getting a deal at normal market conditions (that is, competitors potentially showing different prices in competition with one another). No alternative explanation has been put forward for this extract by any of the parties.

6 April 2010	11:24:52 – 11:25:47
DB ([...])	*"bidding 55mm of these ont 19!"*
BAML ([...])	*"same here"*
DB ([...])	*"lets both bid 41?... and split the trade?"*
BAML ([...])	*"calling"*

(174) On **19 April 2010**[187], […] (Deutsche Bank) and […] (BAML) agree to show the same price to a customer for Neds in a persistent chatroom.

19 April 2010	05:52:32 – 05:53:25
DB ([...])	*"how many neds did you get hit in?"*
BAML ([...])	*"i took 2"*
DB ([...])	*"being asked to offer 20mm… you might see it in a sec so lets shjow at the same level… 50?"*
BAML ([...])	*"what u rekcon..+50… agrteed"*

(175) [Deutsche Bank employee] contacts [BAML employee] in anticipation of [BAML employee] seeing the same request for an offer as [Deutsche Bank employee] is seeing, and proposes they offer at the same price. [BAML employee] agrees. The two traders have agreed on the price shown to the customer. Later in the chat (not reproduced above), [BAML employee] indicates that he ultimately did not see the request. [Deutsche Bank employee] reveals that the request came from a client they have nicknamed […], the identity of which both traders obviously know[188]. No alternative explanation has been put forward for this communication by any of the parties.

186 '*Ont*' refers to bonds issued by the province of Ontario, Canada. The extract reproduced here is only a small part of a long intermittent discussion throughout the document, in which the traders discuss their current trading activity in respect of these bonds, including sharing information or intelligence with respect to specific counterparties and competitors. […].

187 […]

188 […]

(176) On **27 April 2010**[189]**,** […] (BAML) and […] (Deutsche Bank) collude over pricing terms offered to specific customers in a non-persistent chatroom.

27 April 2010	06:28:21 – 07:51:32
DB ([...])	*"you can have the trade if you want…i'm offering 50 IBRD 3s"*
BAML ([...])	*"ok..what kind of a/c"*
DB ([...])	*"Asian CB"*
BAML ([...])	*"ok ibrd 1.75 04/13 correct?"*
DB ([...])	*"yes"*
BAML ([...])	*"show at ct3+23bps" (i.e. 3year Treasury + 23basis points)*
DB ([...])	*"ok..doesn't seem to be in comp"*
BAML ([...])	*"ok show at 22 then"*
DB ([...])	*"trying"*
BAML ([...])	*"cool"*
DB ([...])	*"they have a cash target of 99.70 or +23. If you want it, please let me know"*
BAML ([...])	*"tell him we meet in the middle at 22.5"*
BAML ([...])	*"any response"*
DB ([...])	*"nothing"*
DB ([...])	*"its for 25MM now"*
BAML ([...])	*"ok I can do 99.70 in 25m"*
DB ([...])	*"done i am touching nothing"*
DB ([...])	*"need your help again"*
BAML ([...])	*"yep"*
DB ([...])	*"bidding 45MM of DEN 2.25 5/12"*
BAML ([...])	*"hmm ok…what kind of custy"*
DB ([...])	*"European RM[190]"*
BAML ([...])	*"ct2+30bps bid"*
DB ([...])	*"thanks"*

(177) As regards the IBRD bonds [Deutsche Bank employee] requests [BAML employee's] advice on how to price the bonds. He then tells [BAML employee] he can have the trade if he wants it, and ultimately he makes his offer to the client on behalf of [BAML employee] at [BAML employee's] preferred price. This means that the client, in approaching Deutsche Bank, is ultimately dealing with BAML at a price agreed between Deutsche Bank and BAML. [Deutsche Bank employee] even offers [BAML employee] non-public information, in particular that the request from the client is apparently not in competition ("*ok..doesn't seem to be in comp*"), prompting [BAML employee] to adjust his price in his favour ("*ok show at 22 then*")[191].

189 […]
190 […]
191 […]

(178) In the same chat, as regards the communication concerning the "*DEN*" bonds and the *"European RM"*, [BAML employee] offers pricing advice to [Deutsche Bank employee] on a (probably Denmark sovereign) bond tailored to a specific category of client[192].

(179) BAML's argument[193] that: "*it is clear that [Deutsche Bank employee] is conducting price discovery and sourcing liquidity for his customer requests*" should be rejected. Firstly, as regards the IBRD bonds, [Deutsche Bank employee] offers [BAML employee] the trade, but at a price to the customer which is agreed between the traders and then modified by mutual agreement as [Deutsche Bank employee] negotiates with the customer, who is no doubt unaware that it is facing two traders and not one. Secondly, in the case of the DEN bonds, there is evidence of (accepted) price direction (not '*discovery*'[194]) and a further disclosure of customer type.

(180) On **14 May 2010**[195], in a persistent chatroom, […] (Deutsche Bank) makes an offer for 25mm of KfW '19' bonds to a customer for a position held by […] (BAML), at a price directed by [BAML employee].

14 May 2010	02:59:40 – 03:03:41
DB ([...])	*"you long kifw 19?...being asked to offer"*
BAML ([...])	*"yep…20 mm"*
DB ([...])	*"offering 25mm…where you want to show?"*
BAML ([...])	*"show @ +28"*
DB ([...])	*"ok…will try and get last look"*
BAML ([...])	*"great…i just got lifted in kfw 01/17's 16mm*
DB ([...])	*"he is seeing 29.5..you want to match?*
BAML ([...])	*"ok"*
DB ([...])	*"ok 2 secs…done"*
BAML ([...])	*"cool"*
DB ([...])	*"hedged you"*
BAML ([...])	*"tks man"*
DB ([...])	*"sure…book it through […]"*
BAML ([...])	*"am I doing the full 25mm?"*
DB ([...])	*"stop his moaning…up to you…i don't mind either way"*
BAML ([...])	*"prefer to do my size of 20mm to stop BS increase"*
DB ([...])	*"thats fine man"*

(181) Ultimately, [Deutsche Bank employee] trades 20mm of the bonds on behalf of [BAML employee], who does not want to sell more than his actual holding for balance sheet reasons, and 5mm on his own account, all booked via an interdealer broker. Whilst the initial collusive price shown to the customer did not secure the trade, the ultimate transaction price ("*29.5*") was agreed between the two traders[196].

192 […]
193 […]
194 See recitals (704)-(708) on the issue of price discovery.
195 […]
196 […]

(182) BAML maintains[197] that [Deutsche Bank employee]: "*discovers that [BAML employee] has 20 million of these bonds and can therefore provide liquidity for [Deutsche Bank employee's] customer, who is not in contact with [BAML employee.]*" and that "*[BAML employee] effectively informs [Deutsche Bank employee.] that he is willing to sell bonds to him at +28 ("show @ +28). [Deutsche Bank employee's] customer is in contact with other dealers and so applies pressure on [Deutsche Bank employee] to offer the bonds more cheaply. [Deutsche Bank employee] uses this to pressure [BAML employee] to lower his price; as a result, [BAML employee] agrees to lower his supply price to [Deutsche Bank employee] so that [BAML employee.] can make the sale. [Deutsche Bank employee] can then agree to the trade with the customer. There is no 'collusive' price shown to the customer…We do not know what price [Deutsche Bank employee] actually offered to the customer*".

(183) However, this interpretation of the communication is contradicted by the actual statements of [Deutsche Bank employee] and [BAML employee]. [BAML employee's]: "*show @ +28*" follows a query by [Deutsche employee], who has already told [BAML employee] that he is "*being asked to offer*" by a potential customer. The query, or rather invitation: "*offering 25 mm…where do you want to show?*" makes it obvious that [Deutsche Bank employee] is inviting [BAML employee] to determine the price to be offered directly to the customer and "*show @ +28*" is [BAML employee's] instruction, not his intermediate sales price to [Deutsche Bank employee]. The fact that the customer has seen a better offer of +29.5 in the market does not detract from the fact that there was a further accord over the price between [Deutsche Bank employee] and [BAML employee], when [Deutsche Bank employee] asked [BAML employee] outright: "*do you want to match?*". Moreover, BAML's suggestion that "*we do not know the price [Deutsche Bank employee] actually offered to the customer*" is contradicted by the contemporaneous evidence, that is recorded in their chatroom. Upon [BAML employee's] affirmation that [Deutsche Bank employee] can show 29.5, the latter responds: "*ok 2 secs..done*". This is also not a question of [Deutsche Bank employee] sourcing liquidity and determining terms of trade with his customer – terms which would, according to BAML[198], be influenced not only by the cost of sourcing liquidity but also *inter alia* the trader's relationship with the customer and current market conditions. In reality, the two traders agree *throughout* the negotiation with the (unwitting) customer on the pricing to be offered to the customer. That the customer had not (yet) approached [BAML employee] is irrelevant.

(184) […].

(185) On **19 May 2010**[199], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) exchange current pricing information on IFC 3 04/14 bonds[200], and discuss their trading activity and price levels in a number of other bonds as well[201].

19 May 2010	02:45:11 – 02:48:41
DB ([…])	*"just got asked to offer 30mm ifc 3 04/14"*

197 […]
198 […]
199 […]
200 […]
201 […]

BAML ([...])	*"where you show?... i have those as well"*
DB ([...])	*"showed them at +70… but said make sure we get last look… need to get book down in this environment"*
BAML ([...])	*"yeah level seems fair"*
BAML ([...])	*"i'm being asked ifc now as well"*

(186) In the above extract, [Deutsche Bank employee] discloses to [BAML employee] that he has been asked to offer IFC[202] bonds, and reveals the price he showed to the customer. [Deutsche Bank employee] also notes he has asked his sales desk to get a *'last look'* (an opportunity to improve his offer, if necessary), suggesting he may be willing to offer a better price to the customer. [BAML employee] remarks that [Deutsche Bank employee's] initial offer seems fair, and minutes later reveals he is also being asked about the IFC bonds. There is no further discussion of IFC bonds in the chat, so it is not certain (although likely) that [BAML employee] received his inquiry from the same customer as [Deutsche Bank employee], nor is it known what price [BAML employee] offered.

(187) The knowledge of [Deutsche Bank employee's] price offered for the same bonds, just minutes before, reduces uncertainty for [BAML employee] in relation to the price levels shown to the customer. [BAML employee] must be presumed to have taken this information into account in deciding his own strategy.

(188) Again, BAML claims[203] that [Deutsche Bank employee] was simply sourcing liquidity in the IFC bonds from [BAML employee], which is at odds with the fact that both traders have the bonds and [Deutsche Bank employee] is clearly keen to sell his own to get his book down (meaning to reduce his inventory), such that he has essentially told the potential customer to come back and inform him if they get a better price. BAML's explanation is implausible as [Deutsche Bank employee] would not want to 'source liquidity' from [BAML employee] – either by buying the bonds from him or selling to him, when both already hold the bonds and are clearly interested in a potential sale to a third party. BAML also states that, regarding [BAML employee's] later disclosure of: "*I'm being asked ifc now*": "*it is not clear from the chat if these are the same IFC 3 04/14 bonds requested by* [Deutsche Bank employee's] *customer"*. The "*as well*", however, shows that it is the same bond. In any case, when the two traders are discussing different maturities from the same issuer, as on 14 May 2010, they clarify this[204]. Here they are discussing pricing levels for a bond which they would both like to sell, and for which there are potential customers in the market.

(189) Additionally, throughout the chat, the two traders discuss their recent trading activity, including exchanges of sensitive commercial information[205], such as price levels and offers they have seen on broker screens, in a variety of bonds including Spain sovereign bonds 2 09/12[206] and 03/12[207], EIB 09/12[208], KfW 06/12[209], NEDWBK 2 10/12[210], and Italian sovereign 4.5 01/15[211].

[202] International Finance Corporation (supra-sovereign), www.ifc.org.
[203] […]
[204] See recital (180).
[205] See recitals (105)-(111) for an explanation of the value of the exchange of sensitive information.
[206] […]. The '2' refers to the coupon while '09/12' means the bonds mature in September 2012.

(190) On **2 June 2010**[212], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) align prices they each show to a customer.

2 June 2010	08:40:30 – 09:27:25
DB ([...])	*"the asian?"*
BAML ([...])	*"yes sir"*
DB ([...])	*"where shall we show?"*
BAML ([...])	*"i showed 71"*
DB ([...])	*"and how many you being asked to offer?"*
BAML ([...])	*"just sold them 30mm"*
DB ([...])	*"what spread?"*
BAML ([...])	*"71"*
DB ([...])	*"so lucky the big asian started buying NEDS!"*
DB ([...])	*" seeing it here direct now"*
BAML ([...])	*"got you… i showd 30mm @ 71"*
DB ([...])	*"ok cool will show same level… and wont improve"*
BAML ([...])	*"cool… u soild them yet?… keep udating level but he not lifting"*
DB ([...])	*"sold them"*
BAML ([...])	*"cool nice on… one"*
DB ([...])	*"worked out a dream"*
BAML ([...])	*"sure did"*

(191) [Deutsche Bank employee] and [BAML employee] first discuss the terms (price and volume) of a sale [BAML employee] has made to a client they refer to as "*the asian*"[213]. Some time later, [Deutsche Bank employee] notes he has received an inquiry ("*seeing it here direct now*"). [BAML employee] replies ("*I showd 30mm at 71*"), terms which are identical to the sale of Neds he made with the "*asian*" minutes before. However, this is a new inquiry, possibly by the same customer looking for more of the same bond, which [BAML employee] and [Deutsche Bank employee] are both now seeing simultaneously. After [BAML employee] discloses the volume and price he has shown to the customer, [Deutsche Bank employee] states he will show the same level and will not improve on his offer. Several minutes later, [BAML employee] asks if [Deutsche Bank employee] has sold the bonds and [Deutsche Bank employee] replied that he has, and both agree that the strategy "*worked out a dream*"[214]. No alternative explanation has been put forward for this chat by the parties.

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207 […]

208 […]

209 […]

210 […]. Nederlandse Waterschapsbank, a Dutch agency.

211 […]

212 […]

213 […]. See recital (670).

214 […]. Note that even if it were only [Deutsche Bank employee] who was seeing the second inquiry, this exchange at the very least would represent an exchange of sensitive pricing and volume information from a very recent trade. However, it is evident that both traders are seeing the inquiry and hence coordinating their behaviour, as [BAML employee] notes to [Deutsche Bank employee] that he is refreshing his offer ("keep udating level but he not lifting") while [Deutsche Bank employee] informs

(192) In the same communication, the two traders discuss their recent or current trading activity, including sensitive commercial information such as price levels and specific customers, in a variety of bonds including NEDWBK 15[215], Italian sovereign 06/12[216], KfW 01/20[217] and IBRD 15[218]. Through these type of discussions, the traders enable each other to reduce their uncertainty regarding client positions and trades in particular bonds and thus potentially place them at a competitive advantage vis-à-vis other traders with regard to those clients.

(193) On **21 June 2010**[219], in a persistent chatroom, […] (Credit Suisse) sends […] (Deutsche Bank) and […] (BAML) a '*runs sheet*' containing offers and bids[220], asking them to let him know if they see something "*totally wrong*". He explained that he plans to use this sheet until he gets a proper trading book and can begin trading. In sharing information on his intended trading terms and inviting comments, [Credit Suisse employee] is reducing the market uncertainty of the other two traders and encouraging an environment of cooperation from the start of his employment.

(194) BAML states[221] that, as [Credit Suisse employee] had not yet started trading, the runs sheet was probably more likely to be for his internal use rather than a list of prices to send to customers and that, having been out of the market for a while, he was reducing his own uncertainty, and not that of [BAML employee] or [Deutsche Bank employee]. However, the fact that all three traders working for competing undertakings were sharing pricing information in a persistent chatroom reduced their mutual uncertainty as to their future competitive behaviour. The exchanging of runs between traders provides transparency as regards the pricing intentions of competitors. As [Credit Suisse employee] had been employed in a trading position at Credit Suisse […][222] but was not authorised to actually trade […][223], the exchange with Credit Suisse's competitors provided [Credit Suisse employee] with a base guideline.

(195) On **20 July 2010**[224], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) discuss their price levels for two bonds in relation to a client enquiry.

20 July 2010	04:37:27 – 04:42:00
DB ([...])	*"where you got coe[225] 06/14 marked?"*
BAML ([...])	*"just been checked as well..vs kfw 03/14 right"*
DB ([...])	*"yep"*
BAML ([...])	*"showed 73 vs 86 ...coe i think are 90/86 2 way"*
DB ([...])	*"i showed the same"*
BAML ([...])	*"cool.. i got some bng 05/14 on the book..told him to look at*

[BAML employee] that he "*wont improve*" from the price [BAML employee] has indicated (which would be irrelevant for [BAML employee] if he were not also involved).

215 […]

216 […]

217 […]

218 […]

219 […]

220 See recital (53).

221 […]

222 See recital (99).

223 See recital (184)

224 […]

225 Council of Europe Development Bank.

	those instaed..pick 20bps"

(196) [Deutsche Bank employee] asks for price input on a bond, and [BAML employee] immediately guesses it is the same inquiry he has received, a switch between COE 06/14 and KfW 03/14 bonds. When [Deutsche Bank employee] confirms that it is the same client, [BAML employee] tells him the prices he quoted to the client in both bonds[226]. [Deutsche Bank employee's]: *"i showed the same"*, at 04:41:16, namely around a minute and a half later, is unclear as to whether he has just indicated the same prices as [BAML employee] to the client or whether by coincidence he had already shown those prices before requesting [BAML employee's] input. In the first scenario, the traders align their prices to show to a customer. In the second scenario, it is at the least an exchange of highly sensitive current price information about the terms offered to a client who has approached both traders. [BAML employee] goes on to inform [Deutsche Bank employee] of an alternative trade that he has offered to the client, thus increasing [Deutsche Bank employee's] background knowledge about the situation of their mutual client.

(197) BAML argues[227] that [Deutsche Bank employee's] information was historic and that [BAML employee's] comment on the price for COE bonds was likely to relate to brokers screen prices (again without any evidence) and was not "*highly sensitive*". BAML furthermore argues that [BAML employee's] disclosed strategy of telling the potential customer to look at BNG bonds depended on his own position and was unlikely to influence [Deutsche Bank employee]. BAML's arguments should be rejected for the following reasons. First, BAML does not substantiate its claim that [Deutsche Bank employee's] information was historic. Second, the two traders discussed pricing and trading strategies in relation to a customer who was in the market seeking to trade and had approached them both (*"just been checked as well"*). Such information in relation to ongoing negotiations is commercially sensitive and reduces the traders' uncertainty as regards their future competitive behaviour. Third, the fact that [Deutsche Bank employee] is now aware that [BAML employee] has suggested a possible alternative trade to the customer and that [BAML employee] has a holding of those alternative bonds provides [Deutsche Bank employee] with a further strand of sensitive market information on which to base his pricing terms.

(198) On **28 July 2010**[228], in a persistent chatroom, […] (BAML) and […] (Credit Suisse) discuss their price levels in relation to a client inquiry both were seeing at the same time in relation to "Lbank" bonds. […] (Deutsche Bank) is also present in the chatroom.

28 July 2010	12:11:09 – 13:06:14
BAML ([...])	*"got a buyer of lbank…u short the 15's now?"*
CS ([...])	*"flat now. i've just been asked too… swiss"*
BAML ([...])	*"yeah… hes not telling me the size he is after though… could be 50mm or more"*
CS ([...])	*"exactly. i don't want to short anything at that libor spread…if spreads continue to come in, that bonds gonna scream tighter"*
BAML ([...])	*"agree…gona show him a piece of 25mm or 50mm but tight… u*

226 […]
227 […]
228 […]

	sell yours at like 57 earlier?"
CS ([...])	*"55… 55.5"*
BAML ([...])	*"ok i just showed him bonds at 50"*

(199) [BAML employee] and [Credit Suisse employee] reveal that they are each being asked to offer Lbank bonds by a customer that [Credit Suisse employee] refers to as "*swiss*". [BAML employee] knows the customer [Credit Suisse employee] is referring to, or at least has enough information to know it is the same customer. They then discuss their strategy in relation to the request, with [Credit Suisse employee] disclosing to [BAML employee] that he does not intend to enter into a short position on that bond, meaning that he does not intend to make an offer.

(200) [BAML employee] seems to know roughly the price at which [Credit Suisse employee] sold the same bonds earlier, and asks [Credit Suisse employee] to confirm. [Credit Suisse employee] does so ("*55…55.5*"), and [BAML employee] discloses the offer he has just made to the customer ("*at 50*"), a tighter spread than that at which [Credit Suisse employee] sold earlier. He has therefore revealed a current pricing parameter to its competitor.

(201) The remainder of the communication reveals that the customer did not make the trade with [BAML employee]. Still, [BAML employee] received valuable information from [Credit Suisse employee] during the live negotiation with the customer: the fact that [Credit Suisse employee] was flat on the bond and did not want to go short, meaning he would not place a competitive offer; and the price at which [Credit Suisse employee] had recently made a sale, which [BAML employee] could take into account in formulating his own offer to the customer.

(202) Credit Suisse[229] argues: "*The traders do not coordinate anti-competitively as alleged by the Commission; they each offer to trade for their own independent reasons, at a level that reflects their own positions in the bonds*", with [BAML employee] showing a price because he has a good relationship with the customer and [Credit Suisse employee] showing a price: "*to retain credibility, but makes it clear that he has based this on the fact that he would end up with a short position*"[230]. On the other hand, BAML claims[231] that "*[BAML employee] initiates this discussion for the purposes of liquidity sourcing*" and that "*the Commission is wrong to state that [Credit Suisse employee] indicates that he would not place a competitive offer*". These arguments should be rejected for the following reasons.

(203) First, BAML's explanation contradicts Credit Suisse's interpretation of its own trader's words.

(204) Second, what both addressees neglect to explain is the exchange of sensitive information concerning the identity of and strategy towards the potential customer who has approached both traders with the same request. [BAML employee] could have approached [Credit Suisse employee] in the interests of sourcing liquidity (although he knows that [Credit Suisse employee] has been selling the bonds, presumably as a result of earlier discussions), but when [Credit Suisse employee]

229 […]

230 After [BAML employee's] statement that he showed bonds at 50, [Credit Suisse employee] responds: "*i told him that's where I'll show him a short offering...sales guy said he'll have no interest there but don't think he asked*".

231 […]

indicates that he is 'flat' and facing the same customer enquiry, instead of sourcing liquidity elsewhere, [BAML employee] continues to engage in a discussion about customer identity and pricing. This shows that 'sourcing liquidity' is not a high priority when compared to an exchange of sensitive information with [Credit Suisse employee].

(205) On **29 July 2010**[232]**,** in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) exchange information on the pricing of several bonds.

29 July 2010	05:28:41 – 05:30:19
DB ([...])	*"where you marking kfw 03/18 now?... you seen where those EIB 12/16 are… lib+21 on the bid"*
BAML ([...])	*"kfw 03/18 like +52 bod"*
DB ([...])	*"and what about jfm 17?"*
BAML ([...])	*"eib 12/16 are well tight..got them marked at +78… jfw 17 marked at +34"*
DB ([...])	*"lib+40… they look ok there… 54"*

(206) The information exchanged is commercially sensitive as it might prove valuable for both [Deutsche Bank employee] and [BAML employee] in the event of any upcoming potential trade in those bonds.

(207) BAML argues[233] that marked prices are indicative valuations only. BAML also claims that, as the discussion relates to prices to be shown on broker screens, it will not affect prices to investor customers. However, first, as set out in recital (126) and recitals (720)-(724), queries about marked prices of particular bonds in the context of current trading and pricing (and here [Deutsche Bank employee] is mentioning the current prices of comparable bonds, such as EIB 12/16, on broker screens) are queries on actual prices for the market. Second, as set out in recital (160), BAML's position is at odds with BAML's own subsequent statement that prices shown on brokers screens feed through into prices offered to investor customers. It also ignores the fact that other market participants are also customers of traders.

(208) On **30 July 2010**[234], […] (Deutsche Bank) asks a broker to remove a bid [Deutsche Bank employee] had put on the broker screen in order to help […] (BAML). The communication between [Deutsche Bank employee] and the broker indicates that at least one telephone conversation took place between [Deutsche Bank employee] and [BAML employee] around the same time[235].

30 July 2010	05:27:24 – 06:03:16
Broker (anonymous)	*"have you spoke to [BAML employee] about kfw 3/15 18 offrd not sure if its offer away"*

232 […]

233 […]

234 […]

235 Evidence in the Commission's file shows that [the relevant traders of the addressees] expected certain inter-dealer brokers, with whom they did significant amounts of business, to systematically keep each of them informed of each other's bidding and offering activities, typically by informing them when a specific bid or offer on the respective broker screen had been made by a particular trader among the participants. The use of brokers in this way served as an additional means of conveying potentially relevant information between them. […]. See for example recitals (426)-(427), (437)-(438) and footnote 567.

DB ([...])	*"yeah have speokn to him… he is not a seller… trying to keep a lid on them"*
Broker (anonymous)	*"ok cool"*
DB ([...])	*"can you kill by bid kfw 15 please"*
Broker (anonymous)	*"did you get them"*
DB ([...])	*"nope… just trying to help [BAML employee] out"*
Broker (anonymous)	*"of course"*

(209) The above exchange reveals that the mutual assistance between [BAML employee] and [Deutsche Bank employee] could extend to a request by [Deutsche Bank employee] to a third party broker to cancel prices shown to the market. As no recording exists of the referenced conversation between [BAML employee] and [Deutsche Bank employee], their exact trading strategies cannot be inferred, but it is clear that [Deutsche Bank employee] is cooperating with the other trader rather than competing with him.

(210) BAML declares[236] that: "*dealers are not competing with each other whilst trading via inter-dealer brokers, which are used as a source of liquidity*", and thus presumably withdrawing prices shown on broker screens in the interests of helping each other out is not anticompetitive. In reality, however, traders are competing with each other for trades with customers whether directly or via prices shown on brokers screens and they are competing irrespective of whether they are trading speculatively, meeting a client's order or seeking to cover a position. As discussed in recital (730), brokers screens show only the best, that is, the most competitive prices, which is why [Deutsche Bank employee] seeks to withdraw his competitive price. Moreover, transactions with other traders at broker screen prices are done in the ordinary course of business which is also shown by the fact that the revenues and costs from BAML's transactions with other traders apply to the bank's profit and loss from secondary trading as much as those from trades with any other market participants, including investor customers[237].

(211) On **12 August 2010**[238], in a persistent chatroom, […] (Credit Suisse) checks with […] (BAML) whether [BAML employee] consents for him to go ahead with a potential trade in ICO (Instituto de Credito Official Agency Spain) 05/13 bonds.

12 August 2010	06:53:43 – 07:17:47
BAML ([...])	*"[Credit Suisse employee]..offering ico 03/13s big size..u ave ico 05/13?*
CS ([...])	*"i've got 10mm at 200"*
BAML ([...])	*"i'm off As there ering 200mm of the 03/13!"*
CS ([...])	*"omg"*
BAML ([...])	*"i have 0 on the book..that's 20% of the entire deal"*
CS ([...])	*"asia?..go the seller of spain..from y'day..ico may13s are 215/195 in […] away from me"*

236 […]

237 […]

238 […]. This chatroom conversation started on 11.08.2010.

BAML ([...])	*"ME cb[239]..yeah I saw that market..trying to get an order""*
CS ([...])	*"i'm gonna show this 215 bid a 200 offer if that doesn't get in the way of what you're doing. its only 10mm"*
BAML ([...])	*"yeah man u go ahead"*
CS ([...])	*"traded at 202.5 fyi"*

(212) At 06:53:43 [BAML employee] informs [Credit Suisse employee] that he is offering a large number of ICO March 2013 bonds to a client and asks him whether he has any ICO May 2013 bonds. [Credit Suisse employee] responds with his position and price in the May 2013 bonds. [BAML employee] then explains that he is potentially selling 20% of the entire issue of ICO March 2013 bonds and [Credit Suisse employee] asks where the client is based ("*asia?"*). [BAML employee] subsequently reveals that it is a Middle Eastern central bank. [Credit Suisse employee] informs him that Instituto de Credito bonds have a two-way price of 215/195 on the broker […]' screen and [BAML employee] confirms that he has also seen that price and is *"trying to get an order"*. [Credit Suisse employee] then tells him that *"i'm gonna show this 215 bid a 200 offer if that doesn't get in the way of what you're doing"*. In other words he is about to make an offer price in response to the screen bid (with the intention of selling his holding), unless [BAML employee] would prefer him not to as it might not be to [BAML employee's] benefit. [BAML employee] tells him to go ahead and [Credit Suisse employee] later tells him the price at which he traded. Although [BAML employee] 'allows' [Credit Suisse employee] to trade in the bond, the two traders have agreed on their strategies and exchanged price and volume information. [Credit Suisse employee] has also exhibited a clear willingness to alter his prices if [BAML employee] so wishes.

(213) BAML[240] suggests that [BAML employee] approaches [Credit Suisse employee] with the intention of sourcing liquidity (in a comparable ICO bond) for the large order for ICO March 13 bonds. It argues that, as [Credit Suisse employee] only has a small volume of ICO May 13 bonds, then his offering them at a particular price in a brokers screen would have little relevance to [BAML employee's] potential trade, and states that [Credit Suisse employee's] words, that is: "*i'm gonna show this 215 bid a 200 offer if that doesn't get in the way of what you're doing*", do not imply that [Credit Suisse employee] exhibits a willingness to alter his prices or that the traders "*coordinate their strategies*". Such an interpretation, however, is not credible in light of the text of the exchange itself, and in particular, [Credit Suisse employee's] proposed course of action and his invitation to [BAML employee] to give the go ahead (or not), or of [BAML employee's] response; "*u go ahead*". Nor does BAML provide any explanation for the identification by [BAML employee] of a significant customer in the market (*MEcb*).

(214) In revealing that both [BAML employee] and [Credit Suisse employee] are hoping to transact with another trader who is offering via a brokers screen, this communication demonstrates that traders dealing via broker screens are both customers and competitors of each other. Credit Suisse does not put forward any alternative explanation for this communication.

239 […]
240 […]

(215) Later in the same communication, [Deutsche Bank employee], [BAML employee] and [Credit Suisse employee] discover that all three of them are seeing the same customer inquiry for IADB 3 04/14 and each discloses the price he has offered. [Credit Suisse employee's] price is directly influenced by that of the others, ("*I'll bid 44 tooo*")[241]. None of the parties advances an alternative explanation for this extract.

12 August 2010	10:00:35 – 10:05:36
DB ([...])	*"bidding 50mm IADB 3 04/14"*
BAML ([...])	*"seeing it… […] a/c"*
DB ([...])	*"yeah… no interest […]"*
BAML ([...])	*"what u show"*
DB ([...])	*"45"*
BAML ([...])	*"i bid 44 1+0… prob gonna trade at 41 or something"*
CS ([...])	*"just seen the same […] enquiry… i'll bid 44 tooo"*
BAML ([...])	*"i'm bidding 43.9 now… lol"*
CS ([...])	*"yours"*

(216) On **26 August 2010**[242], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) discover that they have opposing offers for IBRD bonds and each of them offers to stand aside to benefit the other. […] (BAML) is also present in the chatroom.

26 August 2010	03:11:21 – 03:12:27
DB ([...])	*"someone offering ibrd 15 at +8 to 5yrs in […] ... that looks well cheap… just gone 10 bid"*
CS ([...])	*"its me….pi$$ing about"*
DB ([...])	*"hahaha"*
CS ([...])	*"they had a seller last night… trying to get him out"*
DB ([...])	*"you want me to kill the bid?"*
CS ([...])	*"or i can kill offer?... lets leave it as is….see if anyone gets in middle"*
DB ([...])	*"ok cool"*

(217) [Deutsche Bank employee] indicates that he is seeing an offer on the […] broker platform for IBRD 15 bonds at a spread of +8 basis points, and that this sales price looks 'cheap' in his view. [Deutsche Bank employee] then reveals that he has placed a bid at +10 bps (hence he is offering to buy at an even cheaper price for the bonds). [Credit Suisse employee] reveals he is the one behind the offer on […] and says he is trying to draw out a certain recent seller. [Deutsche Bank employee] and [Credit Suisse employee] then each offer to take down their bid ([Deutsche Bank employee]) / offer ([Credit Suisse employee]) which is otherwise anonymous on the broker screen, essentially to stand aside and forego the potential trade to benefit the other.[243].

241 […]
242 […]
243 […]

(218) Although they ultimately decide to leave the prices up, this Decision is jointly taken and this exchange therefore evidences that they freely discuss and are perfectly willing to adapt or change their strategic behaviour on the market which may distort the bids placed in a given bond and also the anticipated reactions of potential customers.

(219) Credit Suisse argues[244] that: "*[Deutsche Bank employee] and [Credit Suisse employee] offer to kill their respective bids and offers, so as to see deeper into the broker screen to assess where the correct pricing is for this bond*" but that they "*ultimately decide to both leave their prices up on the broker screen and see if someone gets in the middle which likely means that they will wait for someone else to make a bid/offer which will help with their price discovery*"[245]. Credit Suisse also claims that "*customers could not even see bids on the broker screens*".

(220) However, the reason that [Credit Suisse employee's] offer price and [Deutsche Bank employee's] bid price were being shown on broker screens at that point in time was that they were the best, meaning the most competitive. Whatever the motivation for showing them (whether 'testing the market' or 'drawing out' a customer) these were the most competitive prices and they were bound to deal at them if another trader chose to transact. Furthermore, by declaring, like BAML, that "*customers*" (presumably investor customers) could not see the screen prices and therefore would not be affected by the collusion, Credit Suisse ignores the fact, firstly, that any other trader who transacts at the screen price is a customer, secondly, that prices to other traders are inevitably reflected in prices offered to investor customers and finally, that Credit Suisse itself[246] explains that there is a flow of information from brokers screens to investor customers ("*asset managers, hedge funds, commercial and investment banks*") via platforms such as Bloomberg.

(221) BAML argues[247] that, although present in the persistent chatroom, [BAML employee]: "*does not participate in that discussion or discuss IBRD bonds elsewhere in the chat*". This statement is, however, irrelevant to the question of [BAML employee's] awareness of the exchange and agreement between the other traders. [BAML employee] communicates only 3 minutes after [Deutsche Bank employee] confirms "*ok cool*". As noted in recital (587), a trader logged into a chatroom is able to scroll up to see the entire previous content. It is implausible that [BAML employee] was unaware of the chatroom content just before his intervention.

(222) On **27 August 2010**[248], in a persistent chatroom, […] (Deutsche Bank), […] (BAML) and […] (Credit Suisse) exchange pricing and volume information concerning transactions with two separate customers at the moment [Deutsche Bank employee] and [Credit Suisse employee] are each negotiating with one of them.

27 August 2010	08:49:35 – 08:58:05
DB ([...])	*"[Credit Suisse employee] where did oyu sell the IBRD to t+2?... was it 100.20?"*

244 […]

245 See recitals (704)-(713) for a further explanation of the concept of price discovery and recitals (725)-(730) for a discussion of brokers screen prices.

246 […]

247 […]

248 […]

CS ([...])	*"27 i think"*
DB ([...])	*"got him on the lline now"*
CS ([...])	*"one sec… yip…27… 100.27"*
DB ([...])	*"cheers dude… just sold 25mm SFEFR 14 into asia"*
CS ([...])	*"aha… @ .06… 107.06?"*
DB ([...])	*"nope at 107.126"*
CS ([...])	*"that's what client is telling me they've seen away…. may 14s yeah?"*
DB ([...])	*"yep"*
CS ([...])	*"[…] … he told me min size is 100mm… i'm offering at 62"*
DB ([...])	*"100mm… i only sold 25mm"*
CS ([...])	*"i showed him 25mm at 63… but said want bigge size"*
DB ([...])	*"that makes no sense"*
CS ([...])	*"got him on phone now"*
DB ([...])	*"philli yeah?"*
CS ([...])	*"y"*
DB ([...])	*"[…]"*
BAML ([...])	*"[…] … be caresul with him… we are short those sffer as well so be careful"*
CS ([...])	*"cool…good to know"*

(223) [Deutsche Bank employee] begins the above exchange by asking [Credit Suisse employee] the price at which [Credit Suisse employee] sold certain IBRD bonds to a customer the traders habitually refer to as "t+2" (in the normal course of business [Deutsche Bank employee] should have no reason or means of knowing that [Credit Suisse employee] has recently concluded a trade with this customer as this is an OTC market with no such records). [Deutsche Bank employee] is in a live negotiation with "t+2", perhaps for the same bonds, and [Credit Suisse employee] readily discloses the terms of his trade, allowing [Deutsche Bank employee] to take this information into account.

(224) Immediately thereafter, [Deutsche Bank employee] returns the favour by revealing the price at which he sold a quantity of SFEFR bonds to a customer in Asia, at the moment [Credit Suisse employee] is in communication with a client for the same bonds. Upon hearing [Deutsche Bank employee's] price, [Credit Suisse employee] realises this is likely to be the same client, and [Deutsche Bank employee] discloses to [Credit Suisse employee] sensitive information concerning the volume he sold to the client which conflicts with the terms the client requested from [Credit Suisse employee].

(225) The two traders then confirm beyond a doubt that the same client is involved by invoking the name "*philli*". Besides [Deutsche Bank employee] and [Credit Suisse employee], [BAML employee] also clearly knows who "*philli*" is and adds the information that BAML is also short in the same bonds. They are therefore exchanging sensitive pricing and volume information between them whilst they are negotiating with the same customer, who would normally expect to be conducting separate negotiations with competing traders.

(226) As regards the exchange of information on the IBRD bond, Credit Suisse[249] claims that: "*Discussing a recent trade* [Credit Suisse employee] *has made ensures that* [Deutsche Bank employee] *has up-to-date information relevant to the true value of the security…*[Deutsche Bank employee] *is asking* [Credit Suisse employee] *for pricing information regarding a historical trade to help him determine the true price of the bonds so as to reduce his risk of mispricing*". This is untenable. An IBRD/World Bank Group bond is neither an obscure nor an illiquid asset for which there is little public market information. [Deutsche Bank employee] already knows that [Credit Suisse employee] has recently sold the bonds to an identified regular client, and thus knows something about that client's likely position, as a direct result of previous sensitive information exchange. He is now checking the price of the recent transaction in the face of a client approach – and, in the process, disclosing the approach and the client to [Credit Suisse employee]. It is highly unlikely that this exchange acted to the benefit of the (unwitting) client, rather than the benefit of the trading strategies of [Deutsche Bank employee] and [Credit Suisse employee], who realise during their exchange that the client is asking competitive bids in turn from them.

(227) Concerning the information exchange on SFEFR bonds, Credit Suisse invokes [BAML employee's] warning about '*philli*' to suggest that the traders are concerned that a: "*fast or smart money client*"[250] might move the market pricing in his favour and justify the sensitive information exchange between three traders on their recent and current contacts with him. However, it is clear from the previous exchange regarding '*t+2*' that the traders shared sensitive information on client identities, approaches, trading strategies and pricing, whoever the customer and however '*fast*', '*[…]*' or otherwise they were. BAML claims[251] that [BAML employee's] participation was: "*de minimis (eg irrelevant or generic market commentary)*", however it gives an insightful view into its position to the other traders ("*we are short those sffer as well so be careful*"), as acknowledged by Credit Suisse when advancing its arguments that the customer might be using the information gathered from the various traders to obtain a better trade. The fact is that, in a normal competitive environment, a potential customer is allowed to request information from various competing sources which are assumed to trade autonomously, thus enabling the customer to make an informed decision about the most beneficial option to take.

(228) On **31 August 2010**[252], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) open the trading day by exchanging or agreeing to align the prices they plan to bid for a series of KfW bonds.

31 August 2010	02:50:22 – 05:23:45
BAML ([...])	*"where u gonna be bidding kfw 20's if asked?"*
DB ([...])	*"+25"*
BAML ([...])	*"ok cool… l+31 that is..maybe we can get away with 1 wider?"*
DB ([...])	*"sure man… let fo +26 or even +27?"*
BAML ([...])	*"let go with 27"*

249 […]
250 See also recital (705).
251 […]
252 […]

DB ([...])	*"ok cool"*
BAML ([...])	*"actualy fck it… 26!"*
DB ([...])	*"bidding 50mm kfw 07/17"*
BAML ([...])	*"where you makring those… they are well tight"*
DB ([...])	*"i bid +27"*
BAML ([...])	*"where you makring kfw 06/19?"*
DB ([...])	*"+16"*
BAML ([...])	*"what you biodding for kfgw 03/15's… i am bidding 15 for bonds"*
DB ([...])	*"i bid the same"*
BAML ([...])	*"cool"*
DB ([...])	*"where oyu marking KFW 07/18"*
BAML ([...])	*"around +60"*
DB ([...])	*"rhats way too wide"*
BAML ([...])	*"probbaly"*

(229) BAML argues[253] in respect of the final discussion quoted about KFW 07/18 bonds that: "*there is no evidence that either trader is planning to bid*" for the bonds in respect of any particular customer enquiry and that the discussion was just 'price discovery'. However, first, even if there is no evidence that traders planned to bid for the KFW 07/18 bonds, the fact remains that the traders could take this information into account in determining their future competitive behaviour, including whether to bid for those bonds and at which price. Second, BAML offers no alternative explanations for the discussions concerning the other KFW bonds, namely the KFW 20, KFW 07/17 and KFW 03/15, for which the traders are obviously bidding. Statements such as: "*maybe we can get away with 1 wider*" (on the KFW 20 bonds) indicate discussion on price alignment.

(230) On **24 September 2010**[254], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) discuss trading activity and a specific client for an Italy 09/13 bond and [Deutsche Bank employee] and […] (Credit Suisse) each subsequently offer to withdraw their respective shown prices for the bond, should the other so wish.

24 Sept 2010	05:46:06 – 05:50:38
DB ([...])	*"just sold 50mm italy 09/13"*
BAML ([...])	*"nice what type of ac"*
DB ([...])	*"Asian biggie..hes back"*
BAML ([...])	*"fck there buying italy..peripeals trading ral bad this morning..where u sell them"*
DB ([...])	*"sold them at +144..just gone 144 offered in […]..someone bidding 148"*
BAML ([...])	*"that's a good sale…148?? they mad"*
DB ([...])	*"[Credit Suisse employee] is that you?"*
CS ([...])	*"dude…148 is me"*

253 […]
254 […]

DB ([...])	*"oh crap..shall i kill me 144 offer..you a real buyer?"*
CS ([...])	*"either way…i can kill the bid…yeah…sold 25mm y'day at 145..vs spain 12s"*
DB ([...])	*"i had 10mm so am short 40mm now..spain getting hit today aswell"*
BAML ([...])	*"perhoerals in the front end getting slammed"*
DB ([...])	*"long 10k spain"*
CS ([...])	*"actually…i was 148 bid in […]..somebody topped me up and gone 147 bid"*

(231) [Deutsche Bank employee] initially announces that he has sold some Italy 09/13 bonds and, in response to an enquiry from [BAML employee] as to the *"ac"* (meaning "account", or customer), explains that it was to an *"Asian biggie"*[255]. He then goes on to state that he sold them at +144 and that he has *"just gone 144 offered in […]"*, namely that he has shown an offer price for the bond in the broker's screen of […]. He then notes that someone is showing a bid price of 148 and asks [Credit Suisse employee] if it is him. On confirmation by [Credit Suisse employee] that it is his bid price, [Deutsche Bank employee] offers to *"kill"*, namely withdraw his offer and asks if [Credit Suisse employee] is genuinely seeking to buy that bond. [Credit Suisse employee] in turn offers to *"kill"* his bid price and confirms that he is a buyer, having sold 25 million the previous day (and therefore wishing to cover a short position). [Deutsche Bank employee] then discloses that he is also short in the bonds as his sale was for a higher amount than his holding. [Credit Suisse employee] notes that his bid price was on the […] broker screen and that another trader has now put in a better bid price of 147. Whether or not either of the two withdrew their prices, this exchange clearly shows offers of mutual assistance. No alternative explanation has been put forward for this communication by any of the parties.

(232) On **28 September 2010**[256], in a persistent chatroom, […] (Credit Suisse) again offers to withdraw a price shown via a broker's screen if […] (Deutsche Bank) wishes.

28 Sept 2010	05:46:31 – 05:48:17
DB ([...])	*"[Credit Suisse employee] wahts you better way ITALY 09/13..trying to get a block out"*
CS ([...])	*"cool…i've just gone 146/143 in […]…shall i kill it?..i'm working on an order to sell italy 13s to buy spain 12s with u know who"*
DB ([...])	*"ok cool"*
CS ([...])	*"so will need to buy at 146ish to print it..shall i kill price?"*
DB ([...])	*"nah its cool…not sure if this guy will sell or not..but trying him now"*

(233) [Deutsche Bank employee] asks [Credit Suisse employee]: "*your better way*" in the Italy 09/13 bond, presumably meaning whether [...] is a buyer or a seller. [Credit Suisse employee] responds that he has just shown a two-way (bid-ask) price on the screen of brokers […], and asks [Deutsche Bank employee] whether he should "*kill*", namely withdraw/cancel it – he also informs [Deutsche Bank employee] that he is working on a switch trade with "*u know who*" (suggesting that [Deutsche Bank

255 […]

256 […]

employee] will know exactly who [Credit Suisse employee's] potential customer is). [Credit Suisse employee] then repeats his offer to withdraw his shown price but [Deutsche Bank employee] tells him this is not necessary[257].

(234) Later in the same communication, […] (Deutsche Bank), […] (Credit Suisse) and […] (BAML) had the following exchange:

28 Sept 2010	11:23:57 – 11:29:54
DB ([...])	*"just bought 200mm asia 07/13… at +12.5… and bought 100mm asia 09/13 at +19"*
BAML ([...])	*"12.5 maybe a shade tight for the 07/13"*
CS ([...])	*"CB seller?... down south?"*
DB ([...])	*"yep"*
CS ([...])	*"being checked on a few things at the mo, to switch back into agencies… i assume same one."*
DB ([...])	*"hoping the japanese guy buy these"*
CS ([...])	*"eib 14s/kfw 14s/cades 13s holder i think"*
BAML ([...])	*"shizzle..thogh that guy was done with his selling"*
DB ([...])	*"selling expensice supra to go itno cheap agency names"*

(235) [Deutsche Bank employee] reveals the terms of two trades he has just made, and [Credit Suisse employee] asks if it is a certain customer ("*CB seller?... down south?*"). [Deutsche Bank employee] affirms, allowing [Credit Suisse employee] to surmise that the customer he is in touch with is the same one. [Credit Suisse employee] then reveals what he believes that customer may still be long in ("*eib 14s/kfw 14s/cades 13s holder i think*"), and [Deutsche Bank employee] says he knows or believes that the client's strategy is to sell more expensive supra-national bonds, and buy cheaper agency bonds[258]. This exchange represents competitors pooling valuable market intelligence concerning the likely trading preferences and future activity of a specific client known to all three traders[259]. No alternative explanation has been put forward for this communication by any of the parties.

(236) On **13 October 2010**[260], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) coordinate their activity and show the same price to a customer in relation to 'Q20' bonds[261]. The coordination takes place in the chatroom and on the phone.

13 October 2010	09:26:14 – 09:38:04
DB ([...])	*"you offering Q 20!!... in size… how many you got?"*
BAML ([...])	*"yeah man"*
DB ([...])	*"quick"*
BAML ([...])	*"got 31mm"*
DB ([...])	*"ok will show 70mm… at +67?"*
BAML ([...])	*"fine… for me… SELL THEM… i am offering now as well"*
	[Phone call begins between [Deutsche Bank employee] and [BAML employee]: 09:32:20 EST, 38 seconds[262]]

257 […]
258 […]
259 […]
260 […]
261 This bond is identified as likely to be a sub-sovereign bond issued by the Canadian province of Quebec.
262 […]

BAML ([...])	*"Hey man. I am offering them as well now."*
DB ([...])	*"Oh, are you? OK. I, I have just shown them at 67, so just 30 million, that's it. That's all they are asking.*
BAML ([...])	*"Okay. I am offering. How many have you, how many have you got?"*
DB ([...])	*"I have only got 30 million."*
BAML ([...])	*"Okay. So I am off… I am being asked 30 million, as well."*
DB ([...])	*"Yeah, I mean I ain't showing them to you if they are going to start buying from f***ing everyone now, aren't they? Do you know what I mean?*
BAML ([...])	*"Yeah, yeah, exactly, he wanted to…"*
DB ([...])	*"I lost enough money on the way out, right? So I ain't, uh…*
BAML ([...])	*"I hear ya, 67 I think is fine, I'll show."*
DB ([...])	*"Yeah, I ain't showing him. Let's just keep that price up because I am not going to improve from there. Because they are just going to try and play one place against another."*
BAML ([...])	*"Yeah, I am going to 67.1." [Laughter.]*
DB ([...])	*"[…]. I am just going to 67, man. Alright. Alright, bye."*
BAML ([...])	*"Cheer, cheers."*
	[Bloomberg chat resumes at 09:34:55 EST]
DB ([...])	*"dont know what they are doing… taking ages"*
BAML ([...])	*"asked ti improve i said no"*
DB ([...])	*"i am not improving from 67… sold them… at +67"*

(237) In this communication, [Deutsche Bank employee] has received an inquiry for these Q20 bonds and, apparently aware that [BAML employee] has a long position, combines [BAML employee's] into his own position to make a larger offer to the customer at a price agreed with [BAML employee] ("*+67*"). Minutes thereafter, [BAML employee] informs [Deutsche Bank employee] both via the chatroom and by phone that he has seen the same inquiry and is offering as well. The two agree to show the same amount and the same price, and refuse to improve so that the client cannot: "*try and play one place against another*". [Deutsche Bank employee] eventually says he sold them at +67[263].

(238) The initial contact between [Deutsche Bank employee] and [BAML employee] resulted in a mutually agreed price offered to the customer by [Deutsche Bank employee] incorporating [BAML employee's] position, and then both traders remained committed to this jointly agreed price and refused to improve when the customer attempted to place them in competition. The end result was a successful trade for [Deutsche Bank employee]. No alternative explanation has been put forward for this communication by any of the parties.

(239) On **14 October 2010**[264], in a persistent chatroom, […] (BAML) and […] (Deutsche Bank) determine their trading strategy for a particular European investment bank bond.

263 […]. NB: it may be presumed that following the trade with the client, a bilateral trade was then executed between [Deutsche Bank employee] and [BAML employee] via a broker for the sale of [BAML employee]'s 31mm to [Deutsche Bank employee].

264 […]

14 October 2010	04:26:51 – 04:42:18
DB ([...])	*"close to sell 20mm eib 06/14 in [...]"*
BAML ([...])	*"i have some of thsoee as well…eib 06/14…i said i am stuck at 39"*
DB ([...])	*"tahts what i said as well…not budging for there"*
BAML ([...])	*"coolio..they look cheap"*
DB ([...])	*"going to give this guys a shot on EIB 06/14 at +39 then going ot kill my offer"*
BAML ([...])	*"ok will do same"*

(240) [Deutsche Bank employee] announces that he is close to selling 20 million EIB 06/14 bonds in a deal through *"[...]"* (broker […]). [BAML employee] responds that he also has a holding of the same bond, but that he has told (an unknown broker) that he will not change his offer price of 39. [Deutsche Bank employee] replies that he has told […] precisely the same thing. He subsequently tells [BAML employee] that he will give his potential buyer a *"shot"* (chance) to take his offer, that is to buy at 39, then withdraw the price. [BAML employee] responds that he will do the same thing.

(241) BAML argues[265] that: "*Both [Deutsche Bank employee] and [BAML employee] have independently already reached their own view on the prices at which they are offering to sell via inter-dealer brokers*" and again argues that removing prices on a broker screen "*would not impact the prices being offered to investors*"[266]. This argument does not stand. Whilst their initial pricing quotes were reached independently, the disclosure of these pricing intentions to each other in real time ("*close to sell*"), as well as [Deutsche Bank employee] revealing that he would give a customer "*a shot*" then kill his offer price, and the "*ok will do same*" affirmation by [BAML employee], were certainly mutual agreements on strategy.

(242) On **18 October 2010**[267], in a persistent chatroom, […] (Credit Suisse) informs […] (Deutsche Bank) and […] (BAML) that the "*usual guy*" has requested an offer for KfW 04/20. [Deutsche Bank employee] replies that he has just sold the usual guy 25mm at a price (spread) of 11.5. [Credit Suisse employee] replies "*cool*" and reveals that he has shown at 11. [Deutsche Bank employee] has thus revealed pricing information on a recent trade with a customer which [Credit Suisse employee] can now take into account in deciding his own strategy. No alternative explanation has been put forward for this communication by any of the parties.

(243) On **20 October 2010**[268], in a persistent chatroom, […] (BAML) and […] (Deutsche Bank) coordinate their pricing strategy in relation to Finnish sovereign bonds.

20 October 2010	04:29:59 – 07:31:12
DB ([...])	*"offering 50mm FINL 15..another middle east account"*
BAML ([...])	*"the cr4p one?..those things have diappered"*
DB ([...])	*"just sold another 30mm FINL 15..at +9..what a joke"*
BAML ([...])	*"nutz..got to try and get some out"*
DB ([...])	*"nice 100k back..get me close to flat on the day..what a result"*

265 […]
266 […] See also recital (726).
267 […]
268 […]

BAML ([...])	*"nice dude..question is though have you coveed them?..mans sold them at 9 and them marked them at 13"*
DB ([...])	*"had them..bought another 30m on a no pst from [...] last night at +15.5..leaves me short 7mm bonds"*
BAML ([...])	*"are u an ongoing buyer of finl..might be abke to get some"*
DB ([...])	*"not sure..they wont say..how many can oyu get out?"*
BAML ([...])	*"50-100mm i reckon"*
DB ([...])	*"what kind of level? Can defo show it to them"*
BAML ([...])	*"gonna bid 16..no more..15 looks too tight"*
DB ([...])	*"that's my bid..am short just 7mm..bidding that tight to try and get hit"*
BAML ([...])	*"ok..take it out for now man…don't want ot have to pay 15!"*
DB ([...])	*"sure"*
BAML ([...])	*"tks man"*

(244) [Deutsche Bank employee] informs [BAML employee] that he is offering 50mm FINL 15 bonds to a Middle Eastern customer. [Deutsche Bank employee] later discloses that he has sold another block of the bonds and reveals the price. He then discusses his net position in the bonds with [BAML employee] and reveals that he is 7 million short. Sometime later [BAML employee] inquires whether [Deutsche Bank employee] is still looking to buy the bonds and tells him that he might be able to get hold of some for him. The two then discuss the price at which the bonds should be bought, with [BAML employee] proposing *"16"* and asserting that: "*15 looks too tight"*. (The bid price of 15 is actually a higher price – it is a quote made in terms of the yield[269] – and therefore more attractive to a customer looking to sell.)

(245) [Deutsche Bank employee] reveals that the price of 15 is his (presumably via a broker's screen) and that he has placed such a (relatively attractive to a potential seller) bid price in order to try and cover his small short position. [BAML employee] requests [Deutsche Bank employee] to withdraw his bid price as he wants to buy on more favourable terms (to himself, that is, less favourable to the customer): "*take it out for now man…don't want ot have to pay 15*". [Deutsche Bank employee] agrees to do so. The two traders have therefore agreed to withdraw the price being shown by [Deutsche Bank employee] so that [BAML employee] can attempt to buy specific bonds (for [Deutsche Bank employee] and possibly himself) at a less competitive price agreed between them. They have also exchanged information on trading positions, strategies and at least one client.

(246) BAML[270] offers no explanation for the exchange of information at the start of the communication. With regard to the agreement between the two traders that [Deutsche Bank employee] will withdraw his bid price in the brokers screen, BAML argues that: "*the Commission has misunderstood and misinterpreted this communication, which involved legitimate communications to source liquidity and potentially enter into a direct trade…As [BAML employee] is going to bid 16 to the customer (a lower price than 15), [BAML employee] suggests that [Deutsche Bank employee] remove his price from the broker because if [BAML employee] wins the*

[269] See recitals (23)-(25).
[270] […]

customer trade he will sell [Deutsche Bank employee] 7 million to cover his short…[BAML employee's] comment'don't want to pay 15!' is a joke because…the customer would not see this price and…[BAML employee] would not bid the same price to the customer as the trade is for a much larger size"

(247) However, BAML fails to explain just where [BAML employee] intends to source the liquidity (that is, hedge/offset) for the rest of the trade with the customer, whom, he believes, wants to sell 50-100 million. Potentially entering into a direct sale of 7 million to [Deutsche Bank employee] 'sources liquidity' for only a small fraction of this amount. If he secured the customer trade, [BAML employee] would almost certainly sell on the rest of a large trade to other traders, both directly and via screen prices – just as any other trader would if they bought the bonds from the customer, unless they considered them an attractive speculative hold. Thus, by agreeing with [Deutsche Bank employee] that [Deutsche Bank employee] should withdraw his higher bid (purchase) price, [BAML employee] has effectively made sourcing liquidity more expensive for other traders who might have wished to buy the bond from the customer, that is, he has withdrawn an attractive purchase price and thereby reduced the returns from selling them on in the market. and thus reduced the attraction to them of the initial customer trade. Furthermore, since the cost of sourcing liquidity for other traders will feed through to the price offered to the investor customer, the two traders have potentially adversely affected the terms of trade to the customer. "*Sourcing liquidity*'" does not only apply to transactions between these two specific traders.

(248) On **9 November 2010**[271], in a persistent chatroom, […] (Deutsche Bank), […] (BAML) and […] (Credit Suisse) discuss client enquiries and price levels on two bonds and [Credit Suisse employee] agrees not to trade in one of the bonds until [Deutsche Bank employee] has made a purchase.

9 November 2010	09:32:13 – 10:20:25
CS ([...])	*"finally a few sellers coming out now..bid on ont 14s and finl 15s"*
DB ([...])	*"seeing jack here..where you bid ont 06/14?"*
BAML ([...])	*"been asked to bid 60mm finls as well"*
CS ([...])	*"60"*
BAML ([...])	*"yeah"*
DB ([...])	*"all out of the US?"*
CS ([...])	*"i bid +60 on the ont..i take it u didn't get edc[272]?"*
BAML ([...])	*"not head back yet..chasing now"*
CS ([...])	*"what did u bid on finland? i bid 8.5"*
BAML ([...])	*"i bid +10"*
DB ([...])	*"8.5!"*
BAML ([...])	*"didn't know they were +8.5 bid!"*
DB ([...])	*"thats well tight"*
CS ([...])	*"yeah i know....was thinking t+2 or monster asian"*

271 […]

272 Export Development Canada, Canadian agency (www.edc.ca).

BAML ([...])	*"seeing theo ny enquiry now..ont"*
DB ([...])	*"bidding these ont 06/14 now aswell..i bid the same level as you..FYI am short 25mm"*
BAML ([...])	*"guess the whole world is seeing it..now gone 65/58 in [...]..how pathetic"*
DB ([...])	*"what a joke"*
BAML ([...])	*"cr4p Canadian guys no ba44ls"*
DB ([...])	*"ONT 59 offer now in [...]"*
BAML ([...])	*"joke"*
CS ([...])	*"nonsense"*
DB ([...])	*"65.59..i have bid +62 off screen..ont 06/14 going down at 62 in [...]..have backed my bid up"*
CS ([...])	*"I've just bought these at 60"*
DB ([...])	*"doh!"*
CS ([...])	*"i'm gonna buy 62s..u all done?"*
DB ([...])	*"nope..still short..told [...] i would buy some there..were you bidding on 41.265mm"*
CS ([...])	*"y"*
DB ([...])	*"ok so same seller..canadians are [...]..41mm bonds come out and they starting blasting bids all over the place"*
CS ([...])	*"[...]"*
DB ([...])	*"what a [...]"*
CS ([...])	*"i'm gonna lift 61s....is that an issue for u?"*
DB ([...])	*"can i lift them first and cover my short?"*
CS ([...])	*"sure"*
DB ([...])	*"ok..let me lift in [...]...lifting 61 in [...]..cheers dude"*
CS ([...])	*"no worries...let me know when you're done"*
DB ([...])	*"cheers dude"*
CS ([...])	*"did u get your size done?"*
DB ([...])	*"got 2mm..the guy offering at 61 wasn't a seller..what a joke..got 1.5mm at +62 and another 2mm at 61"*
CS ([...])	*"they are [...]"*
DB ([...])	*"canadian..total waste of time"*

(249) [Credit Suisse employee] informs the others that he has just bid (showed bid prices via brokers) in ONT 06/14 (Ontario) and FINL 15 (Finland) bonds. After initially discussing price levels in the Finland 2015 (FINL 15) bond and the possible identities of customers in the market, the three traders focus on the ONT 06/14 issue when [BAML employee] observes that he has also seen an enquiry. [Deutsche Bank employee] notes that: "*i bid the same level as you*" (presumably [Credit Suisse employee], who informed the others that he had bid 60) and that he is short 25 million of the bond. The three then discuss changes in the price levels at which the bond is being shown, presumably in response to the customer activity (as [BAML employee] states: "*guess the whole world is seeing it*") and the risk-averse nature of Canadian banks. [Deutsche Bank employee] also notes that he has *"bid +62 off screen"* and later that he has: *"backed my bid up"* after hearing about a bid at […] at 62. [Credit Suisse employee] informs the other two that he has bought the bonds at 60 and that he intends to buy more, but asks [Deutsche Bank employee]: *"u all done?"*, referring to [Deutsche Bank employee's] efforts to cover his short position.

[Deutsche Bank employee] responds that he is not and has told the broker […] that he will buy some through them.

(250) [Credit Suisse employee] then requests [Deutsche Bank employee's] approval before making a purchase of the bonds at 61 *("i'm gonna lift 61s…is that an issue for u?")* and [Deutsche Bank employee] asks him to hold off until he has covered his position ("cover my short")[273]. [Credit Suisse employee] agrees ("*no worries…let me know when you're done*"). [Credit Suisse employee] subsequently asks whether [Deutsche Bank employee] bought his desired number of bonds and [Deutsche Bank employee] explains that in fact he got 1.5 million at 62 and another 2 million at 61 – again complaining about the supposed deficiencies of a Canadian counterparty.

(251) The accord between [Deutsche Bank employee] and [Credit Suisse employee] enables [Deutsche Bank employee] to trade with a seller (or sellers) of a specific bond without any competition from [Credit Suisse employee]. In addition, all three traders are aware of each others' positions and trading strategies in relation to the ONT 06/14 bond[274].

(252) BAML argues[275] that the situation with regard to the Ontario 06/14 bonds was a case of 'front running'[276] by other traders in response to the enquiries from the investor wishing to sell. Far from being "*[...]*", other traders are: "*purporting to sell the Ontario bonds at 2 basis points wider in the brokers screens, at +62, to portray the bonds as cheaper/weaker than their actual market value, so that they can buy them more cheaply. This type of front running could disadvantage the customer if other dealers were to believe that there were substantial amounts of the bond for sale elsewhere. [Credit Suisse employee] knows that the prices in the broker screens are not from genuine sellers of the bond so he is planning to buy the bonds at the prices offered (which he assumes relate to small sizes only) to stop the front running activity*". In other words, according to BAML, [Credit Suisse employee] is acting to end the market distortion and presumably benefit the investor customer (despite the fact that BAML states that he was initially bidding an "*aggressive price*" himself). In reality, in buying the Ontario bonds at 60 and then intending to get more as he sees a lower price of 61, [Credit Suisse employee] is acting entirely rationally if he thinks the bonds are now relatively cheap (whether the ['…'] are, '*[...]…blasting bids all over*' or shrewd frontrunners). Moreover, [Credit Suisse employee] is also sharing information with [BAML employee] and [Deutsche Bank employee] regarding client approaches and pricing (for two bonds) and standing back whilst [Deutsche Bank employee] buys the Ontario bonds until he obtains [Deutsche Bank employee's] approval to continue his purchases. The motivations of third party market participants and the amounts available via brokers screens are irrelevant to these joint activities as the traders are eliminating competition between themselves and thus reducing it in the market. Credit Suisse, that is, [Credit Suisse employee's] employer, has not provided an alternative explanation for this communication.

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273 See recitals (49) and (50) regarding the meaning of having a long or short position.

274 […]

275 […]

276 'Front running' traditionally means trading by a financial market participant who has inside knowledge of an event which will affect its price significantly (such as a new issue of securities which could depress the price of existing securities). […]. Here BAML uses the term in the sense that some traders, according to BAML, have received news of an investor wishing to sell before other traders.

(253) On **17 November 2010**[277], in a persistent chatroom, […] (BAML) and […] (Credit Suisse) exchange information and align their bids for "*finl*" bonds offered by a customer they refer to as the "*Can bank*". […] (Deutsche Bank) is also present in the chatroom.

17 Nov 2010	08:39:59 – 08:53:57
BAML ([...])	*[Credit Suisse employee]/[Deutsche Bank employee] t+2 still a buyer of finl ... ?... might be getting some"*
CS ([...])	*"i've been showing him every day, but he's not biting. What u bidding?"*
BAML ([...])	*"+10... what u reckon"*
CS ([...])	*"i biid +10 too .... This is the Can bank right... ?"*
BAML ([...])	*"y... 135mm"*
CS ([...])	*"yip"*
BAML ([...])	*"cool"*
CS ([...])	*"i showed 9.5 and then backed it to 10"*
BAML ([...])	*"10s the right price i think... they look ok there"*
CS ([...])	*"still rich, but yeah, its the right number."*
BAML ([...])	*"he just came back to me asking if i want to split with another dealer... who also bid 10"*
CS ([...])	*"just u and i....that makes sense. Dont want the other guy involved though... he's asked 3 in total apparently"*
BAML ([...])	*"i said no...but f course if i get them you can have half after... i also said I'm not improving"*
CS ([...])	*"gotcha....i'm relaxed. All yours if u want em"*
BAML ([...])	*"t+2 will take those at some point so prob better for you"*
CS ([...])	*"ok...he's just asked me the same question now. i just said NO too....up to him to decide"*
BAML ([...])	*"cool"*

(254) In this extract, [BAML employee] has asked [Credit Suisse employee] and [Deutsche Bank employee] if a customer known to all of them as "*t+2*" is still interested in buying "*finl*" bonds. [BAML employee] is in the process of executing a trade to purchase some of these bonds and has bid +10 for them. [Credit Suisse employee] disclosed he has placed an identical bid for the same bonds and the two traders realise the counterparty is the same ("*the Can bank*"). They then discuss the 'right' price for those bonds and [BAML employee] discloses that the customer has asked him if he would split the trade, namely buy half the quantity originally offered. [BAML employee] reveals he said no and that he does not intend to improve his bid, but is willing to sell half the trade to [Credit Suisse employee] should he make the trade (despite declining the request to split). [Credit Suisse employee] then discloses that he has just received the same request to split, and that he has followed the same strategy as [BAML employee].

(255) By means of the information exchanged in the chatroom in the above extract, the traders have disclosed to each other all the essential terms of an ongoing negotiation they are each engaged in with the same counterparty. This has enabled [Credit Suisse employee] to adapt his behaviour and align his bidding strategy with that of [BAML

[277] […]

employee] ("*he's just asked me the same question now. i just said NO too*"), thereby eliminating competition between them for the trade and maximising the chances of an outcome favourable to both.

(256) BAML argues[278] that: "*the Commission ignores that [BAML employee's] approach to [Credit Suisse employee] was based on an expectation that he may need to buy the bonds from a customer to provide liquidity… Further, the pricing information [BAML employee] and [Credit Suisse employee] exchanged was their pre-determined bidding levels, which were based on their assessments of 'the right price' for the bonds and did not change following the discussion in the chat. Importantly, it appears that the customer revealed to [BAML employee] information regarding the bid that he had received from a third party, which suggests that the customer was potentially disseminating the same information that the Commission claims was being discussed by [BAML employee.] and [Credit Suisse employee] privately*."

(257) BAML's first statement does not stand up to scrutiny. [BAML employee's] potential customer, from whom he "*might be getting some*" Finnish bonds is obviously a seller of the bonds. [BAML employee] might well wish to source liquidity, that is, layoff risk, by selling on the bonds (not buying them) and therefore asks [Credit Suisse employee] and [Deutsche Bank employee] if '*t+2'* is still a buyer (presumably based on earlier exchanges of information). However, the desire to source liquidity does not justify the exchange of confidential information between three traders about an (identified) customer's trading strategies. Liquidity can be sourced from traders directly or via brokers screens without the necessity to identify and discuss customers.

(258) The subsequent discussion between [BAML employee] and [Credit Suisse employee] on pricing for a potential customer who has approached them both is sensitive, whether or not they had each independently bid 10, as it gives each trader greater transparency on the prices currently being shown to the customer, reduces their market uncertainty and allows them to follow up, should they wish, with reduced risk. As for the information "*revealed to [BAML employee]*" by the customer, this was that another trader had bid the same price. It is perfectly normal for a customer to tell two independent salesmen separately that they have quoted the same price, or indeed that one has quoted a better price – regardless of the product, whether bonds or cars. This 'revelation', however, does not justify all the other information shared between the two traders, including information on future pricing. Nor does the fact that the customer might, in the end, have sold the bonds to a third party legitimise the discussion between the two traders.

(259) As a final point, BAML's presentation of the communication as essentially an attempt by [BAML employee] to lay off the risk of a trade with the customer, that is, an example of liquidity sourcing, is unconvincing as he (like [Credit Suisse employee]) turns down the suggestion to split the trade with another party, which would have laid off the risk. Any liquidity sourcing was therefore strictly between 'friends'.

(260) On **30 November 2010**[279], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) coordinated their trading of a KFW 03/15 bond, with [Deutsche Bank

278 […]
279 […]

employee] 'clearing' a price with [Credit Suisse employee] before offering it to the market and [Credit Suisse employee] indicating he has told a broker that he will stay out of trading that bond until [Deutsche Bank employee] has achieved his aim.

30 Nov 2010	06:53:41 – 06:55:33
DB ([...])	*"going to go +2 offer in the kfw 03/15 if ok with you…going to make +7/+2"*
CS ([...])	*"yeah man…I told […][280], i'll stay out of it for a while until u're done"*
DB ([...])	*"how many you short? Have a holder"*
CS ([...])	*"30"*
DB ([...])	*"ok will bid this gy for 200mm"*

(261) Both [Deutsche Bank employee] and [Credit Suisse employee] are short of KFW 03/15 and have an interest in buying the bond, but agree that [Deutsche Bank employee] will go in first and that [Credit Suisse employee] will hold off until [Deutsche Bank employee] is done. In other words, [Deutsche Bank employee] is able to trade in the market without competition from [Credit Suisse employee]. Having found a holder wishing to sell, [Deutsche Bank employee] also makes it clear that he will take [Credit Suisse employee's] short position in the bond into account and bid for a large quantity, with a view to meeting [Credit Suisse employee's] demand as well as his own. Again, the two traders have agreed on their trading activities rather than competed with one another[281]. No alternative explanation for this communication has been put forward by any of the parties.

(262) On **13 December 2010**[282], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) agree that [BAML employee] will attempt to protect [Deutsche Bank employee's] open positions while [Deutsche Bank employee] is on holiday. [Deutsche Bank employee] tells [BAML employee] he will send him his entire book before he goes on holiday, revealing all of his open positions and trading interests. No alternative explanation for this communication has been put forward by any of the parties.

13 Dec 2010	10:36:01 – 10:55:14
BAML ([...])	*"man shifting every eib offer in sight"*
DB ([...])	*"hahah!... yeah man… need to cover some of this crap before i go on hols"*
DB ([...])	*"still short 90mm KFW 15… 100mm KBN 15… 24mm finl 15… and 25mm okb 15"*
BAML ([...])	*"don;t worry man i#ll look after your posis while away"*
DB ([...])	*"yeah your going to have to man… have a massive book… will sedn you the final book on weds"*
BAML ([...])	*"cool"*

280 [a broker's employee] […].
281 […]
282 […]

(263) On **15 December 2010**[283], […] (Deutsche Bank) sent an internal email with the subject "*HOLIDAY NOTES*" to eight other Deutsche Bank employees, including [...]. The email detailed [Deutsche Bank employee's] views on the state of the USD SSA market at the time and was apparently aimed at providing guidance to various traders who would be taking over his USD SSA trading duties while he was on holiday. The email also contained the following paragraph:

"*Stay in close contact with [BAML employee] ([phone number]) at BOFA. He is a very good friend of mine and is 100% trustworthy. He will give you good colour on flows he is seeing and insights on specific bonds. If you cant reach him you can also contact [Credit Suisse employee] at Credit Suisse. I have told both these guys to help you out if needed.*"

(264) On **16 December 2010**[284], […] (Deutsche Bank) instructed […] (Deutsche Bank) to set up a persistent chatroom including [Deutsche Bank employee], [Deutsche Bank employee], [BAML employee] and [Credit Suisse employee]. [Deutsche Bank employee] explained to [Deutsche Bank employee] that he could: "*ask them anything in total trust*".

4.2.2. 2011

(265) On **14 January 2011**[285]**,** in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) exchange information or coordinate their bid to a client in relation to IADB 09/14 bonds. [Credit Suisse employee] is also present in the chatroom.

14 Jan 2011	10:47:37 – 10:52:15
DB ([...])	*"bidding 25mm iadb 09/14"*
BAML ([...])	*"seeing it… […] a/c… or one of them… +57?"*
DB ([...])	*"yeah that's what i bid"*
BAML ([...])	*"cool"*

(266) In this communication, the two traders discuss a client request for bids which they have both seen, meaning they are in direct competition for that trade. [BAML employee] opines that the client is one of the *"[...] [accounts]"* and then proposes a price of +57 to [Deutsche Bank employee]. [Deutsche Bank employee] replies: "*yeah that's what i bid*" and [BAML employee] concludes: "*cool*". It is unclear from the text of the chat whether [Deutsche Bank employee] has already placed his bid by the time [BAML employee] has proposed his price (10:51:10) or has placed it afterwards, at some point before or after replying to [BAML employee] that his bid is the same, just under one minute later (10:52:07).

(267) The exact timing of the bid each has placed is nevertheless irrelevant, as this exchange constitutes clear mutual assistance regarding pricing in the middle of an ongoing negotiation, regardless of whether the two traders are in fact agreeing the price both will bid ahead of time, or whether [BAML employee] is making his bid in the full knowledge of the price [Deutsche Bank employee] has already bid. No alternative explanation for this communication has been put forward by any of the parties.

283 […]
284 […]
285 […]

(268) On **20 January 2011**[286], in a persistent chatroom, […] (Deutsche Bank), […] (BAML) and […] (Credit Suisse) coordinate their strategy in relation to an offer on a broker screen for a bond in which all three have short positions they need to close.

20 Jan 2011	11:12:32 – 11:25:46
DB ([...])	*"[...] have a 16 offer in kfw 4 01/20 in 25mm… we are all short"*
CS ([...])	*"ct2 + 200"*
BAML ([...])	*"I am not lifting 16… i need 10mm only… swaps are wider"*
CS ([...])	*"i told him i couldn't reach near 16"*
BAML ([...])	*"i can get to 17"*
DB ([...])	*"i don't mind 17 as well… you wanna split them if they trade there?"*
BAML ([...])	*"ok i'll take 10mm if you can get there"*
DB ([...])	*"[Credit Suisse employee] you want any at 17?... if so we can all take 8mm each?"*
CS ([...])	*"sure"*
BAML ([...])	*"i need 10"*
CS ([...])	*"take 10..i'll take 6"*
DB ([...])	*"this guy is repeating rpting at 16.54… 16.5"*
DB ([...])	*"what do you guys want to do kfw 20?... guy aint moving"*
CS ([...])	*"i cant be assed to chase it...let u boys carry on"*
BAML ([...])	*"happy to leave it… paper coming uot anyway"*
DB ([...])	*"ok i might buy them if you guys don't want them"*

(269) In the above negotiation, [Deutsche Bank employee] effectively is appointed to negotiate with the broker (and the ultimate counterparty) on behalf of all three traders at a price agreed by all of them. All three are short in the bond[287] and will need to cover their position, and when an offer arises on a broker screen, they mutually agree their action instead of competing for the trade, and arrange to split the trade between them according to the interests of each and attempt to convince the dealer to lower his price (by increasing the spread from 16 to 17).

(270) Both BAML[288] and Credit Suisse[289] maintain that this communication represents a legitimate way for the three traders to cover their short positions whilst avoiding any of them taking on the whole trade and having a long position and inventory risk. BAML goes further and argues that splitting the offer amount: "*may have allowed them to bid at a higher price than they would have otherwise*" and "*there is no evidence that the information exchange caused the dealers to provide non-competitive pricing to the broker*"[290]. In reality, the information exchange, however, resulted in the sharing between three traders in the market concerning the price each would or would not be prepared to pay for the bond and their relative interest, with the conclusion that [Deutsche Bank employee] "*might buy them if you guys don't*

286 […]

287 See recital (50).

288 […]

289 […]

290 Presumably, formally, the broker's client, namely another trader, with the negotiation taking place via the broker, […].

want them". [Deutsche Bank employee] is free to proceed in the knowledge that the other two will not be competing with him.

(271) On **25 January 2011**[291], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) agree on a bidding price for Italian sovereign bonds. [BAML employee] is also present in the chatroom.

24 Jan 2011	03:36:20 – 03:38:48
DB ([...])	*"you short now?... i will send a bid out to my sales"*
CS ([...])	*"only 15mm for now"*
DB ([...])	*"ok will show a bid for 50mm"*
CS ([...])	*"but have a feeling that'll go up by the end of the day"*
DB ([...])	*"at +135?"*
CS ([...])	*"I was gonna start at 140, but yeah man….go with 135"*
DB ([...])	*"140 is fine man… will show that"*

(272) [Deutsche Bank employee] and [Credit Suisse employee] each have a short position[292] in Italy 09/13 sovereign bonds, and [Deutsche Bank employee] informs [Credit Suisse employee] he plans to send a bid to his sales desk. [Deutsche Bank employee] decides the volume he will bid for only after [Credit Suisse employee] tells him the amount of his short position. This indicates that [Deutsche Bank employee] is planning to bid for an amount that will cover both of them while [Credit Suisse employee] refrains from submitting a competing bid at that time. The price of [Deutsche Bank employee's] bid is jointly determined by the two, and after consulting with [Credit Suisse employee], [Deutsche Bank employee] decides to offer at a higher spread (hence offering to pay any seller a lower price) of 140 rather than the 135 he initially planned.

(273) BAML notes[293] that, although present in the chatroom, [BAML employee]: "*did not participate in the discussion identified in the excerpt*" and claims that: "*the Commission makes no attempt to explain or demonstrate why MLI should…be treated as a party to an agreement and/or concerted practice*". This argument should be rejected. Firstly, [BAML employee] communicated with the others less than two minutes before this extract begins (03:34:31) and is therefore likely to have been present whilst the exchange took place. Secondly, even in the unlikely event that he was absent when the communication took place, he was or should have been aware of it[294]. Credit Suisse has not put forward any alternative explanation for this communication.

(274) On **31 January 2011**[295], in a persistent chatroom, […] (Credit Suisse) asks […] (Deutsche Bank) if he consents to [Credit Suisse employee] making a trade to cover a position. [BAML employee] is also present in the chatroom and communicates less than two minutes before the extract.

31 Jan 2011	08:39:02 – 08:50:53
CS ([...])	*"u cover your renten 15s?"*

291 […]

292 See recitals (49) and (50) regarding the meaning of having a short position or a long position.

293 […]

294 See recital (587) on the availability of information to chatroom participants.

295 […]

DB ([...])	*"no was going to at 18... said i would pay 18 this morning and guy was [...]... now wants to hit me when swaps have leaked... told him to pokeit"*
CS ([...])	*"haha....ok...i'm gonna cover at 18 if your cool with that??... 16mm only"*
DB ([...])	*"yeah thats fine bro... go for it"*

(275) [Credit Suisse employee] has asked [Deutsche Bank employee] if he has yet covered an open position[296] in *'renten 15's'* and [Deutsche Bank employee] replies that he has not (note that [Credit Suisse employee] obviously knows [Deutsche Bank employee's] position in these bonds). Earlier in the day, he was prepared to make an offer to a seller (probably another trader) for these bonds at a given price ("*18*"), but the seller did not agree. Later on, the seller apparently approached [Deutsche Bank employee] desiring to make the trade at the terms offered by [Deutsche Bank employee]. [Deutsche Bank employee] refused. [Credit Suisse employee] was apparently also short of the same bonds at this time and in need of covering his position, so he asks [Deutsche Bank employee] if [Deutsche Bank employee] objects to [Credit Suisse employee's] doing so at the same price [Deutsche Bank employee] had offered, hence revealing the price and the volume he intends to purchase.

(276) It is not clear from the exchange (although it cannot be ruled out) whether the seller [Credit Suisse employee] was in contact with was the same as the one [Deutsche Bank employee] had refused. If it was, then the information passed on by [Deutsche Bank employee] as to the earlier negotiation with the client is of obvious value to [Credit Suisse employee]; even if it were not, however, the information [Deutsche Bank employee] disclosed as to the price he had offered earlier in the day has value as it serves as a price point for [Credit Suisse employee] to formulate his own bid (indeed, [Credit Suisse employee] bids the same amount as [Deutsche Bank employee]). Moreover, the fact that [Credit Suisse employee] asks for [Deutsche Bank employee's] permission to cover at the same price shows that the traders were taking into account each other's interests to align their market strategy. Therefore, this exchange is, at the very least, an exchange of sensitive information relevant to a current negotiation engaged in by [Credit Suisse employee]. No alternative explanation for this communication has been put forward by any of the parties.

(277) On **11 February 2011**[297], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) assist one another over the terms being offered to a customer by both, and exchange current information on the customer's request. […] (BAML) is also in the chatroom and offers his opinion.

11 Feb 2011	05:50:29 – 06:02:03
DB ([...])	*"offering 25mm okb 06/13 ...any ideas?"*
CS ([...])	*"haha...i got him on line too..showing at 45 ..i have bonds"*
DB ([...])	*"ok cooll...will offer to miss..i showed 43..you sell them yueah? Asked me to improve to 45"*
CS ([...])	*"he's haggling at the moment"*
DB ([...])	*"i said no..told me he traded away at 45"*
CS ([...])	*"then I just moved the UST price up on him"*

296 See recitals (49) and (50) regarding the meaning of having a short position or a long position.
297 […]

BAML ([...])	*"they are [...] thesedays"*
CS ([...])	*"sold them"*
DB ([...])	*"sweet"*
CS ([...])	*"sold 50"*
DB ([...])	*"did you have them all?"*
CS ([...])	*"i had 48"*
DB ([...])	*"result"*

(278) [Deutsche Bank employee] reveals that he is offering 25mm of OKB[298] 06/13 to a client, and [Credit Suisse employee] replies that he is seeing the same request and is: "*showing at 45*". He then indicates: "*i have bonds*" thus disclosing that he is long and has a strong interest to sell. [Deutsche Bank employee] acknowledges and then makes a comparatively unattractive offer to the client in order to help [Credit Suisse employee] ("*will offer to miss*"). [Credit Suisse employee] then reports he has successfully made the trade[299]. No alternative explanation for this communication has been put forward by any of the parties.

(279) On **15 February 2011**[300], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) exchange pricing information on a customer [Deutsche Bank employee] is in contact with in real time. […] (Credit Suisse) is also present in the chatroom.

15 Feb 2011	12:58:14 – 12:59:18
DB ([...])	*"being asked to bid 100mm sfefr 06/12... from [...] middle east dude... i bid -10"*
BAML ([...])	*"ahha that will be a result of my bif i showed him"*
DB ([...])	*"what you show?... i showed -10"*
BAML ([...])	*"-10... as well"*
DB ([...])	*"ok cool... you short 25mm right?"*
BAML ([...])	*"i am short 25mm myself"*
DB ([...])	*"i ma short 50mm... so fits nice for both of us"*
BAML ([...])	*"cool"*

(280) As part of the nearly constant flow of information between the traders during the day, [Deutsche Bank employee] reveals he has just placed a bid for "*sfefr 06/12*" bonds with a specific customer. [BAML employee] immediately replied that he placed a bid with the same client earlier. The two traders reveal their price levels, which were identical, and then exchange each other's positions, hence apparently exploring their interest in splitting the trade if [Deutsche Bank employee] is successful in his bid.

(281) [BAML employee] has provided [Deutsche Bank employee] with valuable intelligence in relation to this client. More specifically, [BAML employee] disclosed to [Deutsche Bank employee] that the client has received at least one bid at the same price for the bonds [Deutsche Bank employee] has placed a bid for. Such information manifestly increases transparency concerning that client and gives [Deutsche Bank employee] comfort that he does not need to improve his offer, especially since he will probably sell part of his purchase to [BAML employee] immediately thereafter without having to enter into another negotiation. The split has the added benefit of

298 Oesterreichische Kontrollbank, an Austrian agency.

299 […]

300 […]

allowing [Deutsche Bank employee] to avoid having to enter into a larger long position after making the trade, which also has the potential to influence his pricing decisions.

(282) BAML notes[301] that, in this instance the traders: "*have not coordinated or agreed the price to bid*" and argues that: "*had the traders not known about each other's short positions they would almost certainly have bid lower, less attractive prices to the customer*". This is, however, contradicted by the fact that [Deutsche Bank employee] discloses his position in the bonds *after* [BAML employee] makes his bid. The mere fact that the traders have not agreed the price to bid does not detract from the fact that the traders have exchanged information on an approach to each of them from an (identified) unwitting client and also revealed, during ongoing negotiations, the prices each other has offered to the client.

(283) On **9 March 2011**[302], in a persistent chatroom, […] (Deutsche Bank), […] (BAML) and […] (Credit Suisse) discuss the fact that their banks will be participating in a new issue the next day, and discuss their pricing intentions on a variety of bonds, agreeing to: "*switch prices etc at the same level*" the following day.

9 March 2011	07:58:47 – 11.11.46
CS ([...])	*"looks like we're all on the same deal"*
BAML ([...])	*"cough yeah"*
DB ([...])	*"for tomm?..sov deal right?"*
BAML ([...])	*"y"*
DB ([...])	*"yeah sweet…that will be a blowout"*
BAML ([...])	*"for shizzle"*
DB ([...])	*"FINL official…shall we switch prices etc at the same level?"*
BAML ([...])	*"yes..can u guys keep [BAML employee][303] in the loop tom"*
DB ([...])	*"sure man"*
BAML ([...])	*"make sure he doens;t fck up cheers…what bida re you going to put on finl 10/15 for comps list…-5?"*
CS ([...])	*"yeah"*
BAML ([...])	*"perfect thanks"*
DB ([...])	*"where you going tomm"*
BAML ([...])	*"[…]"*
BAML ([...])	*"bidding these on switch 25-50 mm..jfcorp 1.875 9/15 eurofima 5.25 4/16"*
CS ([...])	*"yeah…just been asked to. vs FINL right?"*
BAML ([...])	*"yep"*
DB ([...])	*"NOT BEEN ASKED YET"*
CS ([...])	*"+59 for EUROF?"*
BAML ([...])	*"hmm reckon we can go wider"*
CS ([...])	*"cool…what u thinking?"*
BAML ([...])	*"61?"*
DB ([...])	*"[third party bank] aint going tpo be steeping up.thats for sure!"*

301 […]
302 […]
303 […]

CS ([...])	*"+29 for jfcorp?"*
BAML ([...])	*"yeah that's cool..29 and 61 is fine"*
CS ([...])	*"shown that in. That trade makes no sense though"*
BAML ([...])	*"yeah this a/c never does ... [...]"*
DB ([...])	*"north American cb right?"*
CS ([...])	*"yip"*

(284) The three banks are co-lead managers for the issuance of new Finland sovereign bonds, and the traders agree to coordinate their initial prices for potential switch trades[304] resulting from this issue ("*FINL official…shall we switch prices etc at the same level?*"). [BAML employee] then asks what bid the others will show for FINL 10/15 bonds on their comps list[305], and proposes "*-5?*". [Credit Suisse employee] agrees and [BAML employee] replies: "*perfect thanks*". About an hour thereafter, [BAML employee] reveals he has been asked to place bids for JFCORP[306] and Eurofima[307] bonds as part of switches; [Credit Suisse employee] says he has been asked as well ("*yeah. Just been asked to vs. FINL right?*"), while [Deutsche Bank employee] says he has not yet been asked. [Credit Suisse employee] and [BAML employee] then discuss, and eventually agree, on the price level for these bids ("*yeah that's cool..29 and 61 is fine*"). This agreement extends both to the bids [Credit Suisse employee] places with the client[308], as well as the levels the traders will show to the seconday market generally in the context of the new issue[309].

(285) On the following day, **10 March 2011**[310], in a non-persistent chatroom, […] (Deutsche Bank) sends […] (Credit Suisse) and […] (BAML), who is standing in for [BAML employee] […], his 'comps list' from the day before, and the three traders agreed to send the same comps for that day, one basis point wider than the day before. This exchange takes place in the context of the new issue of FINL bonds.

10 March 2011	02:48:59 – 03.17.15
BAML ([...])	*"do we prepare comps for FINL?... iadb 2.25 07/15 ct5-12... eib 1 5/8 09/15 ct5-1... finl 1.25 10/15 ct5-5... ibrd 2 1/9 03/16 ct5+6... asia 2.5 03/16 ct5+21... afdb 2.5 03/16 ct5+23"*
DB ([...])	*"let me send you what i did yesterday"*
DB ([...])	*"sent yo guys the comps i sent out last night... let me know if you think any look too tight"*
BAML ([...])	*"swaps spreads tight wider... ok lets send the same comps list. Same levels as yest then?... a 1bp wider?"*
DB ([...])	*"1 bps wider is fine"*

304 Trades out of outstanding positions to free resources to participate in a new bond issue.

305 A list of comparable bonds for potential switch trades that traders send to their sales desk. See recital (54).

306 Japan Finance Corporation, a Japanese agency. www.jfc.go.jp/n/english/.

307 European Company for the Financing of Railroad Rolling Stock, supra-national. www.eurofima.org.

308 It is probable that at least [Deutsche Bank employee] knows who [Credit Suisse employee's] client is, as he guesses that it is a North American central bank ("*north American cb right?*") and [Credit Suisse employee] confirms.

309 […]

310 […]

BAML ([...])	*"ok 1 bp wider for all"*
CS ([...])	*"we were a bit different on comps we sent last night. Forwarding what we sent Asian sales to you.... but happy to go wider of course this morninng"*
BAML ([...])	*";-)... ok lets add IBRD 5/15, EDC 5/15, IADB 15 and NIB 16 to [Deutsche Bank employee]'s list, ok?... 1 bp wider too"*
DB ([...])	*"sure"*
CS ([...])	*"have resent to you boys, using I-spread on YAS.... agree? if so, i'll forward to my lot now"*
DB ([...])	*"that looks good... will send the same thing"*
BAML ([...])	*"same... you didnt widen... by 1bp"*
CS ([...])	*"i didn't bother because looking at the book, we won't need to get switches done anyway, i'm sure."*
BAML ([...])	*"ok... no prob"*

(286) As is evident from the chat, the comps list[311] the traders circulated among each other and to their respective sales desks contained a range of bonds which the traders agreed to offer based on the same prices as they had discussed and agreed the day before, or at one basis point wider than the day before, again by common agreement.

(287) Later on the same day[312], [Deutsche Bank employee], [Credit Suisse employee] and [BAML employee] have further exchanges in which they coordinate the prices they will offer to the market for the FINL bonds issued that day, and agree to monitor the performance of the bonds and coordinate prices accordingly.

10 March 2011	11:59:09 – 12.13.35
BAML ([...])	*"where do we open the new FINL?... +17/+15?"*
CS ([...])	*"you'll get lifted straight away... but its not free is it?"*
BAML ([...])	*"-6?... +14 on the offer... ?... 16/14"*
CS ([...])	*"i think so, yeah"*
DB ([...])	*"i think better to go 17 bid first... see if any spivs come out"*
CS ([...])	*"yeah... agree"*
DB ([...])	*"then we can go tighter if needed"*
BAML ([...])	*"too late... i sent 16/14... lets see"*
CS ([...])	*"ok"*
DB ([...])	*"lets see what to make tomm morning"*

(288) In relation to the overall communications around the new Finland issue, BAML states[313]: "The lead managers on this issue were MLI, CS, DB and HSBC. In those circumstances it would be expected by both issuers and investors that MLI, DB and CS would co-ordinate in relation to the preparation and circulation of comps lists". However BAML provides no explanation on why this expected coordination excluded one of the lead managers (HSBC), when, in BAML's own words, this posed the risk that the syndicate would appear "to both issuers and investors to be disorganised and unprofessional"[314]. Only as regards the initial pre-issue discussion

311 See recital (54).
312 […]
313 […]
314 […]

on switch prices on 9 March 2011, does BAML attempt to explain the complete absence of HSBC from the exercise by claiming that when [Credit Suisse employee] states "shown that in"this expression: "is likely to refer to him having provided the dealers' best price to the syndicate or sales desk, to pass on to the investor. In this case, it is likely that the syndicate desk of the fourth lead, HSBC, would have contacted the HSBC trader to confirm whether he would agree to meet this price and split the switch trade with the other leads, or whether he wished to beat the price and carry out the whole switch: the syndicate would always offer potential investors the best switch level from amongst the group of managers". In reality, there is no evidence whatsoever that HSBC would be included via the syndicate desks and, in any case, BAML's assurance regarding HSBC's involvement, as well as its description of the relationship between the primary and secondary desks of the lead managers on switch trades, concerns potential initial investors in the new bond during the book-building phase before the issue[315], not post-issue secondary market clients. Moreover BAML explains that the initiative on comps lists would come from the primary syndicate desk[316]. This explanation is totally at odds with the initial discussion between BAML, Credit Suisse and Deutsche Bank traders on 9 March 2011, in which it is […] (DB) who suggests to the other two: "shall we switch prices at the same level?". On 10 March 2011, […] (BAML) proposes: "lets send the same comps list" and it is clear that this is primarily intended for the secondary market. [Credit Suisse employee] remarks that he has looked at the book "we won't need to get switches done anyway", presumably as the new bond is fully subscribed (and again indicating that the traders comps lists were intended for secondary market trading and not the book building phase of the new issue).

(289) The three traders then turn their attention from coordinating on comps lists to coordinating the price at which they will trade the new bond as soon as secondary trading opens: "*where do we open the new FINL?*". BAML claims[317] that: "*By offering strong bid prices of 16 and 17 in the secondary market the dealers prevent a material decline in the bond's market price, which is part of the service offered to issuer clients*". It has already been indicated by [Credit Suisse employee] the same day that demand for the new bond is strong so that there is no justification for any support by lead managers in the market and there is no evidence that any cooperation on price takes place in accordance with the relevant regulations[318], which would require all the lead managers, including HSBC, to appoint one of them to be a stabilisation manager and report regularly to the regulatory authorities. What the traders are doing is eliminating competition between them on the initial trading of a new bond for which they are three (out of four) lead managers and from whom interested investors in the secondary market are likely to seek quotations.

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315 This is the pre-launch phase in which the lead managers aim to secure primary investors in the new issue and allocate bonds amongst them.

316 According to BAML […], either "*each syndicate desk of a lead manager would ask their respective trading desk for input on comparable bonds ....and the syndicate desks would then agree on an aggregated comps list to send to the market…*" or *"the syndicate desks would ask their trading desks to work together to prepare a list of comparable bonds…which would have been provided to the syndicate desks or circulated directly to the market…".*

317 […]

318 See recital (152).

(290) On **5 April 2011**, […] (CS) sent […] (BAML) an email entitled "*Comps below*"[319] with a comps list covering twelve bonds. Credit Suisse argues[320] that [Credit Suisse employee] was sending [BAML employee] a comps list in the context of a new three year EIB issue for which BAML, Credit Suisse and JPMorgan were lead managers. It asserts that: "*A comps list would help generate liquidity and interest in the new issue*", that the list is: "*an illustrative guide to inform market participants of the levels that they could sell existing bonds in a switch trade with the newly issued bonds*" and that: "*there is no issue with sending out comps lists to other market makers as discussing a market-makers inventory positions may facilitate the identification of inter-dealer trading opportunities for market-makers to manage their risks.*" However, firstly, this is not a list of inventory positions – there is no indication of positions – but of prices. Secondly, there is no evidence that the comps list was sent to JPMorgan, the other lead manager on the issue. Thirdly, at the same time that the issue is announced on screen, [Credit Suisse employee] and [BAML employee] discuss prices and client switch enquiries with […] (DB)[321], although Deutsche Bank was not a lead manager on the EIB issue.

(291) On **27 April 2011**[322], in a persistent chatroom, […] (Deutsche Bank) seeks to coordinate a price for a KFW bond with both […] (BAML) and […] (Credit Suisse) in a three-way chatroom, with the former responding.

27 April 2011	10:39:16 – 10:41:32
DB ([...])	*"ok might have a buyer of some of the 04/18..was lining it up yesterday..i have 25 m..might need an additional 25mm..where you guys want to show?..going to be on switch..he sells KFW 02/16 and buy KFW 04/18"*
BAML ([...])	*"+27 is my best"*
DB ([...])	*"ok showing it"*

(292) [Deutsche Bank employee] has identified a buyer for KFW 04/18 who has greater demand than [Deutsche Bank employee] may be able to satisfy via his own position. Rather than planning to meet the customer's demand for 50 million of the bonds by making an entirely independent purchase transaction from another trader or broker, or selling his own position and going short (and then approaching another trader or broker), or, finally, offering the client an amount equal to his position and no more, [Deutsche Bank employee] approaches [BAML employee] (apparently knowing that [BAML employee] has bonds to sell), agrees the price to be made to the third party upfront with [BAML employee], and shows the client an offer combining his and [BAML employee's] positions at the jointly agreed price.

(293) BAML argues[323] that: "*this is a classic example of [Deutsche Bank employee] sourcing liquidity from [BAML employee] to combine with his own inventory of bonds in order to meet the customer's demand in full*" and claims that: "*there is no indication that [Deutsche Bank employee] and [BAML employee] 'agreed the price upfront' that will be shown to the customer, nor do we know whether [Deutsche Bank employee] offered the bonds to the customer at +27*". However, this is at odds with

319 […]
320 […]
321 […]
322 […]
323 […]

[Deutsche Bank employee's] statement: "*ok showing it*", which demonstrates that the price shown to the customer was that arranged with [BAML employee].

(294) On **19 May 2011**[324], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) coordinate over the terms to be offered to a frequent customer, nicknamed "*t+2*" by the group.

19 May 2011	03:34:56 – 05:52:15
DB ([...])	*"you speak to IBRd yesterdaya bout a tap for 08/14?..i did"*[325]
CS ([...])	*"yeah"*
DB ([...])	*"looks like it might be happening..i got t+2 on right now"*
CS ([...])	*"sweet.."*
DB ([...])	*"showing him 100mm..have shwon him a 100.21..in case he comes to oyu..maybe worth showing same level..so we can max the dough"*
CS ([...])	*"i'll do that, if he comes on for sure"*
DB ([...])	*"how many you short"*
CS ([...])	*"sorry…was just tied up with […]..70mm"*
	[no chat between 03:41:59 and 05:41:35]
CS ([...])	*"I'm heading off desk for a bit. If they do come on, i'll tell [Credit Suisse employee] to offer at 8.5..that cool"*
CS ([...])	*"?"*
DB ([...])	*"maybe even tighter...reckong +7.5*
CS ([...])	*"cool"*

(295) In this extract [Deutsche Bank employee] informs [Credit Suisse employee] that he has shown a specific cash price to a client known to both of them, whom they have nicknamed "*t+2*", and [Deutsche Bank employee] and [Credit Suisse employee] agree that [Credit Suisse employee] will offer "*t+2*" the same level if he is approached, in order to maximise the profit opportunity ("*maybe worth showing same level..so we can max the dough", "i'll do that, if he comes on for sure*").

(296) Later, [Credit Suisse employee] informs [Deutsche Bank employee] that he will be off the desk for a while, but will leave instructions for a colleague to show a specified price (expressed as a spread) to the client. [Deutsche Bank employee] responds by suggesting a 'tighter' spread (hence a higher price), to which [Credit Suisse employee] agrees[326]. No alternative explanation for this communication has been put forward by any of the parties.

(297) The next day[327], on **20 May 2011**, in a non-persistent chatroom, the traders continue to discuss and agree the terms they will offer to "*t+2*" in relation to the IBRD issue. [Deutsche Bank employee] proposes to combine [Credit Suisse employee's] position with his own at a price discussed and agreed with [Credit Suisse employee]. No alternative explanation for this communication has been put forward by any of the parties.

20 May 2011	07:56:40 – 07:57:57

324 […]
325 […]
326 […]
327 […]

DB ([...])	*"t+2 going to buy them on Monday as soon as he has funds… how many you got left?... think he has room for more then the 100mm i have"*
CS ([...])	*"sweet. i got 30mm left"*
DB ([...])	*"ok cool will push 150mm at +9… that ok for you?"*
CS ([...])	*"sure man"*

(298) On **1 June 2011**[328], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) again coordinate the terms which they are offering on certain bonds and exchange information on potential customers.

1 June 2011	08:57:59 – 09:21:11
DB ([...])	*"seeing that eib and asia as well…what did you bid?"*
BAML ([...])	*"sec"*
BAML ([...])	*"23 and 30"*
DB ([...])	*"ok cool…i will bid the same"*
BAML ([...])	*"aight"*
DB ([...])	*"the otherguy on asia 05.14 and eib 14 going to be selling Agencies instead"*
BAML ([...])	*"ok good … least we gave sam levs"*

(299) [Deutsche Bank employee] and [BAML employee] are both seeing a request to bid for '*asia*' and EIB bonds, and [Deutsche Bank employee] asks what levels [BAML employee] has bid. Upon hearing [BAML employee's] levels, [Deutsche Bank employee] says he will bid at the same prices for both. [Deutsche Bank employee] later reports to [BAML employee] that the client has decided not to sell the bonds, and [BAML employee] replies "*ok good … least we gave sam levs*", a typo for 'same levels'. Although the client decided not to make the trade, [Deutsche Bank employee] and [BAML employee] nevertheless reached an accord on the prices they each showed.

(300) BAML states[329] that this communication "*almost certainly*" takes place in the context of a new issue of ADB 06/14 bonds, and that customers are looking to potentially switch out of another ADB bond and an EIB bond in order to buy the new issue. BAML argues that: "*the lead managers on this new ADB issue were DB, MLI, Daiwa and UBS. In those circumstances it would be expected by both issuers and investors that MLI and DB would co-ordinate in relation to the joint pricing and splitting of switch orders*". However, first, BAML's statement is unconvincing. As with other new issues[330], BAML fails to explain why only Deutsche Bank and MLI (BAML) are agreeing bid prices for comparable bonds in the secondary market with absolutely no mention of passing any information onto other syndicate members[331]. If the issuer and investors "*expected*" coordination then they would have expected the other lead managers, namely Daiwa and UBS, to have been involved. Furthermore, in justifying coordination, BAML is referring to the 'book building' pre-issue phase of a bond issue, when the syndicate lead managers (primary desks)

328 […]
329 […]
330 See, for example, recitals (283)-(290).
331 See also recitals (731)-(734).

would indeed coordinate to decide allocations of the new bond issue amongst investors (using feedback from their respective sales desks). What is taking place in the communication, however, is not a pre-issue book building exercise in which allocations are made to large institutional investors but price coordination in secondary market trading, as the issue has been announced and traders are placing bids/offers in the secondary market.

(301) On **14 June 2011**[332], in a persistent chatroom, [Deutsche Bank employee] and [Credit Suisse employee] exchange information and (at least initially) align their bids concerning a request both have received from the same account to enter bids for "Italy 01/16" bonds. […] (BAML) is also present in the chatroom.

14 June 2011	10:17:43– 10:44:28
DB ([...])	*"now bidding 80mm italy 01./16... same account... where you got them... i bid +160 to 5yrs... +150 i mean"*
CS ([...])	*"being asked that italy too now... i'll bid the same"*
DB ([...])	*"hes shown everyone"*
CS ([...])	*"dont want them"*
DB ([...])	*"best bid is now 170... in the brokers... hes shown everyone i think"*
CS ([...])	*"i'll bid 160...no interest"*

(302) [Deutsche Bank employee] announces that he is bidding for Italian sovereign 01/16 bonds and asks for pricing input from the others while disclosing his own bid ("*where you got them... i bid +160 to 5yrs... +150 i mean*"). The others do not reply at first (in fact the chatroom goes silent for almost twenty minutes), but then [Credit Suisse employee] discloses he has seen the same inquiry and intends to place the same bid as [Deutsche Bank employee]. [Credit Suisse employee] then informs [Deutsche Bank employee] he will widen his spread as he has no interest in the bonds. Later, (at 10:50:07) [Deutsche Bank employee] informs [Credit Suisse employee] that the client traded with another party at a spread of +145. Nevertheless, [Credit Suisse employee] and [Deutsche Bank employee] have agreed on price levels they will bid during ongoing negotiation they are each having (supposedly separately) with a third party.

(303) Credit Suisse maintains[333] that the reason that [Deutsche Bank employee] asks [Credit Suisse employee]: "*where you got them*" is: "*to have a better idea of the security in order to check whether the amount he has bid is correct*". However, first, this argument is unconvincing given that the exchange concerns a sovereign bond quoted on brokers screens, not an obscure and illiquid company issue. Secondly, even if the issue was obscure, this would not justify the exchange of sensitive information on pricing and price coordination by traders acting in relation to customer enquiries rather than trading with each other. The fact that [Credit Suisse employee] has no particular interest in the bonds or that the customer eventually sold them elsewhere does not justify the agreement between the two traders to bid the same price.

332 […]
333 […]

(304) On **7 July 2011**[334], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) exchange price information in relation to a request to bid Spanish bonds. […] (Credit Suisse) is also present in the chatroom.

7 July 2011	09:09:23 – 09:13:44
BAML ([...])	*"bidding spain 06/13 small"*
DB ([...])	*"where you bidding the spain?... seeing ti now as well"*
BAML ([...])	*"i think they are 205 on the bid... i bid 245"*

(305) In this brief exchange, [BAML employee] discloses that he has made a bid for a volume of Spain 06/13 bonds. A few minutes later, [Deutsche Bank employee] tells him he is seeing the same inquiry and asks [BAML employee] what price he has bid. [BAML employee] readily reveals the price whilst [Deutsche Bank employee] is considering what price to submit as his own bid. Although in this excerpt, unlike in other examples described in this Decision[335], [Deutsche Bank employee] does not respond to [BAML employee's] disclosure of his bidding price by revealing his own strategy, this is at the very least a disclosure of price information relevant to a live negotiation from [BAML employee] to [Deutsche Bank employee], which [Deutsche Bank employee] can take into account without the need for further discussion in the chat.

(306) Credit Suisse[336] argues that during the relevant period the Spanish sovereign bond would have been categorised as "peripheral," as the Eurozone debt crisis made it "*highly volatile and illiquid*". This does not mean, however, that it was an obscure, unquoted bond – on the contrary, it was a European government-issued bond quoted on broker screens. Moreover, the information exchange between the traders in the face of an unwitting customer who has approached both of them, ("*seeing ti now as well*") is not justified by reference to the bond's status.

(307) On **12 July 2011**[337], in a persistent chatroom, […] (Credit Suisse) and […] (Deutsche Bank) combine their buying interest when the former executes a client trade. […] (BAML) is also present in the chatroom.

12 July 2011	05:56:44 – 06:01:49
CS ([...])	*"i'm bidding kbn 5/15s ... u want any [Deutsche Bank employee]*[338]*?"*
DB ([...])	*"am short just over 20mm ... what level you thinking?"*
CS ([...])	*"87/88? ... or wider?"*
DB ([...])	*"how many you bidding?"*
CS ([...])	*"25"*
DB ([...])	*"yeah that cool ... 88 ... you still short?"*
CS ([...])	*"on it"*
DB ([...])	*"what type of account selling?"*
CS ([...])	*"short 10mm .. asian cb ... just bot them at 104.73 ... +88.5"*
DB ([...])	*"cool"*

334 […]
335 See, for example, recitals (239), (279) and (298).
336 […]
337 […]
338 […]

In this extract, [Credit Suisse employee] informs [Deutsche Bank employee] of his intention to bid for KBN 05/15 (Kommunalbanken Norway) bonds and inquires about [Deutsche Bank employee's] buying interests. [Deutsche Bank employee] discloses his short position in the bond and they agree to combine their positions into a single bid to [Credit Suisse employee's] customer at an agreed price level. Subsequently, [Credit Suisse employee] executes the trade. No alternative explanation for this communication has been provided by Credit Suisse.

(308) In respect of this communication, BAML states[339] that [BAML employee]: "*did not participate in the discussion identified in the excerpt or discuss KBN 05/15 bonds elsewhere in the chat*". [BAML employee's] last remark in respect of the previous bond being discussed by the three traders was at 05:55:25, that is, just over a minute before [Credit Suisse employee's] query on KBN bonds. He was very much present in the chatroom and it is unlikely that he was not aware of the discussion taking place on KBN bonds.

(309) **On 15 July 2011[340]**, in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) discuss their pricing on an IBRD bond for a particular customer. The traders reveal the customer's identity and the fact that he is approaching each one of them. The traders devise a strategy that involves misleading the customer to encourage the customer to trade at the terms offered by [Deutsche Bank employee]. [BAML employee] also makes comments.

15 July 2011	04:26:10 – 04:49:02
CS ([...])	*"i was just checked IBRD 14s fyi..not sure if your guy…made him 21/19 as a level"*
DB ([...])	*"was it the vodkas?"*
CS ([...])	*"y"*
DB ([...])	*"that who i am trying to sell these ibrd to..we are pretty close"*
CS ([...])	*"cool…[…]…why bother asking someone else"*
DB ([...])	*"need to get these off the book…you long any of these?"*
CS ([...])	*"29.6"*
DB ([...])	*"trying to ssell these to him at 19..if i sell mine you want to lose your 29.6?"*
CS ([...])	*"yeah man, done"*
DB ([...])	*"ok will take yours along…can you do me a favour…tell him you see them like 20/17 or something…think he will take them then..he wants to feel like he is getting a bargain"*
CS ([...])	*"cool…i assume its price discovery for him, but i'll tell him they're a bit tighter in the street now we're moving it in"*
DB ([...])	*"cool..i am long 190mm and have shown him 200mm…wo happy to do 170mm and your 30mm"*
CS ([...])	*"cool…u getting eib 1.125 aug 14s out? We approached him y'day but said he's gonna wait…if they come out a sensible level, then i'll take some back"*
DB ([...])	*"no hes decdied to sell EIB…he deciding whethere to buy the IBRD outright"*

339 […]
340 […]

CS ([...])	*"even better...nice"*
DB ([...])	*"yeah exactly"*
BAML ([...])	*"plenty of EIB out there no need to buy any of that"*
DB ([...])	*"guys asks me to keep the IBRd yesterday"*
CS ([...])	*"$hit..he's just typing as i type...asking how many ibrd i got"*
DB ([...])	*"so you better of just saying like 10mm or something"*
CS ([...])	*"cool...14mm i said"*
DB ([...])	*"did he lift you?"*
CS ([...])	*" 'we sold a block yesterday' "*
BAML ([...])	*"haha man using all the marketing techniques"*
CS ([...])	*"14mm aint gonna excite anyone, so he'll go away and just lift u hpefully"*
DB ([...])	*"hes lifted me"*
CS ([...])	*"schweet"*
DB ([...])	*"let [...] know what your size is...i'll pay..thank bro...worked out perfect*
CS ([...])	*"29.6 ok?"*
DB ([...])	*"sure"*
CS ([...])	*"thks man...i'll sort it with them"*

(310) [Credit Suisse employee] informs [Deutsche Bank employee] that he has just been asked to offer certain IBRD bonds and discloses the price he has made ("*made him 21/19 as a level*") while wondering if it is the same customer [Deutsche Bank employee] mentioned earlier in the day. [Deutsche Bank employee] asks if the customer is "*the vodkas*" and [Credit Suisse employee] confirms it. [Deutsche Bank employee] indicates this is the client he has been in contact with and that he is "*pretty close*" to making a trade. [Credit Suisse employee] remarks that this customer is a "*[...]*" for approaching another trader at that stage. [Deutsche Bank employee] reveals he is eager to sell these bonds and asks [Credit Suisse employee] to submit a less competitive price, thinking it will convince the client to trade with [Deutsche Bank employee] ("*can you do me a favour... tell him you see them like 20/17 or something...think he will take them then..he wants to feel like he is getting a bargain*"). [Credit Suisse employee] agrees ("*cool*"). In return, [Deutsche Bank employee] offers to buy [Credit Suisse employee's] position of 29.6 mm and combine it with his offer to the client. After some further discussion, [Deutsche Bank employee] informs [Credit Suisse employee] that the client has made the trade and that the arrangement "*worked out perfectly*"[341]. No alternative explanation for this communication has been put forward by any of the parties.

(311) Later in the same communication, [Deutsche Bank employee] and [BAML employee] collude on the prices they offer for AFDB bonds to their mutual client 'smalls'[342].

15 July 2011	08:51:34 – 09:13:59
DB ([...])	*"BIDDING AFDB 05/.14 FOR SMALLS!!... HOW MANY YOU SHORT"*

341 [...]
342 [...]

DB ([...])	*"[BAML employee] i have bid +27... they selling everything in sight man!"*
BAML ([...])	*"yep"*
DB ([...])	*"asking for improvement... what shall we show... 26?"*
BAML ([...])	*"nah i'm not improving"*
DB ([...])	*"ok will tell them to stick to 27"*
BAML ([...])	*"cool"*
DB ([...])	*"they looking for 24 on the afdb... good luck with that"*
BAML ([...])	*"yeah get facked... shall we just show 26 then?"*
DB ([...])	*"ok will do"*
DB ([...])	*"they asking if we can match 25... what oyu reckon?"*
BAML ([...])	*"i showed 26... no better"*
DB ([...])	*"ok will stay ay 26... I agree 26 is like -2.4... thats tight enough"*
BAML ([...])	*"yep... they have left me a soft order at 25... what azz"*
DB ([...])	*"yeah same here"*
DB ([...])	*"bought 50mm you can have half man"*

(312) [Deutsche Bank employee] informs [BAML employee] that the client "*smalls*" has requested a bid for AFDB 05/14 and asks the extent of [BAML employee's] short position. [Deutsche Bank employee] then informs [BAML employee] that he has bid +27 and then, after a request from the client to improve the price, checks with [BAML employee] whether he should improve to +26. [BAML employee] refuses to improve, and [Deutsche Bank employee] says he will stick to +27 as well. He then tells [BAML employee] that the client is looking for a spread of +24 and [BAML employee] proposes they then improve to +26. Then, the traders each inform the other that the client has left a *'soft order'*[343] with both of them to trade at +25, if they agree. [Deutsche Bank employee] then informs [BAML employee] he has bought 50mm (presumably at +25) and offers [BAML employee] half. The two traders had to improve their price in order to make the trade, but nevertheless stayed in regular contact and agreed at every step to consistently offer the same price. None of the parties have provided any alternative explanation for this excerpt.

(313) Still later that day[344], […] (Deutsche Bank) provides […] (BAML) with current, commercially sensitive pricing information concerning a customer.

15 July 2011	*11:26:17 - 11:29:01*
BAML ([...])	*"where have you got your [...] deal marked ... got a seller"*
DB ([...])	*"yeah i bid them aswell ... small size right"*
BAML ([...])	*"yeah"*
DB ([...])	*"i bid 80 as am short ... so you might aswell bid 90 ... only short 3mm ... that bond is [...]"*
BAML ([...])	*"ok bud"*

(314) The exchange starts with [BAML employee] asking for [Deutsche Bank employee's] advice on how to price NADB (North American Development Bank) bonds. In response, [Deutsche Bank employee] reveals he has placed a bid for those bonds, and

343 A soft order is an indication from the client that he would be willing to trade at a certain price, if the trader agrees. […].

344 […]

the traders seem to conclude, based on the size of the enquiry, that they have been dealing with the same customer ("*small size right*": "*yeah*").

(315) [Deutsche Bank employee] proceeds to disclose to [BAML employee] the amount of his bid, then suggests a price [BAML employee] might bid. The price is less competitive (offers the customer a higher spread, and hence a lower price) than [Deutsche Bank employee's] price, and [Deutsche Bank employee] implies he wants the trade to close off a small short position (while telling [BAML employee] the bond is '*[...]*' and expecting [BAML employee] to have little interest in the bond). [BAML employee] acknowledges the suggestion ("*ok bud*"), clearly signalling to [Deutsche Bank employee] he will not place a competitive bid[345].

(316) In respect of this final extract from 15 July 2011, BAML contends[346] that: "*this is an example of an attempt by [BAML employee] to source liquidity for a customer trade in NADB from [Deutsche Bank employee]*", and "*it simply appears that [Deutsche Bank employee] has an incentive to bid for this unattractive bond in order to cover his existing short position...whereas [BAML employee.] has no such incentive*". However, the mere fact that [Deutsche Bank employee] has more of an incentive to bid than [BAML employee] is no justification for the two providing mutual assistance regarding the prices at which they might bid. Without knowing the price at which [Deutsche Bank employee] had bid, and therefore being able to bid a less competitive price, [BAML employee] might (acting as a market maker) have bid a price at which the customer chooses to trade. In fact BAML argues that: "*we do not know whether [BAML employee] did bid for the bonds*", thereby confirming that [BAML employee] was not a formal market maker with obligations to quote prices on demand. [BAML employee's] "*ok bud*" clearly indicates to [Deutsche Bank employee] that he will not make a more attractive price.

(317) On **26 July 2011**[347], in a persistent chatroom, [...] (Deutsche Bank) checks with [...] (BAML) and [...] (Credit Suisse) whether they are flat in certain "*neds*" bonds before improving his bidding prices.

26 July 2011	06:38:41 – 06:44:42
DB ([...])	*"[Credit Suisse employee] you flat neds now>... i might as well go better bid if you are"*
CS ([...])	*"short 1.7mm... but yeah, go for it...... think other leads are still long?"*
DB ([...])	*"[BAML employee] you flat those now?"*
BAML ([...])	*"yessir"*
DB ([...])	*"ok so seems maybe everyone cleaned up"*
CS ([...])	*"u wanna sell me 1700k b4 u go crazy on that bond?... do it for cash, if u wanna let [...] know"*
DB ([...])	*"yeah sure man... yeah sure"*
CS ([...])	*"thks dude"*
DB ([...])	*"62 is where you sold them right?"*
CS ([...])	*"yip"*
DB ([...])	*"ok +62 done"*

345 [...]

346 [...]

347 [...]

(318) In the above exchange, [Deutsche Bank employee] checks with [BAML employee] and [Credit Suisse employee] before embarking on his desired trading strategy. Specifically, he wants to be sure they are both flat before beginning to bid more aggressively for the relevant Ned bonds, because raising his bids could raise the cost of covering any short position for [BAML employee] and [Credit Suisse employee]. [Credit Suisse employee] reveals he is still short 1.7mm but consents to [Deutsche Bank employee's] request. He then asks [Deutsche Bank employee] to sell him the amount he needs to cover his short position before [Deutsche Bank employee] begins bidding. [Deutsche Bank employee] agrees and they then discuss the details of their bilateral trade[348]. None of the parties has put forward any alternative explanation for this communication.

(319) On **18 August 2011** […] (Deutsche Bank) sends […] (BAML) his comps list[349] in relation to a just-announced issue of 10-year KfW bonds[350] and the two exchange information on a client switch enquiry from a 2021 EIB bond, [BAML employee's] bid price and his (short) position in the bond. This allows the two traders to be aware of each other's pricing intentions for the market in general and for that specific client, which amounts to an exchange of sensitive commercial information.

(320) On **7 September 2011**[351], in a persistent chatroom, […] (BAML) and […] (Credit Suisse) coordinate their bidding strategy in relation to a specific customer during live negotiations, with the apparent aim of increasing the likelihood the customer will trade with [Credit Suisse employee]. […] (Deutsche Bank) is also present in the chatroom.

7 Sept 2011	07:08:38 – 07:15:54
BAML ([...])	*"bidding asia 5.5 06/16..u boys axed… smalls in 25mm"*
CS ([...])	*"yeah…me too… i am short… think [Deutsche Bank employee] is too… bidding +22 here"*
BAML ([...])	*"ok what you showing... ok cool..will do +23 bid"*
CS ([...])	*"cheers… missed"*
BAML ([...])	*"dman… hes back..asking to improve..said nop"*
CS ([...])	*"hah… what […]"*
BAML ([...])	*"u should get them"*

(321) [BAML employee] reveals he has been asked by the client the traders refer to as "*smalls*" to bid for "*asia*" bonds with a maturity of June 2016. [Credit Suisse employee] replies that he has received the same request, and that he is short (implying he needs to buy these bonds in order to close off his position). [Credit Suisse employee] reveals the amount he has bid, and [BAML employee] offers to bid at one basis point higher (by bidding a higher spread, [BAML employee] is effectively bidding a lower price). [Credit Suisse employee] accepts and thanks [BAML employee] for his help, but the client declines [Credit Suisse employee's] terms. Then [BAML employee] reveals that he has been asked by the client to improve his price and has refused, in the belief this will help [Credit Suisse

348 […]
349 See recital (54).
350 […]
351 […]

employee] ("*u should get them*") to get the customer's trade, rather than himself[352]. None of the parties has put forward any alternative explanation for this communication.

(322) On **21 September 2011**[353], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) exchange information or coordinate their bidding strategy in relation to a potential trade with a client for which both are in direct competition. […] (Credit Suisse) is also present in the chatroom.

21 Sept 2011	09:47:27 – 10:23:13
DB ([...])	*"offering 50mm renten 02/16"*
BAML ([...])	*"the 5omm rernen 02/16..is in comp with me"*
DB ([...])	*"ok cool"*
BAML ([...])	*"really want to mek the sale against my 01/.16… where u showin"*
DB ([...])	*"27"*
BAML ([...])	*"aight"*
DB ([...])	*"can show them tighter if it helps"*
BAML ([...])	*"guy on the renten is saying he is seeing a 29 offer away… impossible"*
BAML ([...])	*"sold those renten 02/16 50mm"*
DB ([...])	*"result… what level?"*
BAML ([...])	*"[...] said he was seeing 2bps better what a [...] … 27"*

(323) [Deutsche Bank employee] reveals he has been asked to offer these bonds, and [BAML employee] replies that he is in competition for that trade, but that he is keen to execute the trade as part of a switch. [BAML employee] asks [Deutsche Bank employee] the price he has offered ("*where u showin*"), and [Deutsche Bank employee] replies ("*27*"). He then adds "*can show them tighter if it helps*", suggesting he is willing to change his price in order to help [BAML employee] win the trade. Some time later, [BAML employee] says he is being told by the client that a price better by two basis points is being offered by another party, which he believes is impossible. Finally, [BAML employee] informs [Deutsche Bank employee] that he has made the trade at the original price of 27[354].

(324) [Deutsche Bank employee] has revealed his pricing information and offered to change his price in order to help [BAML employee] win the trade, which he eventually did. It is unclear if [Deutsche Bank employee] took any other action to help [BAML employee] which he did not describe in the chatroom, but his willingness to change his price and his knowledge of [BAML employee's] interest in the trade would have certainly influenced his conduct if, for example, he were approached by the client to improve his initial offer. None of the parties has put forward any alternative explanation for this communication.

352 […]. Later in the chat, at 08:38:58, [Credit Suisse employee] reveals he has bought the bonds, albeit at a spread of 21 (meaning he had to improve his initial bid by one basis point).

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(325) On **23 September 2011**[355], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) exchange information and coordinate their offers in relation to a specific trade for which they are both competing. […] (Credit Suisse) is also present in the chatroom.

23 Sept 2011	03:53:55 – 04:54:25
DB ([...])	*"anyone got ned 05/14?... being asked to offer some"*
BAML ([...])	*"yeah... i'm seeing it... he just comaring offers"*
DB ([...])	*"ok cool what you showing... will show them back"*
BAML ([...])	*"showed 100mm at +47"*
DB ([...])	*"you long them?"*
BAML ([...])	*"long 50"*
DB ([...])	*"ok cool"*
BAML ([...])	*"just sold those neds..getting any sale of in this mkt feels good... sole thos eat 49..what are result 54 offered in [...]"*
DB ([...])	*"nice sale!"*
BAML ([...])	*"not often i [...] lol!"*

(326) [Deutsche Bank employee] and [BAML employee] discover they are competing for the same trade, an offer of Ned 05/14. [Deutsche Bank employee] asks [BAML employee] the price he is showing and informs [BAML employee] that he "*will show them back*" (at a worse price) in order to help [BAML employee] win the trade. Later, [BAML employee] informs [Deutsche Bank employee] that he won the trade and expresses satisfaction at "*[...]*" on that client.

(327) BAML asserts[356] that this communication: "*involves a situation where [Deutsche Bank employee] is seeking to source liquidity from [BAML employee.], because [BAML employee] is long, but as [BAML employee] has received a request to offer the same bond, [Deutsche Bank employee] cannot rely on [BAML employee] as a source of liquidity*" and "*it is worth noting that [BAML employee] gives priority to his customer, not [Deutsche Bank employee]*"*…if the two traders had market power, they could coordinate to offer [Deutsche Bank employee's] customer (or [BAML employee's]) an uncompetitively high price.*" BAML also states that the price at which [BAML employee] eventually sold the bonds ("*49*") was competitive, compared to the price in the […] broker screen, as that price would be for a small volume.

(328) These arguments should be rejected. First, in sourcing liquidity for a bond, [Deutsche Bank employee] has no need to inform other traders that he has a specific customer enquiry and nor does [BAML employee] need to disclose that he has received the same enquiry, and the two traders certainly do not need to coordinate on pricing to the customer. Second, if BAML's assertion that [Deutsche Bank employee] is primarily interested in sourcing liquidity (that is, obtaining the bonds) in order to trade with the client is correct, then, having discovered that [BAML employee] has already made a quote to the same customer, [Deutsche Bank employee] could seek to source the bonds from elsewhere. However he has already immediately agreed to show a worse price than [BAML employee]. He thus considers that helping his

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friend is more important than sourcing liquidity. Finally, BAML's suggestion that [BAML employee] sold the bonds at a competitive price is contradicted by [BAML employee's] comment: "*not often I get one over on that guy lol*". This shows that he considers that the customer has paid a high price.

(329) Later in the same communication, the two exchange current commercially sensitive information on a potential trade involving their frequent client: "*biggie smalls*".

23 Sept 2011	07:40:56 – 07:44:26
BAML ([...])	*"biggie smalls now..offering eib 2 12/17... 50mm... did you get lifted yest?"*
DB ([...])	*"am long those... no... yesterday he asked for eib 2.125 12/17"*
BAML ([...])	*"sweet where u show...I guess he checking vs your offer"*
DB ([...])	*"crap jp sole leade deal"*
BAML ([...])	*"defo the 2 12/17... where u show"*
DB ([...])	*"i only have 33m... show those at +71 to 3yrs"*
BAML ([...])	*"5yrs u mean... cheeres"*
DB ([...])	*"yeah"*
BAML ([...])	*"i'm guessing he willhceck u shortly"*
DB ([...])	*"yeah"*

(330) [BAML employee] announces that he has been asked to offer EIB 12/17 bonds. While being aware that [Deutsche Bank employee] had offered those bonds on the market the previous day, he then asks him if he got lifted (that is, if his offer had been accepted). [Deutsche Bank employee] says he was not lifted in those bonds and that he has a long position. He also mentions that the same customer had inquired about EIB bonds with the same maturity (but a different coupon rate[357]) the previous day.

(331) [BAML employee] reasons that the customer will compare [BAML employee's] and [Deutsche Bank employee's] offers, and asks [Deutsche Bank employee] where he would show. The chat does not reveal the price [BAML employee] ultimately showed to the customer, although the most likely outcome is that he showed a price in line with [Deutsche Bank employee's] suggestion.

(332) At the very least, therefore, this is an instance of current and commercially sensitive information being passed from [Deutsche Bank employee] to [BAML employee] which [BAML employee] can take into account in determining his own offer to the same customer. There is also a clear expectation expressed by [BAML employee] that the customer may contact [Deutsche Bank employee] to request an offer to compete with that of [BAML employee], which [Deutsche Bank employee] acknowledges.

(333) BAML states[358] that this is an example of [BAML employee] sourcing liquidity from [Deutsche Bank employee], and it does appear that [BAML employee] would put [Deutsche Bank employee's] 33 million bonds towards the 50 million sought by his identified customer, if he wins the trade. BAML also states that the reference: "*show those at +71*" is not: "*the spread [Deutsche Bank employee] showed to the customer*

357 The bond mentioned on the first line of the extract above has a coupon rate of 2%, whilst [Deutsche Bank employee's] reply refers to a bond with a coupon rate of 2.125%.

358 [...]

the previous day". Indeed, "*show those at 71*" is [Deutsche Bank employee's] response to [BAML employee's] query on (current) pricing, which is far more sensitive and useful to the latter.

(334) The Commission's file contains numerous examples of exchanges of granular information or coordinated activity in relation to the client known to the traders as "*smalls*" or "*biggie smalls*". Such discussions took place at least on 7 September 2011[359]; 26 October 2011[360]; 18 January 2012[361]; 19 January 2012[362]; 23 February 2012[363]; 28 February 2012[364]; 13 March 2012[365]; 19 March 2012[366]; and 12 July 2012[367].

(335) On **30 September 2011**[368], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) agree that [Credit Suisse employee] will make an offer for "*renten 07/16s*" at a price less competitive than [Deutsche Bank employee] has made to the same customer, in order to help [Deutsche Bank employee] sell his bonds and close his long position. […] (BAML) is also present in the chatroom.

30 Sept 2011	09:53:30 – 09:54:53
DB ([...])	*"want out of these 02/16… 07/16 sorry"*
CS ([...])	*"i don't mind buying the 15s… i'll miss 16s in which case… what u offering at?"*
DB ([...])	*"i bif 69 for the 15"*
CS ([...])	*"i'll show tighter on the 16s"*
DB ([...])	*"i showed +38 to old 5yrs"*
CS ([...])	*"cool..i'll show 36"*
DB ([...])	*"you think that wins it?… or should i show wider you reckon?"*

(336) [Deutsche Bank employee] expresses to [Credit Suisse employee] a strong interest in closing the long position ("*want out of these 02/16… 07/16 sorry*"), and [Credit Suisse employee] obliges by offering to "*miss 16s*". [Credit Suisse employee] asks [Deutsche Bank employee] his offer price, [Deutsche Bank employee] replies ("*i showed +38 to old 5yrs*") and then [Credit Suisse employee] informs [Deutsche Bank employee] he will show a price less competitive by tw basis points ("*cool..i'll show 36*"). None of the parties has put forward any alternative explanation for this communication.

(337) On **6 October 2011**[369], in a persistent chatroom, […] (BAML) and […] (Credit Suisse) exchange information and agree to show the same price at the same time to a specific customer. […] (Deutsche Bank) is also present in the chatroom.

6 Oct 2011	10:00:07 – 10:01:49

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365 […]
366 […]
367 […]
368 […]
369 […]

BAML ([...])	*"bidding sfer 09.14... any idea what [Deutsche Bank employee] paid for his... yesterday?"*
CS ([...])	*"77"*
BAML ([...])	*"i'm sure its same custy"*
CS ([...])	*"she's asking me now... yip..same as y'day"*
BAML ([...])	*"i showed 79 fyi... for 50mm"*
CS ([...])	*"perfect...i'll show the same"*

(338) [BAML employee] tells [Credit Suisse employee] he has received an inquiry for SFEFR 09/14 bonds and asks [Credit Suisse employee] if he knows what […] (Deutsche Bank) paid for a similar trade the previous day. [Credit Suisse employee] replies (*"77"*) and less than a minute later, comes back and says the customer is now also asking him. [BAML employee] tells him he showed 50mm at a spread of 79, and [Credit Suisse employee] agrees to show the same price. The two traders have thus agreed on their bid prices to this customer[370]. None of the parties has put forward any alternative explanation for this communication.

(339) On **18 October 2011**[371], in a persistent chatroom, […] (Deutsche Bank) asks […] (Credit Suisse) to combine their interest in responding to a client inquiry by agreeing on a price to be offered to the client. […] (BAML) is also present in the chatroom.

18 Oct 2011	08:34:06-08:35:30
DB ([...])	*"[Credit Suisse employee] you long coe 02/15...i might have a buyer ... working on a switch versus buying eib 10/15"*
CS ([...])	*"yah man...got 30mm"*
DB ([...])	*"ok am gonna show mine around 52..you ok with that?"*
CS ([...])	*"thats cool. thks"*
	12:24:29-12:24:42
DB ([...])	*"[Credit Suisse employee] you can sell your 30mm coe at +52 if ok ... i sold mine there aswell"*
CS ([...])	*"u da man"*
DB ([...])	*"80mm in total"*
CS ([...])	*"thks bro"*

(340) [Deutsche Bank employee] has a buyer of COE 02/15 bonds and asks [Credit Suisse employee] if he has these bonds. [Credit Suisse employee] replies he is long 30mm. [Deutsche Bank employee] suggests a price of 52 for the bonds and asks [Credit Suisse employee] if he agrees. [Deutsche Bank employee] later reports he has executed a trade for a total of 80mm with the client which includes the 30mm held by [Credit Suisse employee], at the price of 52 that they have jointly agreed[372]. [Deutsche Bank employee] has therefore used his knowledge of [Credit Suisse employee's] position to make the client an offer larger than what he may have made but for that knowledge, at a coordinated price which satisfies both [Deutsche Bank employee] and [Credit Suisse employee]. Rather than competing with each other, [Deutsche Bank employee] and [Credit Suisse employee] are taking each other's interests into account and essentially behaving as though they are trading the same

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book[373]. None of the parties has put forward any alternative explanation for this communication.

(341) On **2 November 2011**[374], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) agree that [Credit Suisse employee] should remove a price he has placed on the […] broker screen to avoid interfering with [Deutsche Bank employee's] attempt to deal with an account.

2 Nov 2011	03:46:29 – 03:48:57
DB ([...])	*"that accounts really hacked me off last night"*
CS ([...])	*"?... expt?"*
DB ([...])	*"kept coming back to buy these epxt 16… then kept holding off… going bacvk and forth… then after everything said ok i will wait till today"*
CS ([...])	*"but he bought 15s too?"*
DB ([...])	*"not sure… think he was playing me off with the guy that had the 15's… seeing who would offer the cheapest"*
CS ([...])	*"where were u showing 16s? that's my price in […] ...i can kill it if u want"*
DB ([...])	*"i was close to selling them at 122… is that you on the 16's and 15's?"*
CS ([...])	*"i'll take the offer out in […] ... just 16s"*
DB ([...])	*"ok cool"*

(342) [Deutsche Bank employee] complains to [Credit Suisse employee] about an account that he had been in contact with the previous day concerning EXPT[375] 15s and 16s, but had not succeeded in trading with. [Credit Suisse employee] reveals he is offering 16s in the […] broker screen and asks [Deutsche Bank employee's] price. [Deutsche Bank employee] replies ("*i was close to selling them at 122*") and [Credit Suisse employee] then says he will remove his offer from the broker screen. [Deutsche Bank employee] acknowledges ("*ok cool*"), suggesting both traders believe that the removal of an offer from the broker screen might assist [Deutsche Bank employee] to achieve a trade with the client by concealing potentially available volumes of the bonds. None of the parties has put forward any alternative explanation for this communication.

(343) On **15 November 2011**[376], in a persistent chatroom, […] (Deutsche Bank) warns […] (BAML) and […] (Credit Suisse) not to buy any EIB bonds because he is working on a very large trade which might impact the market price.

15 Nov 2011	10:19:18 – 10:30:02
DB ([...])	*"being asked to bid another slug of EIB paper"*
BAML ([...])	*"joy… usual guy?"*
DB ([...])	*"guys… this EIB thing I am working on… DON'T BUY ANYTHING... unless you are covering a short or have somewhere to go… the size they want to do is massive"*
CS ([...])	*"good colour…thks"*

373 […]
374 […]
375 Eksportfinans, a Norwegian agency. www.eksportfinans no.
376 […]

DB ([...])	*"market cant take it"*
CS ([...])	*"not touching anything"*
BAML ([...])	*"either they know something… something ain;t right"*
DB ([...])	*"this has to stay between us… don't even mention to […] … they want to do another 100k in 01 with me now..but have another +500k they want to do over the next few days!"*
BAML ([...])	*"500k…jeez"*

(344) At the beginning of the above exchange, [Deutsche Bank employee] informs [BAML employee] and [Credit Suisse employee] that he has received a request to bid for a quantity of unspecified EIB bonds. [BAML employee] asks if it is the '*usual guy*' making the request, and [Deutsche Bank employee] does not answer this question but instead warns [BAML employee] and [Credit Suisse employee] in capital letters: "*DON'T BUY ANYTHING*" because the trade he is working on is massive and the "*market can't take it*". He then goes on to describe terms of the client's trading interest ("*100k in 01 with me now[…] another +500k[…] over the next few days!*").

(345) The chat above is an exchange of forward-looking commercially sensitive information which exemplifies the close relationship the traders have with each other and the regard they each have for the others' trading interests, such that they will protect each other just as they would if they were all employed by the same undertaking. The sensitive nature of the information is demonstrated by [Deutsche Bank employee's] admonition to keep the information limited to the tight circle of traders.

(346) The size of the trades [Deutsche Bank employee] is expecting to negotiate with the client is so large that once the trades are made and known to the market, the market price for the bonds could decrease. If [BAML employee] and [Credit Suisse employee] have bought any comparable EIB bonds in the interim, they will probably have to sell them at a loss in order to close their position later. [Deutsche Bank employee] is therefore warning them not to acquire any until his trades are resolved and the market can price them in. [Credit Suisse employee] explicitly states he is "*not touching anything*" upon receiving this information.

(347) BAML states[377] that: "*the information shared by [Deutsche Bank employee] is not specific enough to influence another trader's trading strategy*". This is completely at odds with [Credit Suisse employee's] stated intention of: "*not touching anything*". BAML also asserts: "*Although [Deutsche Bank employee] indicates he has been asked to buy EIB bonds he does not reveal the identity of the counterparty nor does he indicate the duration of the bonds in question*". Whilst [Deutsche Bank employee] does not name a specific customer, he also does not contradict [BAML employee's] query: "*usual guy?*" As to duration of the EIB bonds, the traders have been discussing their trades in various identified EIB bonds throughout the day and probably have a good idea of what: "*another slug of EIB paper*" means. The information is sensitive and [Deutsche Bank employee's] expression: "*this has to stay between us*" confirms that they are not going to pass it on to customers and issuers as 'market colour'.

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(348) On **22 November 2011**[378], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) agree on the price they will each show to a client interested in a trade involving UKRAIL bonds and on splitting any resulting trade between them.

22 Nov 2011	04:13:57 – 04:19:39
DB ([...])	*"getting checked on ukraila gain"*
BAML ([...])	*"what a zz"*
DB ([...])	*"what u gonna show?"*
BAML ([...])	*"dunno +80?"*
DB ([...])	*"I am gonna show 75... lets show the same... we can split the risk if we get hit... if you want?"*
BAML ([...])	*"ok... he ain;t asked me yet though"*

(349) The fact that [Deutsche Bank employee] mentions he is being asked on UKRAIL '*again*' in combination with the fact that [BAML employee] later says that '*he*' (the client) has not asked him yet, suggests that [Deutsche Bank employee] and [BAML employee] have had preceding discussions concerning this client and this bond, and that [BAML employee] knows exactly which client it is (and anticipates that he may be asked as well), even though it is apparent from the text of the chat that, at least at this stage, only [Deutsche Bank employee] has received the current inquiry. Nevertheless, the traders agree that, should the client attempt to put them in competition with each other, they will show the same price to the client and will split the amount of the trade between them if one of them wins the trade.

(350) BAML states[379] that: "*[Deutsche Bank employee] has received an enquiry from a customer to bid UK Rail bonds and suggests to [BAML employee] that they split the risk, which would thereby enable him to bid the customer a better, higher price of +75 than either of them would otherwise have offered*". However, even if the traders wanted to split the risk, this is not a valid justification for price coordination between competing traders who are collaborating to reduce their uncertainty. Moreover, BAML's general assertion that: "*the consolidation of trades and splitting of positions facilitates the sourcing of liquidity and reduces search costs for customers and otherwise benefits them*" is unconvincing. There is no suggestion here of a trade between [BAML employee] and [Deutsche Bank employee], in order for one of them to source liquidity from the other. Splitting the customer trade between them halves their individual risk (whether of being long or short), but there are many other sources of liquidity in the market for UK Rail bonds – whether through direct approaches to other USD SSA traders or via brokers screen quotes. Finally, the notion that trade splitting "*reduces search costs for customers*" is impluasible. It is likely, given the exchange, that the customer would approach both traders anyway in the belief that they are acting independently. In any event, the '*search costs*' of contacting a sales desk or trader direct are minimal. To argue that agreements on prices between bond traders is a means of '*reducing search costs*' for customers who can trade via electronic platforms is even less convincing than a similar rationalisation for price fixing between, for example, food retailers to whom customers actually have to travel in order to transact. BAML does not provide any

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evidence of lower costs (in the form of a lower bid-ask spread) being offered to the customer.

4.2.3. 2012

(351) On **18 January 2012**[380], in a persistent chatroom, […] (Deutsche Bank), […] (Credit Suisse) and […] (BAML), exchange current and commercially sensitive information related to client activity in two Italian sovereign bonds.

18 January 2012	04:52:02 – 04:54:59
DB ([...])	*"smalls asking for a two way in italy 09/16 and 06/17"*
CS ([...])	*"reallly! fk me"*
BAML ([…])	*"i think they must be sellers"*
CS ([...])	*"they gotta be sellers"*
BAML ([…])	*"waited for the tightening then bammm"*
DB ([...])	*"told them order only… aint buying that [...]"*
BAML ([…])	*"yeah for sure"*

(352) In this extract, [Deutsche Bank employee] reveals to [Credit Suisse employee] and [BAML employee] that "*smalls*" has asked for a two-way price in two Italy bonds. [Credit Suisse employee] and [BAML employee] then discuss the client's intentions and come to the conclusion that the client probably wants to sell the bonds. [Deutsche Bank employee] then informs [Credit Suisse employee] and [BAML employee] that he told the client he will not provide him any two-way price and that he will price the bond on the basis of a buy or sell order. [BAML employee] seems to approve of [Deutsche Bank employee's] strategy.

(353) The information shared by [Deutsche Bank employee] is valuable for [Credit Suisse employee] and [BAML employee] going forward as they are now aware of the trading intentions of a client each of them is in frequent contact with, and could adapt their trading strategy accordingly, should the client come to them and ask for a price.

(354) BAML contends[381] that the information exchanged is not current and commercially sensitive: "*Even if the customer is exploring the possibility of a trade, a request for a two-way price does not reveal whether they are a buyer or seller. This discussion is simply speculation and conjecture by the traders*". In contrast, Credit Suisse explains that[382]: "*Discussions on whether a customer is a buyer or seller may result in a better estimate of price movements and reduce the risk of off-market pricing*". This shows that the information is valuable and commercially sensitive. The customer might well approach all three traders for pricing and could expect all traders to act independently.

(355) On **19 January 2012**[383], in a persistent chatroom, […] (Deutsche Bank) requests and receives information from […] (Credit Suisse) and […] (BAML) concerning pricing for "*coe 17*" and Belgian 03/15 bonds, respectively[384]. [Credit Suisse employee] and

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380 […]. The same communication contains an exchange of current pricing information, at the request of [Deutsche Bank employee], concerning SFEFR 06/12 bonds from 09:06:21 to -09:07:11. […].

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[BAML employee] disclose to [Deutsche Bank employee] their own internal estimations about how these bonds should be priced.

19 January 2012	05:55:31 – 06:25:06
DB ([...])	*"where you got coe 17 marked?"*
CS ([...])	*"coe 17s....113/103"*
DB ([...])	*"ok perfect... just bid some... bought 75mm coe 17"*
	10:55:40 – 10:56:16
DB ([...])	*"any clue where bleg 03/15 are now?"*
[...] (BAML)	*"around +350?"*
DB ([...])	*"yeah sounds about right... bidding 15mm"*

(356) In between the extracts reproduced above, in the same communication, […] (Deutsche Bank), […] (Credit Suisse) and […] (BAML) again discuss an approach from the client "*small[s]*" for EIB 01/17 bonds.

19 January 2012	06:34:14 – 06:36:27
CS ([...])	*"small checking eib 1/17s"*
DB ([...])	*"i am long those...but short other eib"*
CS ([...])	*"would have guess he's a buyer, no?"*
DB ([...])	*"you am sure"*
BAML ([...])	*"must be a buyer"*
DB ([...])	*"i am long 25mm"*
CS ([...])	*"[Credit Suisse employee] made him 92/82...want me to show cheaper?"*
DB ([...])	*"nah"*
CS ([...])	*"ok"*

(357) In this extract, [Credit Suisse employee] offers to change the price being shown to the customer for an EIB bond by his colleague (["..."][385]) on the sales desk, after hearing about [Deutsche Bank employee's] position in the bond[386]. [Deutsche Bank employee] is long and therefore may be a seller at the time. [Credit Suisse employee] is therefore offering to adjust Credit Suisse's offer in order to benefit [Deutsche Bank employee][387]. None of the parties has put forward any alternative explanation for this communication.

(358) On **24 January 2012**[388], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) align prices they are both showing to a customer interested in UKRAIL 16s. At the same time, [Deutsche Bank employee], [BAML employee] and [Credit Suisse employee] exchange information concerning offer prices shown to a customer by all three of them for FINL 16 bonds.

24 January 2012	16:45:19 – 16:47:57
DB ([...])	*"offering 25mm 03/16... finl 03/16... and 25mm ukrail 16"*
CS ([...])	*"i was just asked finl US a/c"*
BAML ([...])	*"same"*

385 […]
386 […]
387 […]
388 […]

DB ([...])	*"yeah [...] account"*
CS ([...])	*"but then said show me what else u got closer to 5yrs. "can u update your offer sheet." ... its 5pm son...[...]!"*
DB ([...])	*"lol... yeah exactly!"*
BAML ([...])	*"lol"*
DB ([...])	*"finally sold these [...] 17... had them for yonks!"*
BAML ([...])	*"where you showing these rails..will show same"*
DB ([...])	*"i showed them tight... at +45"*
CS ([...])	*"i showed finl at 64"*
DB ([...])	*"i showed at 57!"*
BAML ([...])	*"i shows 61"*

(359) [Deutsche Bank employee] informs the other traders that he is offering UKRAIL and FINL bonds (both having a maturity in 2016). [Credit Suisse employee] then reveals he has received a request for FINL bonds from a US-based account. [BAML employee] and [Deutsche Bank employee] have received similar requests from the same account, which [Deutsche Bank employee] characterises as a "*[...] account*". [BAML employee] asks [Deutsche Bank employee] the price at which he is showing the UKRAIL bonds (it is unclear if the offer is to the same customer as the FINL bonds) and proclaims he will show the same price. [Deutsche Bank employee] tells him he has offered at "*+45*". The three traders then each reveal the prices they have quoted for the FINL bonds to the US-based account. [Credit Suisse employee] and [Deutsche Bank employee] have already made their offers ("*64*" and "*57*" respectively), while [BAML employee] says he is making his own offer ("*i shows 61*") after receiving the information from [Deutsche Bank employee] and [Credit Suisse employee].

(360) BAML erroneously asserts[389] that: "*the Commission relies upon [Credit Suisse employee's] comment "can u update your offer sheet" as evidence of agreements to submit coordinated prices*". It is abundantly clear from the communication that [Credit Suisse employee] is quoting a customer who asked him to update his offer sheet (of prices) and also telling the others what he replied to the customer. The statement on which Commission relies as evidence of intention to submit coordinated prices is [BAML employee's]: "*where you showing these rails* [UKRAIL bonds] *..will show same*". BAML also argues that [BAML employee's] final: "*i shows 61*" (for FINL bonds) is in the past tense and that the three traders have exchanged information on the prices just quoted for FINL bonds to the same identified customer. However, first: "*I shows 61*" (present tense) indicates that [BAML employee] made an offer *after* he received information about their pricing. Second, in any event, the exchange took place during ongoing negotiations: the customer has approached all three traders, and might well return to at least one of them. The traders can make their next offer with the knowledge of sensitive information on the other quotes that the customer has received.

(361) On **6 February 2012**[390], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) discuss the terms which they will offer for Belgian and Canadian sovereign

389

390 […]. The same communication contains an exchange of pricing information between [Deutsche Bank employee] and [BAML employee] on "*Belg 13s*" between 09:58:35 and 10:00:14.

bonds, as well as possibly a range of unidentified comparable bonds. […] (Credit Suisse) is also taking part in the conversation.

6 Feb 2012	09:58:35 – 10:00:14
BAML ([...])	*"[Credit Suisse employee] u still short belg 13's ... the guy here is asking me for an offer in 25 fyi"*
DB ([...])	*"i am short 5mm of those... [...] bond... lost 75 bps on 5mm... where oyu markiong them?"*
CS ([...])	*"i've got mine to wide funnily enough....240/215*
BAML ([...])	*"i'm goiong to offer them v tight"*
DB ([...])	*"got mine marked 235/200... so pretty much the same... got lifted at 275"*
	10:15:57 – 10:26:02
BAML ([...])	*"new canada"*
DB ([...])	*"yeah man"*
CS ([...])	*"nice work boys..top deal...whats pricing....-15?"*
BAML ([...])	*"yeah about there a bit tighter even...[Deutsche Bank employee] where u gonna show the canada 09/14 on the comp list"*
DB ([...])	*"god knows...what you thinking?"*
BAML ([...])	*"had them marked ct3-5...look silly tight thgouh"*
DB ([...])	*"[BAML employee] can you send me the comps you send out...will send the same thing..cant be assed putting another one together"*
BAML ([...])	*"lol cheers"*

(362) In the first extract, the three traders exchange their internal pricing evaluations on Belgian sovereign 13 bonds in response to [BAML employee's] disclosure that he is being asked to offer these. Both [Credit Suisse employee] and [Deutsche Bank employee] reveal the level at which they have these bonds marked, allowing [BAML employee] to take their estimations into account when deciding his own strategy ("*i'm goiong to offer them v tight*")[391].

(363) BAML states that[392]: "*In this chat [BAML employee] discloses he is being asked to offer bonds to a customer. He does so as part of a legitimate attempt to source liquidity for that trade*". BAML's statement is, however, contradicted by the evidence. In reality it is clear from his initial query to [Credit Suisse employee]: "*[Credit Suisse employee] u still short*" that he has a good idea that [Credit Suisse employee] has a short position in the bonds. Having established that neither [Credit Suisse employee] nor [Deutsche Bank employee] can provide liquidity, that is, that [BAML employee's] purported attempt to source liquidity is in vain, the three traders proceed to discuss pricing in the bond.

(364) In the second extract, [Deutsche Bank employee] asks [BAML employee] what price he is showing for a new Canada 09/14 bond on the Merrill Lynch "*comp list*"[393] and [BAML employee] responds with "*ct 3-5*", which is a level relative to a three year benchmark. [Deutsche Bank employee] then claims or jokes that he will send the Merrill Lynch list out to his own clients, saying he cannot be bothered to put one

391 […]
392 […]
393 See recital (54).

together himself. Whilst it is unclear if [Deutsche Bank employee] in fact sent out a comp list identical to [BAML employee's] on this date, he has clearly sought to agree on the price of at least one bond on the list[394].

(365) BAML state[395] that this exchange takes place in the context of a new issue of the Canadian bonds, for which the lead managers were MLI, Deutsche Bank, HSBC and RBC (Royal Bank of Canada), and that: "*[i]n those circumstances it would be expected by both issuers and investors that MLI and DB would co-ordinate in relation to the preparation and circulation of comp lists*". As before[396], BAML fails to explain why traders from a subset of two out of the four lead managers would coordinate without any reference to the others, or why the 'preparation' was continuing in the secondary market after the issue. Credit Suisse[397] argues that it was, "*implicit that collaboration on the primary issue would extend for the first few days following issuance to encompass comps lists relating to switches on the secondary market*", without explaining why this collaboration was between only half the lead managers, that is BAML and Deutsche Bank, and did not involve HSBC and RBC.

(366) Furthermore, neither BAML nor Credit Suisse provide any justification for the participation in the discussion of a trader ([…] of (Credit Suisse) from a bank that was not a lead manager to the new issue. Even within the supposed coordination around new issues which BAML and Credit Suisse allege as usual practice, [Credit Suisse employee] would not have been involved as his employer was not a lead manager.

(367) On **8 February 2012**[398], in a persistent chatroom, […] (Deutsche Bank), […] (BAML) and […] (Credit Suisse) engage in exchange of information concerning various bonds and specific customers.

08 Feb 2012	02:58:05 – 03:10:51
DB ([...])	*"just about to lose 50mm bng 10/16"*
BAML ([...])	*"getting hcekced on that too"*
DB ([...])	*"just sold them... 50mm"*
BAML ([...])	*"i showed +127 fyi"*
DB ([...])	*"same... thats where I have been lifted"*
BAML ([...])	*"cool"*
DB ([...])	*"i had 37mm"*
BAML ([...])	*"same guy checking me on 100mm new neds"*
DB ([...])	*"sweet!"*
BAML ([...])	*"just lifted in new ned 100mm result!"*
DB ([...])	*"cha ching!"*
BAML ([...])	*"anyone got any ned 06/16"*
DB ([...])	*"flat"*
BAML ([...])	*"i have some but about to get lifted"*

394 […]
395 […]
396 See, for example, recitals (283)-(289) and (300).
397 […]
398 […]

DB ([...])	*"same guy?"*
BAML ([...])	*"yh"*
DB ([...])	*"hes lifting all the cheap names… think he mioght lift me in 100mm coe17"*

(368) In the above extract, [Deutsche Bank employee] and [BAML employee] discuss the approaches made on various bonds by a specific customer the identity of which both traders know, but who is not named in the chat. [Deutsche Bank employee] mentions he has sold 50mm of BNG[399] 10/16 bonds, and [BAML employee] replies that he was also checked on those bonds and reveals to [Deutsche Bank employee] the price he showed. [Deutsche Bank employee] replies that he had shown the same price, and that was the price at which the customer traded. Then [BAML employee] reveals the same customer has bought from him a fairly large volume (100 million) of "*new neds*"[400] and is checking for "*ned 06/16*" bonds. [Deutsche Bank employee] asks whether these approaches are all by the "*same guy*" and when [BAML employee] confirms, [Deutsche Bank employee] says that he is offering 100mm of COE bonds to him, and that the client is "*lifting all the cheap names*", which suggests that the client is on a buying programme for various bonds on the secondary market[401].

(369) This pooling of information between the two traders allows them both to judge the client's intentions and current trading patterns and enables them to act on the market with reduced uncertainty.

(370) BAML states[402] that the reason for the exchange of information between the traders: "*is legitimate: the traders need to gauge whether they can source liquidity from one another for customer trades.*" Only in respect of one of the bonds discussed (ned 06/16), however, is there any suggestion of a possible sourcing of liquidity or a potential request for liquidity. Otherwise, the conversation is a real time running commentary of the two trader's activities.

(371) On the same date and in the same chatroom, […] (BAML) provides […] (Credit Suisse) with valuable market intelligence concerning a potential tap[403] of IBRD 14 bonds, which may have impacted the price [Credit Suisse employee] was willing to bid.

08 Feb 2012	07:42:49 – 07:43:34
CS ([...])	*"[Deutsche Bank employee] .. u long ibrd? i'm being asked to bid… ibrd 14s"*
DB ([...])	*"yeah long 50mm"*
CS ([...])	*"being asked 50mm"*
DB ([...])	*"just got hit on 50mm of those"*
CS ([...])	*"absolut"*
DB ([...])	*"yep!... i bought then at +5"*
BAML ([...])	*"careful hearing potential tap on those pusp"*
CS ([...])	*"ok..bidding 7"*

399 Bank Nederlandse Gemeenten, a Dutch agency (www.bngbank.com).

400 This could refer either to Dutch sovereign bonds or bonds issued by FMO-Ned Financierings, a Dutch agency (www fmo nl).

401 […]

402 […]

403 A tap is the issuance of an additional volume of a bond already issued and available on the market.

(372) [Credit Suisse employee] informs the group that he is being asked to bid for IBRD 14 bonds and asks [Deutsche Bank employee] if he is long. [Deutsche Bank employee] replies that he just bought 50mm of these from a client the traders refer to as "*absolut*", and discloses the price he paid for them ("+5"). [BAML employee] then warns that there are market rumours that a tap of this bond may occur, which would increase the volume of the bond available on the secondary market and could thereby affect its market price. [Credit Suisse employee] takes this advice and says he will bid +7, a wider spread (thereby offering a lower price) than the one at which [Deutsche Bank employee] traded, possibly taking account of [BAML employee's] warning[404].

(373) In respect of [BAML employee's] warning, BAML states[405]: "*A market rumour that a tap may occur is not commercially sensitive or confidential to any on trader*". This is indeed the least sensitive element in the discussion on approaches and pricing. Most of the discussion is, however, sensitive because it concerns the exchange of information on current customer enquiries and trades.

(374) Still later in the same chatroom on that day, the traders pool information on the positions of various market players in KfW 22 bonds. The prevalence of significant positions among all of them, as well as [Deutsche Bank employee's] warning of the reluctance of major customers to buy the bonds, allows the traders to infer that the bond will be difficult to sell and that its price may therefore weaken[406].

08 Feb 2012	12:42:58 – 13:10:31
DB ([...])	*"so [...][407] lonf 175mm of these kfw 22"*
CS ([...])	*"street way too long [...]"*
DB ([...])	*" i ma long 150mm aswell"*
CS ([...])	*"need your jap buyer to scoope 'em up… i got 68"*
DB ([...])	*"yeah that aint going to happen..too long!... the other big jap not buying either… no KFW is what he saif this morning… great"*
BAML ([...])	*"i got 50mm as well lol… and my book is only 400mm"*

(375) BAML argues[408] that the three traders are: "*sharing information for the legitimate and necessary purpose of sourcing liquidity in the market*". BAML submits that: "*in order to know where a trader can source liquidity, he or she needs to identify which counterparties might be buyers or sellers of the bond…The traders appear to think that Japanese investors might be buyers of the bond*".

(376) Sourcing liquidity in order to hedge a position would involve approaching another trader direct or trading via a broker in order to buy (or sell) the bonds. An attempt to source liquidity does not justify an exchange between a group of traders regarding which of their customers might buy the bonds, in other words mutual disclosure of their customers' positions. In exchanging information on not only their own trading positions and strategies but also those of their customers, the traders are actively enabling each other to act on the market with reduced normal market risk and with an assumption that there will be collaboration rather than competition between them.

404 […]
405 […]
406 […]
407 [broker employee]
408 […]

(377) On **23 February 2012**[409], in a persistent chatroom, […] (Deutsche Bank), […] (Credit Suisse) and […] (BAML) engage in exchange of current and commercially sensitive information concerning their trading activities and interactions with customers in relation to various bonds. In at least one instance, the exchange of information apparently leads to mutual assistance on pricing.

23 Feb 2012	03:25:18 – 04:55:36
DB ([...])	*"smalls asking for a two way in iadb 08/17…they been trying to sell this one right?"*
BAML ([...])	*"oh go awat"*
CS ([...])	*"[...]"*
BAML ([...])	*"yeah he tried to sell to me"*
CS ([...])	*"they lifted me last week and then tried to sell y'day"*
BAML ([...])	*"i made him +35/30 last vs old 5 yrs…hes a seller so just show a sh1t bid"*
DB ([...])	*"i made 33/28…Passed"*
CS ([...])	*"just checked me on neddie 14s…assuming he's a seller still"*
BAML ([...])	*"what a bore this man is"*
DB ([...])	*"being checked now aswell…what did you show"*
CS ([...])	*"90/85"*
DB ([...])	*"ok will how him the same"*

(378) The three traders discuss the prices they have each recently quoted to a specific customer ("*smalls*") and the fact that this customer is currently requesting quotes. The discussion includes speculation as to his likely trading strategy. [Credit Suisse employee] then mentions that the customer has just asked him for a two-way price on "*neddie 14*", and [Deutsche Bank employee] reveals he is being asked as well, and asks for the price [Credit Suisse employee] showed. When [Credit Suisse employee] answers, [Deutsche Bank employee] says he will show the same price[410].

(379) BAML maintains[411] that: "*when traders provide two-way markets for a particular bond, these are only indications of the price a trader would make if the customer were to request a bid or offer price for a specified quantity of bonds. It is therefore not correct to say that the traders discuss the prices they have each recently quoted…as no firm prices, only indicative two-way quotes, have been provided.*" However, BAML itself stresses[412], that traders are required: "*to service the requirements of MLI's investor customers*" and, given that '*smalls*' is a regular customer, then these quotes would bear a close relationship to any final prices in the event of a trade. This is apparent by Credit Suisse's statement[413]: "*Traders are cautious of showing two-way prices because they do not have certainty on whether the trade would result in a long or short position and are wary of attempts of investors to capitalise on off-market prices*". In other words, traders are cautious of showing two-way prices because they can be required to trade at those prices – in other words, such prices are not purely indicative. In addition to disclosing quotes, the traders exchange information on what they know about *smalls*' trading strategies

409 […]
410 […]
411 […]
412 […]
413 […]

in two bonds and finally [Deutsche Bank employee] and [Credit Suisse employee] agree on pricing.

(380) Later in the same chat communication on that date, [Deutsche Bank employee] and [BAML employee] discuss the terms [Deutsche Bank employee] has offered a customer known to them as "*the Asian sprayer*". [Credit Suisse employee] is also present.

23 Feb 2012	05:45:55 – 05:54:52
DB ([...])	*"just got asked to bid 100mm kfw 10/16 versus offering 100mm kfw 02/17… i missed… from the sprayer… so not stepping up"*
BAML ([...])	*"ah schit… i have exactly that switch on from a previous trade… ffs"*
DB ([...])	*"same guy no doubt"*
BAML ([...])	*"no diff guy"*
DB ([...])	*"ah ok… this was the asian sprayer"*
BAML ([...])	*"what did u show"*
DB ([...])	*"pick 15 bps"*
BAML ([...])	*"yeah prob dealt at 17 or 18"*
DB ([...])	*"sorry i showed 16… but i don't trust that account at all"*
DB ([...])	*"10:52:35 [anonymous]: they got low 20s for info just for guide… wtf"*
BAL ([...])	*"its unbelavle how these a.cs come in a dn do the same switch after all this time… low 20's!... WTF… impossible"*
CS ([...])	*"that's the wrong price for sure"*
BAML ([...])	*"good info though thanks"*

(381) [Deutsche Bank employee] reveals the terms which he offered the customer and that he missed, followed by [BAML employee] speculating on the price the client probably traded at. [Deutsche Bank employee] then reveals information he has received from another source on the price at which the client eventually made the trade, which surprises both [BAML employee] and [Credit Suisse employee]. [BAML employee] thanks [Deutsche Bank employee] for the information[414]. Although the trade with the Asian customer did not take place ("*i missed*"), the traders shared that information with the intention to disclose to each other the approach by the customer and potentially agree on the offers to show to the customer should he reapproach them. This information enables them to trade with reduced uncertainty.

(382) BAML states[415] that [Deutsche Bank employee's] price quote disclosure is "*in respect of a past enquiry, which is therefore no longer sensitive*". However, it is current pricing information concerning an identified customer, and therefore useful information, as is the information on the price actually achieved.

414 […]
415 […]

(383) On **1 March 2012**[416], in a persistent chatroom, […] (Deutsche Bank) asks for the consent of […] (Credit Suisse) before posting a bid for EIB 09/16 bonds. […] (BAML) is also present in the chatroom.

1 March 2012	10:43:21 – 10:44:16
DB ([...])	*"[Credit Suisse employee] just going 60 bid eib 09/16… i am long just trying to move them in… that ok with you?"*
CS ([...])	*"yeah..go for it… i'm small long, but happy to buy at these kinda levels"*

(384) [Deutsche Bank employee] is clearly willing to take [Credit Suisse employee's] interests into account when determining his commercial behaviour, in this case whether to bid for a specific bond at a given price[417]. Here, he is informing [Credit Suisse employee] that he has a long position in the bond and that he is planning to place a bid.

(385) [Deutsche Bank employee] tells [Credit Suisse employee] he is "*just planning to move them in*", which combined with the fact that he has a long position, indicates to [Credit Suisse employee] that he is not very interested in buying more, but rather that the placing of his bid on the broker screen is intended to affect the market price ("*moving them in*" means to tighten the spread) by showing that there is demand on the market for the bond[418]. [Credit Suisse employee] replies by giving his consent, noting he also has a limited long position. None of the parties has put forward any alternative explanation for this communication.

(386) On **7 March 2012**[419]**,** in a persistent chatroom, […] (Deutsche Bank), […] (BAML) and […] (Credit Suisse) again exchange information concerning various bonds and specific customers, over a period of several hours[420].

07 March 2012	07:17:03 – 07:17:58
BAML ([...])	*"your buddy checking me on ifc[421] 04/25 now"* *"04/15"*
CS ([...])	*"asking me too…. +22/14 I said"*

(387) In the above brief extract, [BAML employee] informs [Credit Suisse employee] that a client he refers to as [Credit Suisse employee's] buddy is asking him for a price ("*checking me on ifc*") in IFC 04/15 bonds (the initial reference to 04/25 appears to be a typo). [Credit Suisse employee] replies that he is being asked on that bond as well and informs [BAML employee] that he has shown a two-way price of +22/14. The traders, instead of providing the customer with independent bids, have disclosed

416 […]

417 A similar exchange between the two takes place on 22.03.2012 […], at 08:38:43 when [Deutsche Bank employee] says "*going ot make 2/-1 in the screens if ok with oyu*" and [Credit Suisse employee] replies "*Sure*".

418 […]

419 […]

420 In addition to the extracts reproduced and explained in this Section, in the same chat at intervals between 04:09:15 and 08:41:33, [Deutsche Bank employee] and [Credit Suisse employee] exchange information on the trading activity of their frequent client '*smalls*', including price levels of bids they are showing at the time ([Credit Suisse employee's] price at 04:32:01 and [Deutsche Bank employee's] price at 06:29:01 and 06:32:35), and their estimation of the client's strategy. […].

421 International Finance Corporation, supra-sovereign (www.ifc.org).

to each other the approach by the customer and the prices they are showing to that customer. The entire exchange takes less than one minute[422].

(388) Some time later, […] (Deutsche Bank), […] (BAML) and […] (Credit Suisse) all discuss the activities of a specific client in relation to EIB bonds.

07 March 2012	08:16:07 – 08:26:35
BAML ([...])	*"[Credit Suisse employee] u doing anything in eib 08/14… getting checked bidside"*
CS ([...])	*"i sold bonds this morning in the street at 39. and just bot 50mm at 44"*
DB ([...])	*"nice… what kind of seller?... i am being checked my bidside on EIB 07/16… seems like some paper coming out"*
CS ([...])	*"with spreads and USTs here, it makes sense actually… EIB getting close to KFW levels"*
BAML ([...])	*"what klind of a/c sol to you bro…down south cb asking me"*
DB ([...])	*"hes just hit me in eib 02/14… at 43.5… 50mm"*
BAML ([...])	*"[...]… wants 40 for his 08/14.. [...]"*
CS ([...])	*"haha… he's hard work sometimes, but knows how to play the game"*
BAML ([...])	*"is he the one that hit you… just want to if he treating me like a [...] or not"*
CS ([...])	*"yeah, got them from him"*
DB ([...])	*"hes just hit me in 50mm eib 07/16 at 45"*
CS ([...])	*"He sells and then tightens the rest up.. its his style"*
DB ([...])	*"got lifted in [...] at 40"*
	12:20:35 – 12:23:39
CS ([...])	*"did u get those eib aug14s earlier?... i just been hit in 12/14s"*
BAML ([...])	*"No he wanted 40.. gd luck"*

(389) [BAML employee] asks [Credit Suisse employee] if he is active in EIB 08/14, as he has just been asked to bid by a potential seller. [Credit Suisse employee] reports that he has both bought and sold those bonds that morning, and reveals the prices he paid ("*i sold bonds this morning in the street at 39, and just bot 50mm at 44*"). [Deutsche Bank employee] congratulates him and asks what kind of seller he dealt with, mentioning that he is being asked to bid for EIB 07/16 and he believes there is a good amount of selling interest in the market ("*seems like some paper coming out*").

(390) [BAML employee] now intervenes, asking [Credit Suisse employee] which client [Credit Suisse employee] sold the bonds to (*what klind of a/c sol to you bro*"), mentioning that a "*down south cb*" is asking him about 08/14. [Deutsche Bank employee] immediately replies that 'he' has just hit [Deutsche Bank employee] in EIB 02/14 (that is, sold the bonds to [Deutsche Bank employee][423]), and [Credit Suisse employee] later says: "*he's hard work sometimes, but knows how to play the game*", indicating that both [Deutsche Bank employee] and [Credit Suisse employee] know exactly which client [BAML employee] is referring to. [Deutsche Bank employee] mentions the volume and price of his trade in 02/14s with the client. [BAML employee] repeats his question whether that client is the one who sold

422 […]

423 See also recital (36) on the definitions of "hit" and "lift".

[Credit Suisse employee] the 08/14s at 44, as the client is asking [BAML employee] to pay 40 (a lower spread, translating ino a higher price) for the same bond. [Credit Suisse employee] confirms the identity of the client, and comments on the client's strategy ("*he sells and then tightens the rest up.. its his style*")[424]. Later, [Credit Suisse employee] asks [BAML employee] if he bought the 08/14s and [BAML employee] replied that he did not.

(391) Credit Suisse argues in respect of this extract[425] that: "*sharing this information about a customer's expected strategy would help the traders carry out market-making and may result in better estimates of price movements and as a result a reduction in the risk of off-market pricing. This in turn could lead to a reduction in bid-ask spreads.*"[426] Credit Suisse's explanation is, however, unconvincing as the bonds under discussion (EIB and KFW) are commonly traded and there are multiple sources of public (market) information on pricing. Avoidance of 'off-market pricing' can therefore not be a justification for the exchange of information on client approaches, client identities and even client trading strategies. Rather, the exchange allows for pricing coordination and trading at the expense of the customer who is approaching traders in the belief that they are acting independently.

(392) On **12 March 2012**[427], in a persistent chatroom, […] (Credit Suisse) asks […] (Deutsche Bank) to "*kill the bid*", namely withdraw a price that he has shown to the market via a broker, in order to protect [Credit Suisse employee's] strategy in relation to a potential sale of EIB 09/15 bonds. […] (BAML) is also present in the chatroom.

12 March 2012	07:46:15 – 08:45:22
CS ([...])	*"[Deutsche Bank employee] ...is that your price in eib 9/15s in [...]?"*
DB ([...])	*"yeah...you want me to kill it?"*
CS ([...])	*"can u do me a favour and kill the bid if possible"*
DB ([...])	*"killed"*
CS ([...])	*"I'm about to sell 200""*
DB ([...])	*"sure man...I have 48mm if you need them"*
CS ([...])	*"talking to our man from south about these last week, so will take some of his and will try and take yours too. Let u know how it goes thks"*
DB ([...])	*"sure..what kind of buyer?"*
CS ([...])	*"t+2"*
DB ([...])	*"result man!"*

(393) [Deutsche Bank employee] offers, and [Credit Suisse employee] agrees, that [Deutsche Bank employee] will remove his price from the screen as [Credit Suisse employee] is close to making a large sale and wants to eliminate a price which could interfere with his strategy. [Credit Suisse employee] then mentions he may be buying

424 […]
425 […]
426 See recitals (704)-(713) on the concept of off-market pricing and price discovery.
427 […]

these bonds from another buyer ("*our man from south*")[428] and may buy [Deutsche Bank employee's] size as well to help close his position[429]. [Credit Suisse employee] later reveals that the buyer was a customer the traders refer to by the nickname "*t+2*". Further in this communication the two exchange information on the identity of a buyers in another transaction ("*CAN bank*"). None of the parties has put forward any alternative explanation for this communication.

(394) On **13 March 2012**[430], in a persistent chatroom, […] (Deutsche Bank), […] (Credit Suisse) and […] (BAML) exchange pricing information on a specific client ("*smalls*") and a particular IBRD bond.

13 March 2012	03:33:10 – 03:39:05
DB ([...])	*"smalls asing for atwo way in ibrd 05/15… obviulsy a seller"*
CS ([...])	*"the early morning sniper"*
DB ([...])	*"i made 19/15… reckon they will say Passsssssssss"*
BAML ([...])	*"yeah seller for sure"*
DB ([...])	*"shock .. PASS!... yep they are a seller… sure you will get asked in a sec"*
CS ([...])	*"they hit me in these last week at 17… gonna make 20/17 if they ask me"*
DB ([...])	*"the hit me in 100m ont he same day at 18… i have sold all of mine"*
BAML ([...])	*"i wil make 22/19 if he asks me haha"*

(395) [Deutsche Bank employee] informs [BAML employee] and [Credit Suisse employee] about a client's trading activity ("*smalls*" asking for a two-way price) and about his pricing strategy following that request. [Deutsche Bank employee] then reveals the client 'passed' (did not trade) and, given his price and the client's reaction, deduced that the client is a seller. This information helps [BAML employee] and [Credit Suisse employee] in the event the client subsequently asks them to quote the same bond. [Credit Suisse employee] and [BAML employee] then each mention a price level they may show if asked to offer[431]. None of the parties has put forward any alternative explanation for this communication.

428 The use of the phrase "*our man*" indicates [Deutsche Bank employee] probably knows who [Credit Suisse employee] is talking about; this may in fact be the same customer referred to in other chats as "*down south*" "or "*down south cb*". See recital (671).

429 As [Deutsche Bank employee] is also long in these bonds, it may be that he has placed an offer (or a two-way price) for these bonds which might compete with the potential sale [Credit Suisse employee] has lined up, and that [Credit Suisse employee] simply misspoke when he asked [Deutsche Bank employee] to kill his "bid". Alternatively, if [Deutsche Bank employee] in fact had a bid up, [Credit Suisse employee's] request could aim to prevent "*our man from south*" (the seller [Credit Suisse employee] believes he has lined up to help him cover the short position he will obtain from selling the 200mm) from hitting [Deutsche Bank employee's] bid instead of selling to [Credit Suisse employee]. Later in the chat, from 08:49:50 until 08:51:12, [Credit Suisse employee] in fact does purchase the 48mm held by [Deutsche Bank employee]. In any case, the request to [Deutsche Bank employee] to kill his price (remove his offer) is obviously aimed at furthering [Credit Suisse employee]'s strategy.

430 […]. In the same communication from 04:05:40 to 04:05:47, [Deutsche Bank employee] reveals that smalls asked him for a two-way price in IADB 10/16, and discloses the price he showed; and at 05:35:41 [Deutsche Bank employee] reveals similar information in relation to a request from a client (possibly also smalls) in relation to IBRD 04/17. […].

431 […]

(396) On **23 March 2012**[432], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) exchange information and agree bidding prices concerning KfW bonds in relation to a client inquiry both have received.

23 March 2012	03:25:31 – 03:25:53
BAML ([...])	*"dude..did you get these kfw 22?... getting vchecked on offer"*
DB ([...])	*"yeah man i got them… call me"*

(397) At this stage, [BAML employee] phones [Deutsche Bank employee]. [Deutsche Bank employee] asks [BAML employee] whether the Japanese customers are requesting a quote from him, and [BAML employee] confirms this. [Deutsche Bank employee] reveals that Deutsche Bank showed these bonds to a couple of customers, and the two ultimately conclude that [BAML employee's] customer is one of those to whom [Deutsche Bank employee] showed the bonds the previous night. [BAML employee] tells [Deutsche Bank employee] he will show a price intended to make the customer go back to [Deutsche Bank employee] ("*I'll just show him tight levels, innit, so he'll come back to you…*"). [BAML employee] tells [Deutsche Bank employee] the price he will show ("*I'm gonna show him, like, 53.*") and that he will stay at that level ("*So, I'm just gonna stick, stick there. So, obviously you're going to be showing him wider.*"). [Deutsche Bank employee] replies that he will show a slightly wider price ("*Yeah, I'll show him a little bit wider than that, but not, you know, not, not massively or whatever. Because you want to try and make some good money on it, isn't it?*"). [BAML employee] then informs [Deutsche Bank employee] that the client has replied that [BAML employee's] spread of +53 is too tight, so [Deutsche Bank employee] may have to show +54 to get the trade[433].

(398) On the same day, minutes thereafter, the discussion in the chatroom resumes.

23 March 2012	03:35:09 – 03:50:02
DB ([...])	*"they are checking me know… we showed them the zxe[434] overnight"*
BAML ([...])	*"i shows +53 and told him thats a great offer"*
DB ([...])	*"my sales reckon he will lieft the entire street… so don't get caught short"*
BAML ([...])	*"ok i shows 50mm only..i'm ok there… there is some out there away from you…fine at 53… but yeah he is tricky"*
DB ([...])	*"think Gs has them… hes bidding me 54… for 100mm… sold full 160mm… at 54"*
BAML ([...])	*"ok got it… hopefully he won;t come back for more"*

(399) [BAML employee] repeats that he has shown +53 to the customer. [Deutsche Bank employee] warns him that his sales desk believes that the customer will be buying in sizes which may affect the price of the bond on the market ("*my sales reckon he will lieft the entire street*"), so [BAML employee] should be careful not to get stuck in a short position. [Deutsche Bank employee] informs [BAML employee] that he has been lifted at 160mm at +54, the exact price discussed with [BAML employee] on the telephone call, and subsequent to [BAML employee's] assurance to [Deutsche

432 […]
433 […]
434 This is probably a typo intended to refer to an axe sheet (see recital (53).

Bank employee] that he will not improve his offer[435]. None of the parties has put forward any alternative explanation for this communication.

(400) On **25 April 2012**[436], in a persistent chatroom, […] (Deutsche Bank), […] (Credit Suisse) and […] (BAML) exchange pricing information and coordinate prices on various bonds. They first discuss a "*bng*" (Bank Nederlandse Gemeenten[437]) bond.

25 April 2012	03:36:55 – 03:41:44
DB ([...])	*"morning…bidding 50mm bng"*
BAML ([...])	*"oh and the selling continues…bollox"*
DB ([...])	*"where oyu guys marking these now?...like 150 on the bid?"*
CS ([...])	*"i got them marked at 135, but would bid any better than 150 for sure"*
BAML ([...])	*"i was gonna say 130/135 area…bid 150…yh makes sense"*

(401) [Deutsche Bank employee] has asked [BAML employee] and [Credit Suisse employee] where they think the bond should be priced. It is unclear whether he asked before he showed his bid (in which case he could have taken the information into account when formulating his own bid), or afterwards (as a check on the level of his bid and in view of a possible opportunity to revise). In any case, at the very least this represents the exchange of current pricing information between and among the three traders[438].

(402) With regard to this extract BAML claims[439] that: "*the discussion is necessary in order to facilitate price discovery (ie an understanding of the value of the bond) and thereby the provision of liquidity to [...]'s customer.*" However, there is no suggestion in the communication of him 'sourcing liquidity' from the two other traders and, consequently, there is no need to exchange sensitive pricing information with each other.

(403) Later that day, the traders assist one another on pricing and discuss current customer approaches and recent trades with regard to an EIB bond.

25 April 2012	10:32:48 – 10:33:11
DB ([...])	*"[BAML employee]..offering 25mm eib 06/17"*
BAML ([...])	*"seeing it"*
DB ([...])	*"where you wanna show them? ah ok..what you showing"*
BAML ([...])	*"i shows 77"*
DB ([...])	*"will show a worse price..cool"*

(404) [Deutsche Bank employee] and [BAML employee] reveal they are each seeing the same inquiry, for 25 million worth of EIB 06/17 bonds. [Deutsche Bank employee] asks [BAML employee] what he is showing and then says he will show a "*worse price*", indicating he will show a less competitive price in order to render [BAML employee's] offer more attractive[440].

435 […]
436 […]
437 A Dutch agency.
438 […]
439 […]
440 […]

(405) BAML argues[441] that: "*in this chat, [Deutsche Bank employee] knows that [BAML employee] is long EIB 06/17 bonds* [presumably as a result of previous discussions] *and trying to sell his position. As a result, when [Deutsche Bank employee] receives a customer request to offer them, his initial thought is to source liquidity from [BAML employee]. However, when it becomes clear that [BAML employee] is also seeing an enquiry…[Deutsche Bank employee.] cannot rely on [BAML employee] to provide liquidity…[Deutsche Bank employee] must necessarily show a less competitive price than he obviously would have because he will have to risk to be hedged if he cannot source the bond immediately elsewhere.*" However, in reality, [Deutsche Bank employee], in agreement with [BAML employee], has shown a worse price than [BAML employee] to a customer who has approached them both, presumably believing them to be acting independently. Even if BAML's comment that [Deutsche Bank employee] would have to source the bonds is correct, the size of the proposed trade (25 million) is not large and the EIB bond is widely traded and could easily be sourced elsewhere (the EIB is one of the primary issuers in the sector).

(406) On the same date and in the same chatroom, […] (Deutsche Bank), […] (Credit Suisse) and […] (BAML) exchange further information on the activity of a client interested in trading EIB bonds in real time and in contact with multiple traders.

25 April 2012	10:14:05 – 10:16:49
BAML ([...])	*"just hit in 40mm eib067/17 and 25mm eib 21"*
DB ([...])	*"what levels?"*
BAML ([...])	*"78 and 75"*
DB ([...])	*"75!"*
CS ([...])	*"75! !"*
BAML ([...])	*"y"*
DB ([...])	*"wtf"*
BAML ([...])	*"be careful"*
DB ([...])	*"is this the US fast money guy?"*
BAML ([...])	*"not THAT one.. but a diff one"*
DB ([...])	*"and you wrking more behind that?"*
BAML ([...])	*"not yet"*
DB ([...])	*"this EIB stuff is fooked"*
BAML ([...])	*"not out of my risk yet… trying to get a bid ... guy won't bid for more than 5 at 70"*
DB ([...])	*"no point hitting that"*
BAML ([...])	*"nah"*
	10:45:14 – 10:47:02
CS ([...])	*"THAT fast money now asking me for EIB run"*
BAML ([...])	*"haha… u better run out the door"*
CS ([...])	*"shown 5-10 bp and said "LEVELS ONLY"… sent us what i sent him"*
BAML ([...])	*"showed those 06/17 at 77 and missed"*

(407) The above extract contains the exchange of current or forward-looking commercially sensitive pricing information with respect to EIB bonds in respect of one or possibly

441 […]

two different customers interested in trading those bonds and approaching traders at the time of the communication. First, [BAML employee] describes two trades he just made for two different maturities of EIB bonds, and divulges the prices. [BAML employee] warns [Deutsche Bank employee] and [Credit Suisse employee] to be careful, possibly hinting that the customer is looking to do more trades and is negotiating aggressively on price. [Deutsche Bank employee] and [Credit Suisse employee] appear surprised by the level of one of the trades (both exclaim "*75!*"), and [Deutsche Bank employee] asks if the customer is "*the US fast money guy*", to which [BAML employee] replies that it is not "*THAT one*" (the one [Deutsche Bank employee] is thinking of), but rather a different fast money customer[442].

(408) A short time later, [Credit Suisse employee] reveals that "*THAT fast money*" has asked him to show prices for EIB bonds. All three traders therefore know who they are referring to in this instance. [Credit Suisse employee] reveals to [Deutsche Bank employee] and [BAML employee] the prices he showed and that he has made it clear to the client that the prices are "*LEVELS ONLY*", meaning indicative prices subject to further negotiation rather than firm offers. [Credit Suisse employee] therefore takes into account [BAML employee's] warning to be careful, regardless of whether the "fast money" client referred to by [BAML employee] is the same one or not[443].

(409) With regard to this extract, Credit Suisse states[444]: "*The market-makers are cautious over such investors* ['fast money'] *as they typically use trading strategies which can result in market-makers incurring material losses*". However, irrespective of the type of customer – whether traditional pension fund, hedge fund or any other - the exchange of current or forward looking commercially sensitive information (price levels, customer identity) is not justified.

(410) On **30 May 2012**[445], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) coordinate their pricing on an EIB 05/17 bond for which they are both submitting bids.

30 May 2012	04:30:29 – 04:33:58
BAML ([...])	*"bidding 50mm eib 5 1/8 05/17 u will see it"*
DB ([...])	*"yeah just seen it#...that high coup stuff can be a bit tricky"*
BAML ([...])	*"big coupon..i have no cares in it"*
DB ([...])	*"where you gonna bid"*
BAML ([...])	*"+100....96...somwhere round there"*
DB ([...])	*"yeah that look more like"*
BAML ([...])	*"will bid same as you...so 96?"*
DB ([...])	*"i think that's a bit wide man...95?"*
BAML ([...])	*"nah i think its right...poile of cr4p bond...i'm gonna show 96"*
DB ([...])	*"they were 93 bid yesterday"*
BAML ([...])	*"might as well try to get them cheap"*
DB ([...])	*"yeah fair enough...unless [...] beats us to it!*
BAML ([...])	*"[...]..i bid 96.."*
DB ([...])	*"ok will show the same"*

442 A "*fast money*" customer is likely to be a hedge fund, as hedge fund portfolios turn over rapidly. […].
443 […]
444 […]
445 […]

(411) The above extract shows [Deutsche Bank employee] and [BAML employee] agree the price they would both show for an EIB bond they were both bidding for at the same time. [BAML employee] begins the exchange by alerting [Deutsche Bank employee] to the bond he is bidding for and the volume, and indicating that [Deutsche Bank employee] is likely to 'see' the offer as well. [Deutsche Bank employee] replies that he has indeed seen it. In the exchange which follows, the two traders discuss the right price at which to bid for these bonds, with [BAML employee] disclosing that he has "*no cares*" in the bond and that he believes it is a "*poile of cr4p bond*" (a "pile of crap" bond). The two traders end up by agreeing to show the same bid of "*96*"[446].

(412) On the same day and in the same chatroom, the two traders further assist each other with regard to their trading in EIB bonds. In one instance, [BAML employee] agrees to deliberately make a less competitive offer than [Deutsche Bank employee] to help [Deutsche Bank employee] win a trade.

30 May 2012	04:41:28 – 05:33:52
DB ([...])	*"asking for EIB 01/17 now as well"*
BAML ([...])	*"ok not seen that yet"*
DB ([...])	*"ok they want to sell 165mm eib 05/17 and 85mm eib 01/17!... versus buying the new one"*
BAML ([...])	*"ok not been told that yet.... but yeah not muchinterest in that shlte... the 05/17 for that many .. not paying better than 99... seein gi tall now"*
DB ([...])	*"yeah"*
BAML ([...])	*"what did you show"*
DB ([...])	*"i showed 96 and 93... am shorts 150 k in 01 of EIB... so suits me"*
BAML ([...])	*"too tight"*
DB ([...])	*"yeah i am short the 03/17, 06/17 and 07/16... what did you show?"*
BAML ([...])	*"gonna show 2 back... sorry 1 back from u... u will get them"*
DB ([...])	*"unless [...] does"*
DB ([...])	*"yeah BTMU said one of the leads is freaking out about the size"*
BAML ([...])	*"i showed 97 and 95 fyi"*
DB ([...])	*"i want to win this just to get flat risk... if [...] beats me will never slag him off again"*
BAML ([...])	*"flaty eib here.. so all for you dude... he own;t pay that for those"*
	[..]
DB ([...])	*"i won the package... 165mm eib 05/17... and 35mm 01/17"*
BAML ([...])	*"COOL"*

446 […]

(413) In the above extract, [Deutsche Bank employee] is in negotiations with a customer (apparently BTMU[447]) to acquire a large volume of EIB bonds in which he is holding a short position and hence needs to make a purchase to "*get flat risk*". He alerts [BAML employee] to this trade, and [BAML employee] acknowledges after a short time that he is seeing it too (putting him in competition with [Deutsche Bank employee]). [BAML employee] asks [Deutsche Bank employee] what he showed, and once [Deutsche Bank employee] reveals the bids he made, [BAML employee] states that he will offer a worse price ("*gonna show 2 back… sorry 1 back from u*") in the belief this will help [Deutsche Bank employee] win the trade ("*u will get them*"[448]).

(414) Another competitor for this trade is […], a trader at [third party bank]. In any case, even with the presence of a third competitor, [BAML employee's] agreement to bid behind [Deutsche Bank employee] eliminates competition between the two banks and distorts the picture the customer is seeing as he attempts to negotiate with the dealers. While [Deutsche Bank employee] and [BAML employee] cannot control what [employee of third party bank] is bidding, they are manipulating the trading terms offered to this customer to the maximum extent possible. Ultimately, [Deutsche Bank employee] beats [employee of third party bank] to the trade and [BAML employee] congratulates him.

(415) BAML contends[449] that, as these trades in EIB bonds were made as switch trades of comparable bonds within the context of a forthcoming new issue of EIB bonds, for which Deutsche Bank, MLI and HSBC were lead managers[450] then: "*it would be expected by both issuers and investors that MLI and DB would co-ordinate in relation to the joint pricing and splitting of switch orders*". They state that: "*both [Deutsche Bank employee] and [BAML employee] have been approached by one or more investors looking to sell existing five-year issues of EIB bonds, versus buying the new three year bonds. There is, therefore, no basis for such co-operation to be considered to be anti-competitive.*" It is clear from the chat, however, that the investors have approached the traders independently, and can expect independent and not mutually agreed prices. Furthermore, as with other exchanges concerning new issues[451], BAML's interpretation of the communication is contradicted by the fact that there is no coordination with traders from other lead manager banks. On the contrary, [BAML employee] and [Deutsche Bank employee] consider the [third party bank] trader to be a rival, who is obviously trading (entirely legitimately) in competition with them. Any coordination is thus between [BAML employee] and [Deutsche Bank employee] only.

(416) Later on 30 May and in the same chat as above, the two traders have a discussion, and agree on the level at which they would begin trading the newly issued EIB bonds once they become available to trade on the secondary market the following day. [Deutsche Bank employee] initiates the discussion with [BAML employee] in an attempt to enlist [BAML employee's] help in his efforts to be

447 Bank of Tokyo Mitsubishi.
448 […]
449 […]
450 […]
451 See, for example, recitals (283)-(290), (300) and (365).

"*supportive/vigilant*"[452] in relation to how the bond trades on the market once issued, as requested by […], an employee of the […][453].

30 May 2012	11:25:52 – 12:25:24
DB ([...])	*"[...] sending me some message… so wanted to talk to you about it… beofre we stick bids up… etc… you free?"*
BAML ([...])	*"y… call now"*
DB ([...])	*"ok… "[...]: I'll need for you to be supportive / vigilant on this one, given the context. It is solid enough but needs to be perceived as such given book is not all singing and dancing."*[454]
BAML ([...])	*"h/h what a chump… good luck supporting it bro ha"*
DB ([...])	*"told him i will take 100mm down for every bps… sod it man… have to do it"*
BAML ([...])	*"i don't owe him anything… [...]"*
DB ([...])	*"looks like wont be free to trade till tomm"*
BAML ([...])	*"ok cool"*
BAML ([...])	*"i gonna make +66/63 in 50 to start with my sales"*
DB ([...])	*"think i will just make a 66 bid to start… then tomm we can make 66/63 to sales"*
BAML ([...])	*"cool"*

(417) The mutual assistance regarding trading prices between [Deutsche Bank employee] and [BAML employee] in relation to these bonds recurs at least on the two following days, and again on 6 and 7 June, as reproduced in recitals (418)-(423) and (425). Over this period, [Deutsche Bank employee] in particular is in frequent contact with […] in a parallel bilateral chatroom where he keeps […] informed about his and [BAML employee's] concerted efforts to support the bond[455].

(418) The following day, on **31 May 2012**[456], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) continue discussing the new EIB issue and their trading strategy, including exchanges on the prices and the broker screens at which each of them will show their bids[457].

31 May 2012	02:15:57 – 02:52:26
DB ([...])	*"yo…what you wanna open new EIB?…reoffer spread"*
BAML ([...])	*"66/63…i got hit last night at 66 in 5mm"*
DB ([...])	*"by a custy?"*
BAML ([...])	*"yep"*
DB ([...])	*"we are gonna get hit in the street for sure…its 2 tighter to*

452 Generally speaking, lead managers for a new issue are expected to ensure that newly issued bonds are well placed among end investors in the market, and if needed, to act as a buffer in order to make up for potentially inadequate demand by buying up quantities of the relevant bond in order for the spread of the bond not to widen too significantly against the benchmark, as this would create the perception that the issue has been a failure. Any price 'support' for the bond in the secondary market once it has been issued, however, is subject to strict regulatory requirements – see recital (733).

453 […]

454 […]

455 […]

456 […]

457 […]

	swaps already"
BAML ([...])	*"hmm…he won't let us be wider bid will he"*
DB ([...])	*"no chance man"*
BAML ([...])	*"ok u bid in […] and […] and i bid in […] and […] …haha"*
DB ([...])	*"loser! ... if we start getting hit..how many you up for taking down…50mm at each bps?...as in 50mm each…just make sure your repo guys don't lend them out"*
BAML ([...])	*"yeah i guess"*
DB ([...])	*"if we get hi that is…ok lets go then…will tell all three bookies"*
BAML ([...])	*"chill bro not even had my coffee ha"*
DB ([...])	*"coffee boy!"*
DB ([...])	*"you drunk your coffee yet…i will go 66 bid in each bookie"*
BAML ([...])	*"ok…u do that"*
DB ([...])	*"have given it to them…told them you are joining it"*
BAML ([...])	*"aight"*
DB ([...])	*"i haven't really…but tell […] and […] at least…10mm on screen should put of some potential sellers…Told the stroker you and me have opened it up"*[458]
DB ([...])	*"+65 offered now in […] …we gonna get hit pretty soon!...we are getting hit at 66"*
BAML ([...])	*"yep"*
DB ([...])	*"lets leave it up there for 100mm?...50mm each?"*
BAML ([...])	*"ok"*
DB ([...])	*"then move it back a bps after that"*
BAML ([...])	*"y"*

(419) The traders begin the discussion by agreeing that "*66/63*" is the right price at which to open trading on the market once they are allowed to trade the bond, and that he got hit the night before at that price for 5mm. They then outline further their mutual trading strategy for the bond, discussing which of them will post with which broker[459] and then agreeing that [Deutsche Bank employee] will post a price of 66 with each broker ("*i will go 66 bid in each bookie*"). The two traders further agree to each instruct their repo desk[460] not to lend out the bond to potential short sellers in the market, which could have the effect (and hence most likely the aim) of artificially supporting the bond's price in the market by curtailing short selling activity[461].

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458 After this message by [Deutsche Bank employee] (referring to […] as "*the stroker*"), [BAML employee] calls [Deutsche Bank employee] and tells him "*Don't, don't say it like that, because you're not supposed to do that.*" [Deutsche Bank employee] asks him what he means and [BAML employee] replies "*You're not supposed to support the deal as a group.*".

459 The phrase "*ok u bid in […] and […] and i bid in […] and […[…haha*" may well be a joke, however the two traders appear to later agree that [Deutsche bank employee] will post bids in each broker screen, and [Deutsche Bank employee] suggests that [BAML employee] inform at least two brokers that he is 'joining' [Deutsche Bank employee's] bids, which may indicate that he intends for [BAML employee] to post identical bids on at least some screens.

460 Repo desk = repurchase desk. It is the desk that deals with short term borrowing of the bonds. A trader sells bonds to investors and buys them back the following day.

461 […]

(420) The traders also agree how to share or split the risk of the bonds they purchase, and on how to adjust their bidding prices, depending on the extent to which their bids are hit (the volumes they purchase) over the course of the day. From 02:51:36, [Deutsche Bank employee] informs [BAML employee] that they are getting hit at 66, and they agree to: "*leave [the bids] up there*" until they have each acquired a specific volume ("*100mm?...50mm each?*") and "*then move [their discussed price] back a bps after that*".

(421) Shortly thereafter, the two traders further discuss how to adjust their prices in alignment with each other as more of their bids get hit and they accumulate longer positions in the new EIB bonds.

31 May 2012	03:13:38 – 03:22:18
DB ([...])	*"hit in another 5mm in […] ... so 65 mm in total so far right?... another 25mm in […] and another 25mm in […] ... what you wanna fo"*
BAML ([...])	*"thats enought man ... 67 now ... we're gonn get fcked on these otherwise"*
DB ([...])	*"told […] to give you that 25mm"*
DB ([...])	*"how many have we got in total so far"*
DB ([...])	*"i think its just over 50mm each ... lets leave it for another 25mm in total them move it back a bps?"*[462]
BAML ([...])	*"ok"*

(422) On **1 June 2012**[463], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) continue to coordinate their pricing strategy on the new EIB issue, including by agreeing to place bids on all broker screens at identical prices at least twice during the day, and by giving identical instructions to their repo desks not to lend out the relevant bonds (which could risk lowering the market price).

1 June 2012	02:20:41 – 02:21:14
DB ([...])	*"yo...where you wanna bid this […] bond?...67?"*
BAML ([...])	*"yeah"*
DB ([...])	*"ok man will go 67 bid in all screens"*
BAML ([...])	*"aight"*
	09:37:31 – 09:40:30
BAML ([...])	*"lets put bid back up on eib ... 68"*
DB ([...])	*"sure ... everywhere?"*
BAML ([...])	*"y"*
DB ([...])	*"bid it in […]"*
BAML ([...])	*"cool"*
DB ([...])	*"might aswell joing my bid there"*
BAML ([...])	*"done... told me repo guys not to lend these under any circumstances"*
DB ([...])	*"i have mine the same"*

462 […]. As explained by Deutsche Bank, here the two traders are agreeing that once they have each acquired a certain volume they will move their bids back by 1 basis point.

463 […]

(423) On **6 June 2012**[464] and **7 June 2012**[465], […] (Deutsche Bank) and […] (BAML) continue to develop their trading strategy on the same EIB issue and then congratulate themselves for managing it "*pretty well*"[466].

(424) BAML explains[467] that the communications between [Deutsche Bank employee] and [BAML employee] over the period between 30 May 2012 and 7 June 2012 show them working together to provide support for the new EIB issue and state: *"Both DB and MLI can be seen to be providing, as a service to their issuer client, supporting bids to ensure liquidity and price stabilisation for the benefit of their issuer client*."

(425) Once again, the total absence in the communications of any reference to working together with HSBC, the other lead manager, is striking when compared to BAML's claim[468] that: "*at least in 2012, SSA bond issuers expected and required traders to work together to support and provide liquidity for new issues*". This is contradicted by the fact that the cooperation between lead managers in the secondary market was restricted to a subset of traders: the '[…]'[469] and their colleagues. Furthermore, with regard to any price stabilisation in the week following the start of trading in the new bonds, BAML provides no evidence that this was in accordance with the relevant financial regulations at the time, which stipulated strict time limits, periodic public reporting requirements and the identification amongst (all) the lead managers of a stabilisation manager[470].

(426) Also on **6 June 2012**[471], in a persistent chatroom, […] (Credit Suisse) refrains from lifting an offer on a broker screen for KfW 03/18 bonds despite having an interest in buying that bond, upon learning that the offer has been placed by [Deutsche Bank employee], and that [Deutsche Bank employee] is already short in that bond and hence would prefer not to get lifted[472]. […] (BAML) is also present in the chatroom.

6 June 2012	04:09:09 – 04:10:28
CS ([...])	*"kfw 03/18s…r u long? just showed […] an 81 bid and he said its your price"*

464 […]

465 […]. In this extract, besides agreeing on the bidding prices, both agree not to show any offers for that bond on-screen. The two traders brag about how their bid price for that day *"nailed all the short sellers"* and [BAML employee] tells [Deutsche Bank employee] he told the broker at […] to *"[…] and tell them never to mess with ml/db [Merrill Lynch/Deutsche Bank] haha"*.

466 […]

467 […]

468 […]

469 See recital (809).

470 See recital (733).

471 […]. The same chat contains a similar exchange from 03:37:14 to 03:38:39, in which [Credit Suisse employee] checks with [Deutsche Bank employee] which "Asia" bonds [Deutsche Bank employee] has a short position in (*"you're short asia 08/15s not 09/15s, yeah?"*) before informing him he has placed a slightly better bid for 09/15s. According to Deutsche Bank: "*[i]t is possible [Credit Suisse employee] wanted to check that he would not be interfering with [Deutsche Bank employee] trading strategy as a more competitive bid by [Credit Suisse employee]may have affected [Deutsche Bank employee] chances to cover a short position in the bond*". […].

472 Immediately following the extract reproduced here between 04:10:50 and 04:18:19, [Deutsche Bank employee] and [Credit Suisse employee] negotiate a bilateral trade and [Deutsche Bank employee] and [Credit Suisse employee] agree to provide misleading information to the market by asking the broker with which they executed the trade to post the trade on the broker screen at a different price than the one they have agreed on. […].

DB ([...])	*"i am short"*
CS ([...])	*"cool…no probs. will leave it alone"*
DB ([...])	*"short 75mm… i got 42mm back on friday at 80… still short kfw 07/18 as well… but they look pretty rich"*
CS ([...])	*"no probs…i'm flat, but was just looking to put something on the book"*

(427) [Credit Suisse employee] has placed a bid for KfW 03/18 bonds with the broker ["…"], identified by Deutsche Bank as likely to be […] of […][473]. […] has informed [Credit Suisse employee] that the dealer on the other side of the offer that [Credit Suisse employee] was interested in lifting was [Deutsche Bank employee]. This prompts [Credit Suisse employee] to check with [Deutsche Bank employee] if he actually wants to make the trade. [Deutsche Bank employee] tells [Credit Suisse employee] that he is short in the bond, whereupon [Credit Suisse employee] agrees not to lift the offer in order not to worsen [Deutsche Bank employee's] short position[474]. None of the parties has put forward any alternative explanation for this communication.

(428) On **26 June 2012**[475], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) discuss trading strategies and exchange current or very recent pricing information in relation to a specific client interested in trading KfW 01/15 bonds. […] (Credit Suisse) participates in the discussion.

26 June 2012	04:46:25 – 06:00:24
DB ([...])	*"bidding kfw 01/15"*
BAML ([...])	*"saw that earlier..he done the rounds..i shopwed20"*
DB ([...])	*"cool… showed the same"*
BAML ([...])	*"think kfw 01/15 guy done the rounds…gone down at 20"*
CS ([...])	*"sprayer?"*
BAML ([...])	*"Nah ME guy… the super tight one… actually that doesn;t make it any clearer hah… they are all tight"*
DB ([...])	*"i just covered my short bck at 20… 25mm"*
CS ([...])	*"oh that guy….cheaper not to see the enquiry"*
DB ([...])	*"there doing a decent amount in these kfw 01/15… 100mm so far"*
BAML ([...])	*"yeah i selling some"*
DB ([...])	*"bidding these kfw 01/15 again… what a bore… already gone down at 20 out there in size"*
BAML ([...])	*"yep..i shows 21… […]"*
DB ([...])	*"i showed 20.75"*
DB ([...])	*"i showed 20.75"*

473 […]. This is corroborated by […], a bilateral chat from the same day between [broker employee] and [Deutsche Bank employee] in which at 04:58:23 [broker employee] tells [Deutsche Bank employee] that [Credit Suisse employee] had placed a bid in KfW 03/18 and that [Credit Suisse employee] had told [broker employee] he would contact [Deutsche Bank employee]. [Deutsche Bank employee] immediately confirmed that he and [Credit Suisse employee] had already discussed it.

474 […]

475 […]

BAML ([...])	*"u get them? Guys […]"*
DB ([...])	*"nah not heard back"*
BAML ([...])	*"made 22/20 in […]… just got feedback..he wants to wait..ok u do that"*

(429) After [Deutsche Bank employee] discloses that he is bidding for KfW 01/15 bonds, [BAML employee] reveals that he saw an inquiry for these bonds by what he believes may be the same client, and discloses the price he showed. [Deutsche Bank employee] replies: "*cool… showed the same*" but it is unclear from the chat whether he has submitted his price only after receiving the information from [BAML employee] (which amounts to coordination), or has already done so and is only acknowledging to [BAML employee] that he has bid the same price (still sensitive information in the context of ongoing discussions with the customer). Later in the extract, the two traders continue to exchange information on the prices they have shown to the client[476]. None of the parties has put forward any alternative explanation for this communication.

(430) On **17 July 2012**[477], in a persistent chatroom, […] (Credit Suisse) and […] (Deutsche Bank) coordinate pricing and trading on a KBN (Norway Kommunalbanken) bond. […] (Deutsche Bank) is also present in the chatroom.

17 July 2012	08:57:13 – 09:21:07
CS ([...])	*"i just saw that kbn enquiry too fyi…i bid 64.5..i am long 50mm already, fyi"*
DB ([...])	*"oh you are?..damn..is that you who showed better bid at […]"*
CS ([...])	*"nope"*
DB ([...])	*"oh ok…ok, i will go talk to him…will let you know before i do anything…a real buyer at […] it seems…got a +63 bid fyi"*
CS ([...])	*"in decent size?"*
DB ([...])	*"no…just 3mm :-D"*
CS ([...])	*"cool..looks like […] getting something going in bigger"*
DB ([...])	*"yes…just talking to him now…i will hit the bid of +61 if you don't mind"*
CS ([...])	*"i told him I'd sell once you're out the way…no, thtas cool"*
DB ([...])	*"ok"*
CS ([...])	*"guy might take more"*
DB ([...])	*"thanks i am hitting…let me know how youre positioned…once you sell. I will try to sell on my side at 61 or tighter with account if it hlps you"*
CS ([...])	*"i also sold 25mm at 61..leaves me with 25mm left…have shown to a US a/c too"*
DB ([...])	*"ok"*

(431) This extract shows the willingness of [Deutsche Bank employee] and [Credit Suisse employee] to take each other's interests into account before deciding whether to seek or execute potential trades with third parties. [Deutsche Bank employee] and [Credit Suisse employee] have both seen an offer for KBN bonds (probably on a broker

476 […]
477 […]

screen) and [Credit Suisse employee] informs [Deutsche Bank employee] that he has placed a bid of "*64.5*" and that he already has a long position of 50mm.

(432) [Deutsche Bank employee] informs [Credit Suisse employee] that a "*+63 bid*" has appeared on the […] broker screen. A few minutes later, at 09:14:24, [Credit Suisse employee] mentions he understands that broker […] is looking for a seller of more significant size: "*cool..looks like [...] getting something going in bigger*" and [Deutsche Bank employee] confirms he is talking to the […] broker at that moment. At some point, a better bid has appeared and [Deutsche Bank employee] asks [Credit Suisse employee] for his consent before hitting this bid of "*+61*", which it is apparent both traders are aware of and may be the trade posted on the […] screen. [Credit Suisse employee] gives his consent ("*I told him I'd sell once you're out the way…no thtas cool*"), indicating he has refrained from hitting that bid for the benefit of [Deutsche Bank employee][478].

(433) Deutsche Bank have further explained that [...]'s statement at 09:16:51: "*once you sell. i will try to sell on my side at 61 or tighter with account if it hlpes you*" was an offer [Deutsche Bank employee] made to sell [Credit Suisse employee's] long position to any other buyer that might approach [Deutsche Bank employee] to buy these bonds. According to Deutsche Bank, [Deutsche Bank employee] was offering to keep [Credit Suisse employee's] position in mind and help him offload his KBN bonds if possible[479]. None of the parties has put forward any alternative explanation for this communication.

(434) On **28 August 2012**[480], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) coordinate trading of KfW 08/15 bond. They comment that […] (BAML) is on a trip with brokers, which explains why he is not present in the chatroom.

28 August 2012	04:24:55 – 09:37:54
DB ([...])	*"just went 18 offered int hose KFW 08/15 in [...]*[481]*..[...] actually said its you (for a change!)..you a buyer?"*
CS ([...])	*"nadda…still long those vs 10/15s"*
DB ([...])	*"oh yeah off course..i bought 100mm fyi"*
CS ([...])	*"oh cool…where u get them…24?"*
DB ([...])	*"23.5"*
CS ([...])	*"i got them marked at 22…have 100mm fyi."*
DB ([...])	*"another 150mm of these KFW 08/15 are gonna be coming out"*
CS ([...])	*"great. Same a/c?"*
DB ([...])	*"no..first seller was Asian..this gonna be a tight middle east guy"*
CS ([...])	*"oh yeah …that [...]. Cool, thks for headsup"*
DB ([...])	*"i am in comp for the second piece..so not sure if 23.5 wins it"*
CS ([...])	*"want me to pull that bid?..off screen I mean"*
DB ([...])	*"nah its cool leave it"*

478 […]
479 […]
480 […]
481 Probably […], an interdealer broker.

DB ([...])	*"can yiu kill that bid in the 08/15 pls"*
CS ([...])	*"sure"*
DB ([...])	*"bidding 150mm…ahh I missed..i bid +23…oh well"*

(435) [Deutsche Bank employee] and [Credit Suisse employee] begin by discussing their positions in KfW 08/15 bonds, with [Deutsche Bank employee] disclosing that he is a buyer, having bought 100mm and awaiting a further 150mm to come out from another seller. [Deutsche Bank employee] has been informed by broker […] that a bid for those bonds has been placed onscreen by [Credit Suisse employee]. [Deutsche Bank employee] and [Credit Suisse employee] discuss incoming trade flows in the KfW 08/15 bond. [Deutsche Bank employee] reveals the size of an incoming trade to [Credit Suisse employee] as well as the location of two counterparties (Asia, Middle East). [Credit Suisse employee's] reply ("*oh yeah… that […]*") shows that he knows who [Deutsche Bank employee] is referring to.

(436) When [Deutsche Bank employee] mentions he is in competition for another trade in those bonds, [Credit Suisse employee] offers to kill his bid (instruct the broker to take it off screen). [Deutsche Bank employee] at first declines the offer at 04:50:29, but then reverts to [Credit Suisse employee] at 09:35:54 and asks him to kill the bid in the 08/15s, which [Credit Suisse employee] agrees to do. [Deutsche Bank employee] mentions he has bid for 150mm at a price of +23, but misses the trade. Nevertheless, in light of the earlier portion of the chat, the later request made to [Credit Suisse employee] to kill the bid was aimed at helping [Deutsche Bank employee] complete the trade via the removal of a competing bid on a broker screen[482]. None of the parties has put forward any alternative explanation for this communication.

(437) On **19 September 2012**[483], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) coordinate trading on an issue of CADES[484] bonds. […] (BAML) is also present in the chatroom.

19 Sept 2012	05:54:29 – 05:56:58
DB ([...])	*"[Credit Suisse employee] ... how you left cades 11/16?"*
CS ([...])	*"i'm tryi9ng to buy"*
DB ([...])	*"i just went 102 bid in […]"*
CS ([...])	*"seeing who else has bonds..can u kill it for a sec"*
DB ([...])	*"ah got you"*
CS ([...])	*"i think i might be able to get bonds out."*
DB ([...])	*"ok have kileld it"*
CS ([...])	*"thks dude"*
DB ([...])	*"[…] said you traded some at 102..i can take some there if you get some..[…] i mean"*
CS ([...])	*"I hit it, in order to get him out of the way…he was long, but am trying to get someone else to hit me in better size at that level"*
DB ([...])	*"in the brokers? or from a custy?"*
CS ([...])	*"custy"*

482 […]
483 […]
484 The Caisse d'Amortissement de la Dette Sociale (France).

(438) Here - as in the previous excerpt from 28 August 2012 described in recital (434) - [Deutsche Bank employee] and [Credit Suisse employee] discuss their positions in a particular bond, but this time it is [Credit Suisse employee] who requests that [Deutsche Bank employee] kill a bid he has placed on the broker screen in order to remove from the market a bid which could potentially compete with that of [Credit Suisse employee], so that [Credit Suisse employee] might complete his desired trade. [Deutsche Bank employee] agrees to do so[485].

(439) In the latter part of the exchange, [Deutsche Bank employee] informs [Credit Suisse employee] that he may be willing to buy some of the relevant CADES bonds from [Credit Suisse employee] if [Credit Suisse employee] gets them (as he is also a buyer). Effectively, the two traders have agreed not to compete for CADES at that time so that one of them can secure the trade without competition from the other, whilst still exploring a subsequent bilateral trade between them that can satisfy the trader who stood aside in this instance. None of the parties has put forward any alternative explanation for this communication.

(440) On **15 October 2012**[486], in a persistent chatroom, […] (Deutsche Bank) and […] (BAML) have another similar exchange, in which [Deutsche Bank employee] asks [BAML employee] to kill a bid he has placed on the […] broker screen, in order to clear the way for [Deutsche Bank employee] to make a successful bid at a higher spread (+50 instead of +48), hence at a lower price paid to the seller. [BAML employee] complies with the request, and then checks back in with [Deutsche Bank employee] a short time later to ask if [Deutsche Bank employee] won the trade. […] (Credit Suisse) is also present in the chatroom.

15 Oct 2012	10:29:43 – 10:52:31
DB ([...])	*"is that your 48 bid in the 01/20 in [...]?"*
BAML ([...])	*"yeah"*
DB ([...])	*"i reckon youmight get hit"*
BAML ([...])	*"what kinf od a/c"*
DB ([...])	*"CB... gonna show all the other leads for sure"*
BAML ([...])	*"that trades makes no sense"*
DB ([...])	*"kill it for now if you can... just while i get the bid in"*
BAML ([...])	*"killed it... what u bid"*
DB ([...])	*"+50"*
BAML ([...])	*"u get em,?"*
DB ([...])	*"not heard yet"*

(441) BAML claims[487] that: "*[BAML employee's] bid in the broker screen will relate to a small, 'social' size trade of 2 or 5 million bonds. Removal of this bid from the screen will not affect the success of [Deutsche Bank employee's] bid to his customer because (a) the customer does not have access to the broker screen so he cannot see [BAML employee's] price of +48 and (b) other traders receiving the customer's enquiry (or [BAML employee], if he were to receive the enquiry) would not bid this price to the customer anyway, as the customer trade would be for a much larger size*". Furthermore, BAML contends that: "*[Deutsche bank employee] wants [BAML*

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487 […]

employee] to be available as a potential source of liquidity for his customer trade". If he wins the customer trade, [Deutsche Bank employee] might sell part of it onto [BAML employee].

(442) These arguments should be rejected. First, BAML has provided no evidence to substantiate its assertions on trading sizes and information availability. Indeed, its statement that [Deutsche Bank employee] wishes [BAML employee] to be available as a liquidity source to cover the risk of any customer trade [Deutsche Bank employee] makes contradicts the claim that [BAML employee's] bid relates only to a small social size. If [BAML employee] is only seeking to buy a very small amount of bonds he will hardly be willing to buy a rather larger amount from [Deutsche Bank employee]. Second, even if BAML's unverifiable assumptions were accepted[488], this does not detract from the fact that [Deutsche Bank employee] is asking [BAML employee] to withdraw his price in the broker screen. Screen prices inevitably feed through into the prices paid by investor customers. This is because those are the prices at which traders - such as [Deutsche Bank employee] or anyone else transacting with the investor customer - can 'source liquidity', that is, in this case, sell on the bonds. Withdrawing prices from broker screens therefore affects prices throughout the market. [Deutsche Bank employee] requests [BAML employee] to "*kill it for now*" because he does not want [BAML employee's] more attractive buying price of +48 in the market as a 'basis' for other traders to price the customer trade at a more attractive price (to the customer) than [Deutsche Bank employee] (such as +49). [Deutsche Bank employee] does not suggest to [BAML employee] that he will sell the bonds on to him. His expression: "*just while I get the bid in*" indicates that [BAML employee] can show the price of +48 again once [Deutsche Bank employee] (or someone else) has dealt with the customer[489].

(443) On **[…]**, following the end of his trading activity at BAML and having been placed on gardening leave[490], […] (BAML) withdraws or is removed from the persistent chatrooms in which […] (Deutsche Bank), […] (Deutsche Bank) and/or […] (Credit Suisse) were also members[491].

(444) On **17 December 2012**[492], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) have the following exchange.

17 Dec 2012	04:33:01 – 04:35:44
DB ([…])	*"u still have ur IADB 9/16s?"*
CS ([...])	*"i still got 38mm, but i think i'm about to sell them shortly (European a/c) ... thats my price in […]...24/21"*
DB ([…])	*"aaah ok think we have a european account coming in for an offer later in the day"*
CS ([...])	*"yeah.. .same a/c i'm sure ... also looking for nib, ebrd etc"*
DB ([…])	*"yer sounds like it ... yerp thts the one"*
CS ([...])	*"clealry u are the "one other dealer" seeing the enquiry"*

488 Credit Suisse have noted that investor customers could receive information from broker screens via data platforms. […].

489 See recitals (725)-(730) for discussion on broker screen prices and trading via broker screens.

490 See recital (99)

491 See footnotes 84, 85, 87 and 95; […].

492 […]

(445) [Deutsche Bank employee] and [Credit Suisse employee] exchange forward-looking commercially sensitive information on the trading activity of a specific (common) client, including on price level [Credit Suisse employee] has shown the market via a brokers screen and his current position. This reduces uncertainty, as both [Credit Suisse employee] and [Deutsche bank employee] now know who is the "one other dealer" and allows them to potentially adapt their behaviour. None of the parties has put forward any alternative explanation for this communication.

4.2.4. 2013

(446) On **10 January 2013**[493], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) exchange information and coordinate trading on a KfW bond.

10 Jan 2013	05:02:00 – 05:13:37
CS ([...])	*"is that your bid in KFW 4.375 18?"*
DB ([...])	*"yeah"*
CS ([...])	*"i'm being checked on these vs the kommun"*
DB ([...])	*"i am short 50mm … badly need them … will pay whatever"*
CS ([...])	*"ok, will let u know what happens"*
DB ([...])	*"you want me to kill the bid?... i am short 50209... if you can get these for me will pay whatever man... just want out off them … costing a fortune in carry everyday"*
CS ([...])	*"nah, thats cool..i'll do my best, but could just be time wasting. These bonds are a […], i know. Will let u know what they say."*
CS ([...])	*"scandi guy who we dont do anything with, so not really sure...but sales guy says its "under control"*
DB ([...])	*"cool man … you want me to kill the bid?"*
CS ([...])	*"sales dude say's if he's gonna do anything, he'll let us know, so not shopping it around."*
DB ([...])	*"ok cool"*

(447) [Deutsche Bank employee] has a large short position in a particular KfW bond and has placed a bid for this bond to cover it. [Credit Suisse employee] asks him if it is indeed [Deutsche Bank employee's] bid he is seeing (presumably on one or more broker screens), perhaps being already aware that [Deutsche Bank employee] is short and thus likely to be placing bids. [Deutsche Bank employee] confirms it is his bid, and [Credit Suisse employee] informs him he is being "*checked on these vs the kommun*", which means he is being asked to do a switch whereby he will purchase these KfW bonds in exchange for selling the client a specified 'kommuncredit' bond, and also means that he has received a customer enquiry regarding the bonds.

(448) [Deutsche Bank employee] offers to kill his bid on the broker screen, which could help [Credit Suisse employee] make the trade by eliminating the impression that there are other potential buyers on the market. [Credit Suisse employee] does not accept [Deutsche Bank employee's] offer to kill the bid, telling him the customer is a "*scandi guy*" (probably a client from a Scandinavian country) with whom he does not do much business. He is therefore not comfortable enough the trade will happen so as to direct [Deutsche Bank employee] to kill his bid. [Deutsche Bank employee] nevertheless repeats his offer, and [Credit Suisse employee] informs him that

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according to his sales desk, the customer is not shopping around (perhaps indicating he will give Credit Suisse priority for the trade), so there is no reason for [Deutsche Bank employee] to kill his bid.

(449) In this exchange, [Credit Suisse employee] and [Deutsche Bank employee] have exchanged sensitive information about a potential trade both of them could be interested in. Moreover [Deutsche Bank employee] has given [Credit Suisse employee] comfort that he will have a buyer who "*will pay whatever*" for the bonds he acquires from the client, which is a factor [Credit Suisse employee] can take into account when formulating his price. Additionally, [Deutsche Bank employee] has shown a clear willingness to stand aside and remove a competing bid from the market in order to help [Credit Suisse employee] execute his desired trade. By removing a competing bid from the market, [Deutsche Bank employee] has reduced the client's opportunity to get the best deal for the bonds he was looking to sell.

(450) Credit Suisse points out[494] that: "*[Deutsche Bank employee's] desire to purchase these bonds in order to flatten his position is palpable*". This would have been reflected in his bid price on the broker screen and does not justify potential coordination with [Credit Suisse employee]. [Deutsche Bank employee's] price in the broker screen is in respect of up to 50 million bonds and not for a "*small 'social' size*"[495].

(451) Later in the day, [Crédit Agricole employee] joins the chatroom. The chat indicates that […] at Crédit Agricole[496]. [Crédit Agricole employee] requests: "*[…]*", that is to rejoin the persistent chatroom with [Deutsche Bank employee] and [Credit Suisse employee]. [Credit Suisse employee] (the chat administrator) greets him with: "*[…]*" and [Crédit Agricole employee] responds: "*[…]*".

(452) On **11 January 2013**[497], in a persistent chatroom, […] (Deutsche Bank), […] (Crédit Agricole) and […] (Credit Suisse) exchange information and coordinate trading on KfW bonds.

11 Jan 2013	10:05:58 - 10:08:07
DB ([...])	*"[Credit Suisse employee] oyu short kfw 10/22? i am short aswell. but told [...] to give you all of them as i am not that keen to ocver them. i am short 70mm"*
CS ([...])	*"he just told me...can split it if u want?"*
DB ([...])	*"nah thats cool... i am not that keen to ocver ... look well rich"*
CS ([...])	*"ah, i'm only short 20."*
DB ([...])	*"i am just gonna leave that one"*
CS ([...])	*"ok, cool....i've got 25mm of the new one, but i think that sprayer will scoop up those eventually"*
CA ([...])	*"what level these pups trading at"*
DB ([...])	*"20"*
CS ([...])	*"i just lifted those at 20. did u buy yours earler?"*
CA ([...])	*"k...bid 20mm at 20.5 this morn...and missed...so must be that guy"*

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(453) This chat evidences the consistent willingness of the participants to take each other's interests into account and make each other aware of opportunities as if they are not employed by different competing undertakings, but rather colleagues trading the same book. [Deutsche Bank employee] and [Credit Suisse employee] are both short in a given KfW bond, but discuss which of them would actually prefer to buy it ([Deutsche Bank employee] thinks they are expensive at the price).

(454) The three traders then go on to discuss a "*new one*", probably indicating a newly issued KfW bond. [Credit Suisse employee] reveals his position and his belief that a customer they commonly refer to as the "*sprayer*" will eventually buy the bonds. [Crédit Agricole employee] then asks for price guidance (either on the "new one" or on the aforementioned 10/22s), to which [Deutsche Bank employee] and [Credit Suisse employee] both reply with a level of "*20*". [Credit Suisse employee] adds that he lifted those bonds at 20 recently. [Crédit Agricole employee] then reveals the price at which he bid and missed for the bonds that morning, reasoning that it must have been the same seller as the one [Credit Suisse employee] lifted.

(455) Crédit Agricole maintains[498] that: "*[Crédit Agricole employee's] involvement in the relevant extract ...was limited to confirming that he had bid for, but failed to buy, bonds earlier in the day*". [Crédit Agricole employee] is, however, an active participant in the discussion, both requesting information on pricing and disclosing information about an earlier trading attempt. He is also a recipient of the sensitive information shared by the other two traders.

(456) On **18 January 2013**[499], in a persistent chatroom, […] (Deutsche Bank), […] (Crédit Agricole) and […] (Credit Suisse) exchange information on trades and customers and then [Deutsche Bank employee] and [Credit Suisse employee] coordinate trading on an issue of Bank Nederlandse Gemeenten bonds.

18 Jan 2013	03:10:06 – 03:46:58
CS ([...])	*"saw some biz last night....seller of 50mm bng 17s, 25mm bng 23s and bought 50mm kfw 19s and sold 25mm...missed the bng 17s"*
CA ([...])	*"nice what kind of a/c..all US?"*
CS ([...])	*"US seller of bng, Asian buyer of kfw"*
CA ([...])	*"chrs"*
DB ([...])	*"i saw the bng stuff as well...i obught the 09/17...i missed the 23...i bid 70"*
CS ([...])	*"i got them at 70.5"*
DB ([...])	*"i think we were slow with our price"*
CS ([...])	*"he said he was seeing 70.25, I said poke off and he came back and hit me."*
DB ([...])	*"hes a liar that guyt"*
CS ([...])	*"i bid 45 for the 17s"*
DB ([...])	*"i paid 44"*
CS ([...])	*"u see these are 42/40 in […]. i told them i got 10mm that come in the middle fyi"*
DB ([...])	*"i hadn't seen that"*

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CS ([...])	*"but can leave alone if u want me to"*
DB ([...])	*"let me speak to them..and find out what the score is…seems the bid is rpting…at 42"*
CS ([...])	*"it was 43/40 then bid got to 42"*
DB ([...])	*"but might do better size…you wanna hit the bid?*
CS ([...])	*"nah, crack on man…its only 10mm"*
DB ([...])	*"you sure…the bid might do more anyway"*
CS ([...])	*"cool…i told […] to sort u out first and if he wants 10mm more, to tag it along"*
DB ([...])	*"lol…i told him same…but to tag you first lol…perfecty"*
CS ([...])	*"sweet…all done"*
DB ([...])	*"he took 40mm…now bid 43…yeah result…cheers bor"*

(457) First, [Credit Suisse employee] reveals certain trades he made at the end of the previous trading day ("*saw some biz last night […]*"), mentioning the bonds and the volumes he traded, and [...] asks if all the counterparties were US accounts. [Credit Suisse employee] replies that his seller was from the US, while his buyer had been Asian. [Crédit Agricole employee] thanks him for the information ("*chrs*"). [Deutsche Bank employee] then joins the exchange, discussing his activity bidding for the same BNG bonds [Credit Suisse employee] had mentioned.

(458) The conversation now turns to the BNG 17s mentioned by [Credit Suisse employee] at the beginning of the extract. [Deutsche Bank employee] and [Credit Suisse employee] coordinate their trading strategy from this point on. First, they exchange the bids they entered for the bond ("*i bid 45 for the 17s","i paid 44*"). Then [Credit Suisse employee] informs [Deutsche Bank employee] that a two-way price of 42/40 has appeared on the […] broker screen, which [Deutsche Bank employee] had not noticed ("*i hadn't seen that*"). [Credit Suisse employee] then discloses to [Deutsche Bank employee] he has told 'them' (probably the broker) that his price level is within that spread.

(459) However, [Credit Suisse employee] now offers to step aside so that [Deutsche Bank employee] can trade ("*can leave it alone if u want me to*"). [Deutsche Bank employee] says that he will speak to 'them' and comes back with the information that the counterparty is repeating a bid price of 42. [Deutsche Bank employee] then asks [Credit Suisse employee] if he wants to "*hit the bid*", that is sell the bond at the bid price, to which [Credit Suisse employee] replies "*nah, crack on man*". [Credit Suisse employee] thus allows [Deutsche Bank employee] to trade instead of him. [Deutsche Bank employee] finally thanks [Credit Suisse employee] for letting him have the trade[500]. Instead of competing for a trade in the normal course of business, the two have, unbeknownst to the counterparty, kept each other informed of their activities in respect of this potential trade every step of the way, allowing each of them to adapt his strategy, and ultimately decided between them which of the two is to conclude it.

(460) Crédit Agricole argues[501] that the initial exchange between [Credit Suisse employee] and [Crédit Agricole employee]: "*relates to general activity in the market, which would have been generally observable in the market*". However, [Credit Suisse

500 […]
501 […]

employee] and [Crédit Agricole employee] are also discussing client identities and trades. Moreover, [Crédit Agricole employee] is present in the chatroom throughout the coordination between [Credit Suisse employee] and [Deutsche Bank employee].

(461) On **23 January 2013**[502], in a persistent chatroom, […] (Deutsche Bank) and […] (Crédit Agricole) exchange information and coordinate trading on an IFC bond.

23 Jan 2013	05:39:59 – 05:43:20
DB ([...])	*"hey"*
CA ([...])	*"yo"*
DB ([...])	*"IFC 11/16…that's me on the bid in […]…i am short a few fo these"*
CA ([...])	*"i am just short a scrp 5mm"*
DB ([...])	*"ok…can you just stay out of it for the moment…as in don't bid them up…and i will add your 5mm wherever i get mine back?...cool?"*
CA ([...])	*"sure man…just tell them ty"*
DB ([...])	*"i bid 22 net"*
CA ([...])	*"k bro"*

(462) The extract indicates that [Deutsche Bank employee] and [Crédit Agricole employee] take each other's trading interests into account: "*stay out of it for the moment… as in don't bid them up*", meaning that [Crédit Agricole employee] must not place a competing bid until [Deutsche Bank employee] has covered his short. Whilst [Crédit Agricole employee] agrees to refrain from trading in the bond (in the broker screen of […]) at [Deutsche Bank employee's] request, [Deutsche Bank employee] is willing to add [Crédit Agricole employee's] buying interest to his own bidding interest. This intentionally misleads the market as to the level of demand for the bond at that time, thereby potentially affecting the market price and behaviour of sellers. The two traders have thus agreed to withhold a potentially competing bid from the broker market in order for [Deutsche Bank employee] to cover his position (and possibly [Crédit Agricole employee's] as well) without interference[503].

(463) Crédit Agricole contends[504] that, having ascertained that [Crédit Agricole employee] is also short in the IFC bonds: "*[Deutsche Bank employee] then suggests a back-to-back arrangement, whereby [Deutsche Bank employee] will sell bonds to [Crédit Agricole employee] to cover [Crédit Agricole employee's] short position if he is able to buy a sufficient volume of the relevant bonds*". However, Crédit Agricole's description of this agreement as a "back-to-back' trade does not correspond to the usual bond market term or even Crédit Agricole's own definition: a risk offsetting double trade which occurs when a trader faces a customer approach to either buy or sell bonds and, not wishing to go long or short, finds a counterparty to 'take the other side' (meaning sell on to, or buy from), whether via a broker or directly, and performs a 'back-to-back' trade[505]. What Crédit Agricole characterises in this instance as a back-to-back arrangement is, in reality, two traders with the same

502 […]

503 […]. [Deutsche Bank employee] may have been informed by a broker that [Crédit Agricole employee] had shown interest in placing a bid for those bonds at that time. […].

504 […]

505 See recital (51). […]

position trading in the market as if they were one and thereby avoiding competing with each other and potentially driving the terms of trade against them (namely bidding up the price of a bond they wish to buy, or *vice versa*). Credit Suisse also asserts that: "*there is no evidence that [Crédit Agricole employee] was planning to bid for the relevant bonds*". However, this ignores [Deutsche Bank employee's] request that [Crédit Agricole employee]: "*just stay out of it for the moment…as in don't bid them up*" and [Crédit Agricole employee]'s response: "*sure man*". If [Crédit Agricole employee] had no intention of bidding he would surely have told [Deutsche Bank employee] at this point.

(464) On **31 January 2013**[506], in a persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) exchange information and coordinate prices on an EIB 09/20 bond. […] (Crédit Agricole) is also present in the chatroom.

31 Jan 2013	06:02:08 – 06:05:38
DB ([...])	*"[Credit Suisse employee]…i just went 41 offered eib 09/20…i am still short…but these look too tight i think…[...] told me you were about to stick up a 41 offer aswell"*
CS ([...])	*"hhaha...i just pt it up at the same time…i'm flat, but same thing.. .i think they look wrong"*
DB ([...])	*"they gone 47 bid…will go 42 offered…i am still short…but just see whats out there"*
CS ([...])	*"cool.. .would offer there too.. .lets see what they say"*
DB ([...])	*"yeah"*

(465) [Deutsche Bank employee] reveals his pricing strategy and current position on an EIB bond to [Credit Suisse employee]. [Deutsche Bank employee] then tells [Credit Suisse employee] he has been told by […] (an inter-dealer broker) that [Credit Suisse employee] intended to show the same price level as [Deutsche Bank employee]. [Credit Suisse employee] then confirms this and reveals his own position in the bond. [Deutsche Bank employee] and [Credit Suisse employee] then discuss the current offer level, which they estimate is wrong. [Deutsche Bank employee] finally tells [Credit Suisse employee] he will update his offer price to 42. [Credit Suisse employee] in turn agrees to align his own pricing and show the same offer level[507].

(466) According to Credit Suisse[508], both traders separately identified that a bid for EIB 09/20 bonds on the […] broker screen was mispriced because it was too tight and whilst: "*It was not in [Credit Suisse employee's] or [Deutsche Bank employee's] interest to trade the bonds because [Deutsche Bank employee] had a short position and [Cedit Suisse employee] was flat. Nonetheless, both of them made an offer due to their role as market makers as they needed to generate liquidity for the bond*". This interpretation of the evidence is unconvincing. First, the rationale for generating liquidity for a bond, as opposed to a customer or themselves, is not explained. Credit Suisse has also asserted that "*smart money*" investors are quick to identify mis-pricing and any opportunities for making money[509]. Even if investor customers are not so well informed, other traders and interdealer brokers could be counted on to

506 […]
507 […]
508 […]
509 See recital (705).

take a profit from any perceived mispricing. This is precisely what [Deutsche Bank employee] and [Credit Suisse employee] are contemplating in this instance. They are happy to sell the bonds, despite being short, or flat, because they think that the current price is relatively high. Just over twenty minutes later, [Deutsche Bank employee] announces: "*showed them at 43…and told them* [presumably […]] *to work it*". This is the strategy of a trader looking to make a deal, not voluntarily losing money in the interests of bond liquidity. This strategy would be entirely legitimate if he was not sharing his pricing and intentions with a trader from another bank.

(467) Crédit Agricole states[510] that: "*[Crédit Agricole employee] did not participate in the exchange and cannot be assumed to have seen the content of this exchange…Indeed [Crédit Agricole employee] did not say anything in the chat room for nearly two hours prior to this exchange and almost 30 minutes subsequently*". However, [Crédit Agricole employee] speaks less than two minutes after [Deutsche Bank employee's] last announcement in respect of the EIB bonds ("*told them to work it*") and can be presumed to have been present for at least part of the relevant exchange Moreover, as set out in recital (587), the contents of a multilateral chatroom were available for all participants to review.

(468) On **15 February 2013**[511], in a persistent chatroom, […] (Deutsche Bank) and […] (Crédit Agricole) coordinate their trading strategy, including price levels and the timing of their offers, on a CADES 01/18 bond.

15 Feb2013	10:29:52 – 11:11:21
DB ([...])	*"you wann sell any cades 01/18?...i am long 80mm…but gonna look to add like another 25mm and round it up…and just wanna see how many are actually out there..we seeing large payingin 30yrs…that's whats pushing swaps out…[…]…you there?"*
CA ([...])	*"yh"*
DB ([...])	*"i am gonna try to buy some at 65.5 if you care at all"*
CA ([...])	*"sorry lemme checl…u want me to sell mine?..or go with you on the buyside"*
DB ([...])	*"either or man…it hink there a few losr hands out there"*
CA ([...])	*"fck it..lets buy em"*
DB ([...])	*"ok"*
CA ([...])	*"both get fooked probs lol"*
DB ([...])	*"i got 80mm on the book..shall we try to get 50mm each or something?"*
CA ([...])	*"yh who got the cheapest offer"*
DB ([...])	*"[…]"*
CA ([...])	*"cool…lift it"*
DB ([...])	*"at 65?"*
CA ([...])	*"and I'll take whatever u don't want…hold on…calling you"*
	[Phone call][512]
DB ([...])	*"Hey"*
CA ([...])	*"Hey bro"*

510 […]
511 […]
512 […]

DB ([...])	*"Yo"*
CA ([...])	*"Um…they were trading at 66 this morning, you know that right?"*
DB ([...])	*"Yeah but they're at 66.5 now aren't they"*
CA ([...])	*"Yeah I'm just saying, let's try and go middle bid right?"*
DB ([...])	*"Yeah, yeah, yeah that's what I was saying. No, no,that's what I was saying. We'll go 66.5 bid first, that's what I was going to write in the chat.*
CA ([...])	*"Yeah fine."*
DB ([...])	*"You know what I'm thinking yeah, I spoke to one account who, uh, might have interest."*
CA ([...])	*"Yeah"*
DB ([...])	*"And it's an account that'll keep coming back to buy them yeah."*
CA ([...])	*"Okay"*
DB ([...])	*"But you can't buy them yet because they're not seasoned yet"*
CA ([...])	*"Seasoned yeah I gotcha, I think I've got a pretty good idea who those fuckers are"*
DB ([...])	*"Alright fine, alright, let me, let me do it and I'll just tell them whatever we get just split it, just split it with you"*
CA ([...])	*"Yeah yeah that's fine."*
DB ([...])	*"Okay, alright cool"*
	[Bloomberg chat continues]
DB ([...])	*"66 offer in about 20mm odd..two sellers"*
CA ([...])	*"65 u mena"*
DB ([...])	*"I don't think theres that many out there"*
CA ([...])	*"fine lets lift them"*
DB ([...])	*"just in weak hands..lets wit a bit"*
CA ([...])	*"k"*
DB ([...])	*”like 10 mins or so”*
CA ([...])	*“sure”*
DB ([...])	*“maybe even make a 65.5 lock… if we get lifted we sell 2mm… what you think?”*
CA ([...])	*“actually yeah thats cool… good idea”*
DB ([...])	*"right… so spoke ot […] …they were left a buyer a 66..reckons if we go 65.5 offered we will get lifte…shall we just lift 65…and see wha thappends"*
CA ([...])	*"ok do it"*
DB ([...])	*"0.5 bps..who cares!..ok..am onit…ok lifted 65…told him to do 100mm all day…50mm each…yeah?...thees will catch a bid…just have to bide our time*
CA ([...])	*"y"*
CA ([...])	*"so 25mm thats it"*
DB ([...])	*"yeah…12.5mm each"*
CA ([...])	*"cool"*

(469) [Deutsche Bank employee] first tells [Crédit Agricole employee] that he wants to increase his position in the bond, initially proposing to trade with him. [Crédit Agricole employee's] response suggests that he is willing to either sell to [Deutsche Bank employee] or join him to coordinate their buying. [Deutsche Bank employee] then suggests that there are potential sellers in the market, so both traders agree to try

to get 50 million each. After a check on brokers' prices ("*who got the cheapest offer*"), [Crédit Agricole employee] tells [Deutsche Bank employee] to lift the cheapest offer and that he is ready to buy any size [Deutsche Bank employee] does not want, thereby confirming his willingness to buy, as long as it is compatible with [Deutsche Bank employee's] trading strategy.

(470) A phone call then takes place in which [Deutsche Bank employee] and [Crédit Agricole employee] further discuss and align their views on the trading strategy, in particular on the price [Deutsche Bank employee] should bid for bonds (with the implicit agreement that [Crédit Agricole employee] will not place a competing bid himself but will split [Deutsche Bank employee's] trade). The two traders then discuss the right time for [Deutsche Bank employee] to place his bid ("*like 10 mins or so*"), then agree on the price at which [Deutsche Bank employee] should lift the bonds on the screen ("*ok do it… ok lifted 65*"). Some minutes later, the two traders notice a lack of liquidity in the bonds after [Deutsche Bank employee's] purchases and decide that their joint efforts are over. [Deutsche Bank employee] confirms the split between them ("*12.5mm each*")[513]. At all times, the two traders choose to assist one another in their activities and split the results between them.

(471) Crédit Agricole confirms[514] that [Deutsche Bank employee] and [Crédit Agricole employee] agree that: "*[Deutsche Bank employee] will source the bonds in the market and sell half of any bought to [Crédit Agricole employee]*". Crédit Agricole also states that: "*Given the back-to-back nature of the transaction, [Deutsche Bank employee] checks in with [Crédit Agricole employee] on the price he is planning to pay for the bonds (presumably to ensure that [Crédit Agricole employee] would be willing to pay the price as part of the back-to-back transaction).*"

(472) As with the communication of 23 January 2013[515], Crédit Agricole characterises this trade as a 'back-to-back' when there is no sourcing of liquidity between the two traders at all. [Deutsche Bank employee] has not received a customer approach from another market participant wishing to sell him 25 million bonds that he would like to sell on, at least in part, to offset his risk. Instead, on his intiative and with [Crédit Agricole employee's] agreement, the two supposedly independent traders are effectively acting as one in the market to buy the bonds at a price agreed between them. There is no justification for this. The fact that [Crédit Agricole employee] was not originally "*independently seeking to purchase the relevant bonds*" is irrelevant. If they had not already been exchanging information on their positions and strategies, [Crédit Agricole employee] would not have bought the bonds at all.

(473) On **25 February 2013**[516], in a non-persistent chatroom, […] (Deutsche Bank) had the following discussion with his colleague […] (Deutsche Bank), which provides context to [Deutsche Bank employee's] communications with […] (Crédit Agricole) and […] (Credit Suisse) and indicated the value of their multilateral contacts.

25 Feb 2013	02:04:43 – 02:06:29
DB ([...])	*"you see that email from […]..about no longer allowed to have*

[513] […], in which [Deutsche Bank employee] confirms the split of the CADES bonds with [Crédit Agricole employee] to broker [employee] of […].
[514] […]
[515] See recitals (461)-(463).
[516] […]

	chat rooms with traders at other banks?"
DB ([...])	*"yeah!"*
DB ([...])	*"that's gonna really hinder us"*
DB ([...])	*"why?"*
DB ([...])	*"we not gonna know what flows are going on with [Crédit Agricole employee] and [Credit Suisse employee]"*
DB ([...])	*"what i do with [...] is we open a new room every day..as long as its not permanent chat, its ok"*
DB ([...])	*"ah ok..gonna have to do that then"*

(474) [Deutsche Bank employee] and [Deutsche Bank employee] are discussing new Deutsche Bank rules banning the use of persistent multilateral chatrooms with competing traders. This extract clearly demonstrates [Deutsche Bank employee's] awareness of the value of his relationships with [Crédit Agricole employee] and [Credit Suisse employee], and of the constant communications they engaged in through the chatrooms over the period of the infringement. It also demonstrates that the Deutsche Bank traders were thinking of ways to circumvent this new measure, by using bilateral daily chatrooms, in order to be able to keep going the exchange of information ("*flows*" taking place "*every day*") with the respective traders from the other banks. Even after the banning by Deutsche Bank of the use of persistent multilateral chatrooms, the traders from Credit Suisse and Crédit Agricole continued using the same persistent chatroom[517] (as revealed during the Commissions's inspection at Credit Suisse's premises[518]) that they had used in the past together with the Deutsche Bank trader. On **8 March 2013**, for example, in the respective persistent chatroom which continues between […] (Credit Agricole) and […] (Credit Suisse), the two traders continue referring to the regular contacts and social gatherings with ["…"], which refers to […] (Deutsche Bank)[519].

(475) On **13 March 2013**[520], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) exchange information and coordinate trading on BNG bonds.

13 March 2013	05:51:53 – 07:11:48
CS ([...])	*"hey dude..just done a switch where I sold bng 10/16s and bought bng 2.5 1/16s here."*
DB ([...])	*"i am long bng 10/16 if you need any... also long bng 01/16"*
CS ([...])	*"i was long 15mm which i sold at 58 on switch…need just 12mm if that suits"*
DB ([...])	*"i am making 59/55 out there"*
CS ([...])	*"is that your 34/ in bng 1/16s?"*
DB ([...])	*"cant get to 58..yeah that me in the 01/16..well that's my offer at 33…someone bidding 34 for 6mm..but […] had US guy yesterday looking for better size..so hes keeping the bid on screen till he comes in..if they trade at 33 orr 33.5 and you want some of the trades that's fine"*

517 Persistent chatroom named 'DB/CA/CS $ CHAT', […].

518 […]

519 […]. The three traders also continued to meet socially and in October 2013, the three traders arranged to meet up during business trips to New York the following week (see recital (821)).

520 […]

CS ([...])	*"gotcha, cool. Just see that 10/16s price in […] …that's cool"*
DB ([...])	*"happy to split any sale in the 01/16 if you need to..i hot 90mm of those..i can get to 57 on the 10/16..so in the middle"*
CS ([...])	*"i wont touch the 1/16s, that's cool…i only got 13mm (was short 14mm already)"*
DB ([...])	*"ah ok cool"*
CS ([...])	*"but got them at 38.5 , so not too bad"*
DB ([...])	*"result!..thats cheap..the 01/16 always been a good one ot have"*
CS ([...])	*"might aswell tidy that 10/16s up if ok? 12 mm at 57 is fine"*
DB ([...])	*"yeah sure man thats fine..[…]?..i will sort it"*
DB ([...])	*"i am getting lifted in bng 01/16…at 33.5 in […] …only 6mm so far..was the guy bidding 34..but they are posting to try and get more done"*
CS ([...])	*"ah cool…hopefully bigger US guy will come in..ta*
DB ([...])	*"happy to split any part of it"*
CS ([...])	*"its cool…get yours down to a managable position and then i'll worry about mine."*
DB ([...])	*"you sure bro?...i am easy man"*
CS ([...])	*"yeah man…chill. it'll probably just retail out on the system over time. But cheers."*

(476) [Deutsche Bank employee] and [Credit Suisse employee] exchange commercially sensitive information on their relative positions and recent trades in a BNG 01/16 bond (in which they are both long). [Credit Suisse employee] then asks [Deutsche Bank employee] about a bid price in a broker's screen and [Deutsche Bank employee] confirms the offer on the screen is from him. [Deutsche Bank employee] then tells [Credit Suisse employee] about a client potentially interested in trading the BNG 01/16 bond and that he would be happy to split any sale of that bond with [Credit Suisse employee]. After a trade has occurred, [Deutsche Bank employee] reiterates his readiness to split the trade with [Credit Suisse employee]. [Credit Suisse employee] then declines and tells [Deutsche Bank employee] that he will hold off trading his bonds until [Deutsche Bank employee] has reduced the size of his position to the desired level. [Deutsche Bank employee] and [Credit Suisse employee's] exchanges here indicate that both are acting as if they were trading the same book, willing to split each other's trades with a third party and take each other's interests into account, for example when [Credit Suisse employee] interrupts his trading activity in the bonds until [Deutsche Bank employee] has reached his goal[521]. None of the parties has put forward any alternative explanation for this communication.

(477) On **19 March 2013**[522], in a persistent chatroom, […] (Crédit Agricole) and […] (Credit Suisse) exchange pricing information (based on recent trades or internal pricing intentions) on "*kbn 03/18s*": "*Nether 09/15s*": "*EIB 04/16s*": "*KfW 16s*" and "*coe 4/17s*".

521 […]
522 […]

19 March 2013	10:00:19 – 14:58:26
CA ([...])	*"just bid on kbn 03/18… 25-50mm… bid +38 and missed"*
CS ([...])	*"i just got hit in 10mm at 38 on the system… and then got hit at 38.5 in gfi"*
CA ([...])	*"ah… lol good miss then"*
CS ([...])	*"asset swap seller/unwind?"*
CA ([...])	*"no cb seller…outright"*
CS ([...])	*"gotcha"*
CA ([...])	*"getting checked nther 09/15… seller"*
CS ([...])	*"another $hitty long here"*
CA ([...])	*"where u marking 8/4?"*
CS ([...])	*"i had them marked at 6"*
CA ([...])	*"ok i showed 8/4 2 way indiction to the guy… not come back yet"*
CA ([...])	*"i covered up some shorts today… was short 100mm of these eib 04/16..bought most back… got some at 19 just now"*
CS ([...])	*"decent purchase. I covered some kfw16s…smallish at 17"*
CA ([...])	*"got hit in a few COE bits btw...coe 04/17 and coe 02/15… in case u short"*
CS ([...])	*"small long 4/17s…where u got them marked?... i like that bond….have them +53 bid here"*
CA ([...])	*"got them 51 middle..so yeah same area"*
CS ([...])	*"cool"*

(478) In the span of a few hours, [Crédit Agricole employee] and [Credit Suisse employee] exchange pricing information in relation to at least four separate bonds, by means of disclosing either the prices at which they just completed (or missed) trades (in relation to the kbn 03/18s, the EIB 04/16s and the KfW 16s), or by disclosing where they are "marking" (that is, pricing) the relevant bonds (in relation to the Netherlands 09/15 and the COE 04/17[523]).

(479) Crédit Agricole states[524] that the information exchanged between the two traders was: "*otherwise obtainable and/or available*". This is not correct in relation to their own pricing of bonds. The prices which they are exchanging are not obtained from broker screens and other platforms[525] but are their own current valuations (Crédit Agricole agrees that "marked" in this context refers to current pricing[526]). In addition, they are discussing positions, client approaches and client identities.

(480) On **21 March 2013**[527], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Crédit Agricole) exchange sensitive information about trades and clients.

21 March 2013	04:08:22 – 04:18:40

523 From 13:57:53 onward in relation to the COE 04/17s, [Credit Suisse employee] indicates he is marking them at +53 on the bid side, while [Crédit Agricole employee] indicates his mid is [+]51, which is in the "same area". This is logical as the mid lies between the bid and offer price, hence a mid of +51 could readily indicate a bid price of +53.

524 […]

525 See recitals (714)-(715).

526 See recital (721).

527 […]

CA ([...])	*"just bought 35mm kfw 04/16 and sold 100 mm kfw 01/14"*
DB ([...])	*"ah nice"*
CA ([...])	*"had the 01/14 so all good...no margin in this cr4p though"*
DB ([...])	*"nah man... that front end stuff a waste of time... being asked to offer kfw 01/14 now aswell... i am showing them at +2"*
CA ([...])	*"what cash is that"*
DB ([...])	*"sold them... 100.89"*
CA ([...])	*"ah shlt...i sold at 100.9125"*
DB ([...])	*"thats good man... as in good for you"*
CA ([...])	*"not that cash ... just the level man ... he is having u over... np"*
DB ([...])	*"yeah... never even traded withthis guy before"*
CA ([...])	*"lol he is a spiv... previous experince tells me to be careful with this guy"*
DB ([...])	*"really?"*
CA ([...])	*"this is a cb u delaing with right"*
DB ([...])	*"yeah"*
CA ([...])	*"cool .. yh he dodgy... lol"*

(481) In the above extract [Deutsche Bank employee] and [Crédit Agricole employee] exchange price information on trades in a KFW bond they have each just executed. The exchange takes place after each has executed his trade. Nevertheless, the information concerns pricing of recent trades and can serve to reduce uncertainty as to the price at which that bond might be traded in the near future[528]. The two traders then briefly discuss the customer. Although the customer is not named in the chat, [Crédit Agricole employee's] question ("*this is a cb*[529] *u delaing with right*") and reaction to [Deutsche Bank employee's] reply ("*yh he dodgy*") shows that [Crédit Agricole employee] may have guessed the identity of the client.

(482) Later in the day and in the same document, […] (Crédit Agricole) and […] (Deutsche Bank) discuss an axe sheet[530].

21 March 2013	07:29:22 – 08:26:04
CA ([...])	*"dude... gonna send you something"*
DB ([...])	*"cool"*
CA ([...])	*"is that yopur axe sheet?"*
DB ([...])	*"yeah... calling"*
CA ([...])	*"dont say u heard iot from credit ag though .. as he sends us some good shlt on euro lol"*
DB ([...])	*"no i wont... off course not"*

528 Specifically, after hearing [Deutsche Bank employee's] price [Crédit Agricole employee] informs him he was able to sell the bonds at a better price. This information could impact [Deutsche Bank employee's] future strategic behaviour.

529 In this context: "*cb*" refers to central bank.

530 See recital (53). An axe sheet is the interest that a trader shows in buying or selling a particular financial security that is already in his book. When a broker or a salesperson of the banks asks the traders whether he has any axes, they are enquiring whether he has any interest in buying or selling a bond. When other market participants are aware of a trader's axe sheet they may exploit the situation by offering unfavourable prices or withholding certain trades to their own benefit.

CA ([...])	*"he sent the sheet by mistake ... [...] breakin my nutz now fack what a mess"*
DB ([...])	*"sorry man... will speak to my sales"*
CA ([...])	*"he shouldnt have bothered as i know your axes anywya lol"*
DB ([...])	*"lol... yeah exactly"*

(483) [Crédit Agricole employee] informs [Deutsche Bank employee] that he has received a copy of [Deutsche Bank employee's] axe list. [Deutsche Bank employee] and [Crédit Agricole employee] then discuss how the axe sheet might have been obtained by Crédit Agricole (the axe sheet was probably sent by mistake by a salesperson of Deutsche Bank). [Crédit Agricole employee] concludes the exchange by commenting: "*he shouldnt have bothered as i know your axes anywya lol*", which reads as a joke, but is probably a humourous acknowledgement of the close relationship and constant flow of sensitive information between the traders[531].

(484) Later on the same day, [...] (Deutsche Bank) and [...] (Crédit Agricole) exchange price information on EIB 03/20 in relation to ongoing trading activity.

21 March 2013	10:43:55 – 10:51:28
CA ([...])	*"seeing a seller of eib 03/20... u long that no"*
DB ([...])	*"yep... long 75mm"*
CA ([...])	*"where u marking"*
DB ([...])	*"38/35"*
CA ([...])	*"bidding back .. thats a cr4p bond"*
CA ([...])	*"i bid 41... that looks fair"*
DB ([...])	*"CB seller?"*
CA ([...])	*"no AM"*

In this extract, [Crédit Agricole employee] first asks [Deutsche Bank employee] about his price level for a specific EIB bond ("*where u marking*"). [Deutsche Bank employee] then reveals to him his own bid and ask spread levels. [Crédit Agricole employee] then tells [Deutsche Bank employee] he is "*bidding back*", thereby indicating that he is bidding defensively (relative to [Deutsche Bank employee's] level). Finally, [Crédit Agricole employee] also reveals the type of the client (an Asset Manager) to [Deutsche Bank employee].

(485) Still later in the day, [...] (Crédit Agricole) and [...] (Deutsche Bank) exchange information on a CDC[532] bond.

21 March 2013	11:25:38 – 11:34:26
DB ([...])	*"you need any cdc 09/13?... got 3mm"*
CA ([...])	*"nah scrappy long myself"*
DB ([...])	*"you a french house... must have somehwere to go witht hem"*
CA ([...])	*"yh traded that french shlt really well"*

531 [...]

532 Caisse des dépôts et consignations, a French agency (www.caissedesdepots.fr/en).

DB ([...])	*"where you marking these cdc?"*
CA ([...])	*"i dunno man... 100.40/50"*
DB ([...])	*"perfect... sold my cdc... at 100.40...in [...]... made a 100.40"*
CA ([...])	*"cooll"*

(486) In this extract, [Deutsche Bank employee] says he is long 3mm in a CDC 09/13 bond and offers to trade with [Crédit Agricole employee]. [Crédit Agricole employee] is also long and is not interested in a trade. [Deutsche Bank employee] then asks [Crédit Agricole employee] where he is marking that bond. [Crédit Agricole employee] reveals his price, to which [Deutsche Bank employee] replies "*perfect*" at 11:26:51 of the chat. Less than eight minutes later at 11:34:16, [Deutsche Bank employee] informs [Crédit Agricole employee] he has sold his CDC at the price [Crédit Agricole employee] suggested (100.40)[533].

(487) In respect of the communications of 21 March 2013, Crédit Agricole argues[534] that: "*there is nothing in that series of communications that provides any evidence of CA-CIB coordinating prices to show to the market*". However, what the communications of 21 March 2013 demonstrate is sharing of information between the two traders on recent transactions, customer identities, current positions and current pricing of bonds which may help the two traders reduce the market uncertainty and help them in assessing their pricing intentions for the respective bonds[535].

(488) On **24 May 2013**[536], in a persistent chatroom, […] (Crédit Agricole) and […] (Credit Suisse) exchange information on their ongoing dealings with a customer they call 'the sprayer'.

24 May 2013	09:01:16 – 09:05:06
CA ([...])	*"just bid eib 08/16... 50mm... sprayer"*
CS ([...])	*"ditto... i bid 99.80"*
CA ([...])	*"sme... he got .82 away"*
CS ([...])	*"[...]... left me an order there"*
CA ([...])	*"10:00:12 [CRÉDIT AGRICOLE EMPLOYEE] : can do .80 best10:00:26 [anonymous] : Sec pls10:00:55 : Sorry, they traded away at 99.8210:00:59 [CRÉDIT AGRICOLE EMPLOYEE]: ok"*
CS ([...])	*"[...]"*
CA ([...])	*"haah w4nkers!"*
CS ([...])	*"[anonymous]: can u pls work BI order to sell @ 99.82? order for 15mins pls... killed the order, but still don't believe they got .82"*
CA ([...])	*"agree... fck 'em"*

(489) Here, [Crédit Agricole employee] and [Credit Suisse employee] exchange information on bids they have each placed with the client for EIB 08/16, a few minutes earlier[537]. Both of them have quoted the same bid price of 99.80. The most

533 […]

534 […]

535 See recitals (106)-(108).

536 […]

537 The time signature on the chat between [Crédit Agricole employee] and [Credit Suisse employee] is in UTC, whilst the excerpts from a chat with […] concerning the response from the client that [Crédit

likely sequence of events from the chat is that each of them placed the same bid independently, but they inform each other only minutes afterwards of the price they have quoted, before any trade has been executed. [Crédit Agricole employee] further discloses feedback from the customer on his bid, which is that the client saw a better price of 99.82 from another dealer. [Credit Suisse employee] replies that the client placed an order with [Credit Suisse employee] at that price, meaning the client offered to buy from [Credit Suisse employee] for a certain time period if [Credit Suisse employee] met the desired price. The traders both agree that the client was probably bluffing.

(490) They have not coordinated their initial bids to the client, but have shared very recent or current pricing information on the interactions each has had with this client on the same bond, which they could take into account should the client turn to them again in the short term.

(491) Crédit Agricole states[538] that the information shared: "*relates to bids already placed by the traders, which would have been otherwise observable and/or available*". As these are not trades via a brokers screen, but bids made to the same (identified) client, then the information would not be public.

(492) On **3 June 2013**[539], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Crédit Agricole) discuss their pricing of a KfW bond.

3 June 2013	11:48:44 – 12:03:55
DB ([...])	*"hey..where you marking kfw 08/21?"*
CA ([...])	*"sec..ct10-1/-5"*
DB ([...])	*"yeah perfect…i quoted +1/-4"*
CA ([...])	*"bang on…seller? or 2 way"*
DB ([...])	*"two way…so no idea what way…and not a regular guy"*
CA ([...])	*"ah k…prob a seller…then"*

(493) [Deutsche Bank employee] tells [Crédit Agricole employee] about a client enquiry in KfW 08/21 and asks him for his price in the bond. [Crédit Agricole employee] replies "ct10-1/-5", providing the price against the ten year US Treasury benchmark. [Deutsche Bank employee] then discloses his own 2-way quote to [Crédit Agricole employee]. Both traders are pleased to see their quotes are close to each other, and then speculate as to whether the client is a buyer or a seller.

(494) Crédit Agricole states[540] that the reason [Deutsche Bank employee] asked [Crédit Agricole employee] where he was marking the KFW bond was: "*possibly with a view to setting up a back-to-back trade*". There is, however, no indication of this in the communication, as [Deutsche Bank employee] does not ask [Crédit Agricole employee] whether he is long or short. Rather, the traders engage in an exchange of their own pricing[541].

Agricole employee] pastes into his chat with [Credit Suisse employee] is set one hour later, which logically means that the time of the chat between [Crédit Agricole employee] and […] is expressed in CET. This means that the chat with […] took place a few minutes earlier than the chat between [Crédit Agricole employee] and [Credit Suisse employee] shown here.

538 […]

539 […]

540 […]

541 See recitals (721)-(724).

(495) On **2 July 2013**[542], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Crédit Agricole) discuss pricing on CADES 04/17s, and exchange information concerning EIB 06/18s and 03/18s, CADES 01/18s, EIB 03/20s and on the trading behaviour of a specific competitor ("*GS*"[543]).

2 July 2013	03:35:24 – 07:55:48
DB ([...])	*"where you marking cades 04/17?"*
CA ([...])	*"say 78/73… maybe 77/72… imn this mkt"*
DB ([...])	*"yeah sounds about right"*
DB ([...])	*"i am close to buying 200mm eib 06/18"*
CA ([...])	*"lol… i would biod a lonnnnnng way back"*
DB ([...])	*"nah… got a buyer already in the wings"*
CA ([...])	*"k"*
DB ([...])	*"and they were trading at lib+5 a short while back… still only at lib+18… can easily come in another 5-7 bps"*
CA ([...])	*"l+5? nah never tgot that tight… +8ish i think it was max… either way….they come in a lomng way from wides…be interesting to see what happens if u get them… u bidding +35?"*
DB ([...])	*"yeah… guy wants 33.5… for 275mm"*
CA ([...])	*"good luck… what a pr1c"*
DB ([...])	*"hes also thinking about selling me 250mm eib 03/18… but wants 23.5 for them"*
CA ([...])	*"lol"*
DB ([...])	*"yep"*
CA ([...])	*"this guy is a dreamer"*
DB ([...])	*"i got one guy looking at both"*
DB ([...])	*"that my bid in the cades 01/18… in […] … and […]"*
CA ([...])	*"ah"*
DB ([...])	*"so going cheaper offer aint gonna help!"*
CA ([...])	*"thought it was genuice away from u"*
DB ([...])	*"nah… but if you wanna dust them… will take them on the bid"*
CA ([...])	*"not yet when u bid 50 i will hit u lol"*
DB ([...])	*"i just sold 73mm eib 03/20 in […] … on a no post at 44.5"*
CA ([...])	*"take you out?… i was short 10"*
DB ([...])	*"yeah taken me out… sorry man I dint realise"*
CA ([...])	*"its ok…nice sale"*
DB ([...])	*"would have kept the 10mm for you"*
DB ([...])	*"i just traded eib 03/20 at 44.5… now they going up at 44… and guy might even pay 43.5… must have been a retail buer i guess"*
CA ([...])	*"seriously weird….i dont get it"*

542 […]

543 This may refer to Goldman Sachs, a competing bank in the market. This bank is referred to in other chats as "[…]" after […], an employee with whom each of the core cartel participants has a relationship.

DB ([...])	*"i reckon GS bought some… causei keep lifting him in the EIB 21 and 09/20"*

(496) Again, in the space of a few hours of a single trading day, [Deutsche Bank employee] and [Crédit Agricole employee] exchange current or forward-looking commercially sensitive information on a number of different bonds, and at least one identified customer. In the first instance, [Deutsche Bank employee] requests price guidance ("*where you marking cades 04/17*"), which [Crédit Agricole employee] readily delivers ("*say 78/73… mayne 77/72*"). The traders then discuss [Deutsche Bank employee's] intention to purchase 200mm of EIB 06/18, with [Deutsche Bank employee] disclosing that he has a buyer waiting if he gets the bonds. The two traders exchange their views on where that bond has recently been trading and the direction it may go in. [Deutsche Bank employee] then reveals the price and the size the customer is requesting to make the sale to [Deutsche Bank employee] in that bond, as well as a similar potential trade in EIB 03/18.

(497) Subsequently, the two traders discuss CADES 01/18s in a context in which [Deutsche Bank employee] has placed a bid on two broker screens ([…] and […]), and warns [Crédit Agricole employee] that it is indeed his bid. [Deutsche Bank employee] implies that [Crédit Agricole employee] has offered cheaper in order to entice the bidder to come down in price, a strategy that will obviously not work as the bidder is [Deutsche Bank employee] himself ("*so going cheaper offer aint gonna help!*").

(498) Still later, the two traders discuss a sale [Deutsche Bank employee] has made for EIB 03/20, with [Deutsche Bank employee] disclosing the price he received and noting the trade was a "no post", meaning it would not be posted on the broker screen (and thus that [Crédit Agricole employee] would normally have no way to know that a trade occurred at that price via the broker). [Crédit Agricole employee] asks if the trade cleared [Deutsche Bank employee's] position and notes that he was short 10mm and would have bought them from [Deutsche Bank employee] given the chance. [Deutsche Bank employee] apologised for being unaware of [Crédit Agricole employee's] position. [Deutsche Bank employee] goes on to disclose to [Crédit Agricole employee] movements in the price he is observing for EIB 03/20, including what he believes the customer may be willing to accept as a price.

(499) Finally, [Deutsche Bank employee] discloses to [Crédit Agricole employee] intelligence concerning a specific competitor: "*GS*" (probably referring to Goldman Sachs), in relation to some event which [Crédit Agricole employee] has characterised as "*seriously weird*". Some minutes have elapsed without any communication between the two since the previous exchange, so it is unclear what [Crédit Agricole employee] is referring to. However, [Deutsche Bank employee] reveals that he believes GS has bought certain bonds, and that [Deutsche Bank employee] himself has been buying EIB 21 and 09/20 from GS.

(500) Crédit Agricole maintains[544] that the exchange: "*involves information relating to market colour and information that would have been otherwise observable and/or available*". As the two traders discuss client approaches, their current pricing and a trade which was not posted on any broker screen, then this is not the case.

544 […]

(501) On **10 July 2013**[545], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Crédit Agricole) discuss pricing on a bond on the [...] broker screen.

10 July 2013	06:30:22 – 06:36:35
CA ([...])	*"just got hit in asiaz 10./18… 25mm"*
DB ([...])	*"what level?"*
CA ([...])	*"thats all i bid for guessing he had size… 27"*
DB ([...])	*"i got asked as well"*
CA ([...])	*"what u show"*
DB ([...])	*"28/23… i am long 80mm already"*
CA ([...])	*"ure mkt in […]?"*
DB ([...])	*"nope…my offer in […]"*
CA ([...])	*"gonna go 23 offered? do u mind..dont want to do in your face"*
DB ([...])	*"nah its cool..i am 24 offered in […]"*
CA ([...])	*"k"*
DB ([...])	*"and […] has the better bid"*
CA ([...])	*"what is it…I don't have thier screen"*
DB ([...])	*"26/24..my offer..but bid is just for 2mm i think..probably someone else that's been hit..[Credit Suisse employee] also been hit"*
CA ([...])	*"great..that a/c is just sh1t"*
DB ([...])	*"yep"*

(502) The two traders begin discussing bids they each submitted to a client looking for ASIA[546] 10/18 bonds, including the exact price levels they both bid. [Deutsche Bank employee] then tells [Crédit Agricole employee] he has placed an offer on the […] broker screen. [Crédit Agricole employee] effectively requests [Deutsche Bank employee's] permission before posting his price ("*gonna go 23 offered? do u mind..dont want to do in your face*"), which [Deutsche Bank employee] gives. [Deutsche Bank employee] informs [Crédit Agricole employee] where he is offering the bond ("*i am 24 offered offered in […]*"), and also reveals to [Crédit Agricole employee] the current two-way price for the bond available on […], which [Crédit Agricole employee] is unable to access.

(503) Crédit Agricole argues[547] that: "*there is nothing in this exchange that provides evidence of CA-CIB coordinating prices to show to the market*". However, the fact that [Crédit Agricole employee] asks [Deutsche Bank employee] whether he minds if he shows an offer price of 23 on a broker screen before doing so, and [Deutsche Bank employee's] consent ("*nah its cool*") is clear contemporaneous evidence of an accord on the prices shown to the market.

(504) Later on the same day, the two traders exchange information on a client inquiry both have received for KfW 01/20 bonds[548].

10 July 2013	06:52:39 – 06:58:13
DB ([...])	*"lifted in 50 kfw 01/20"*

545 […]
546 Asian Development Bank, a supra-sovereign (www.adb.org).
547 […]
548 […]

CA ([...])	*"yh… hes asking me… i aint selling mine there… fck him"*
DB ([...])	*"20… i sold at"*
CA ([...])	*"he said 20.5?... lyaing kunt"*
DB ([...])	*"20.1 i sold at"*
CA ([...])	*"what a liar"*
DB ([...])	*"you didn't sell them?"*
CA ([...])	*"nope… showed him 20 and he passed … so screw him"*
DB ([...])	*"what a joker"*
CA ([...])	*"wanted 20.5"*

(505) [Deutsche Bank employee] announces he has had an offer lifted, and [Crédit Agricole employee] replies that he has also received the same client inquiry, but is resisting selling the bonds at the client's price. [Deutsche Bank employee] reveals the price at which he sold the bonds, and [Crédit Agricole employee] then replies that the client lied to him about seeing a better price away (from another dealer). A few minutes later, [Deutsche Bank employee] asks [Crédit Agricole employee] if he showed the bonds and [Crédit Agricole employee] says he showed at 20 (close to [Deutsche Bank employee's] price of 20.1) rather than 20.5 (the price the client was asking) and the client passed. The information given by [Deutsche Bank employee] in this extract was undeniably valuable for [Crédit Agricole employee] in formulating his behaviour towards the client.

(506) In respect of this extract, Crédit Agricole maintains[549] that: "*[Crédit Agricole employee] had put the price* [that is 20] *to the client before the exchange with [Deutsche Bank employee]*". This argument is contradicted by the evidence. First, the evidence clearly shows that [Crédit Agricole employee] made his offer *after* learning that [Deutsche Bank employee] was successful with 20.1. Secondly, irrespective of the exact timing of [Crédit Agricole employee's] offer, the two traders are exchanging pricing information for a client who has approached both of them.

(507) On **12 July 2013**[550], in a non-persistent chatroom, […] (Crédit Agricole) checks his pricing with […] (Deutsche Bank).

12 July 2013	05:50:29 – 06:25:12
CA ([...])	*"just bouthgt 50mm swed 0.25 12/14..sh1t sole gs deal"*
DB ([...])	*"sweet"*
CA ([...])	*"but looks ok"*
DB ([...])	*"pretty short date.. seen zero here so far today"*
CA ([...])	*"where would u bid that just out of interest"*
DB ([...])	*"let me take a look..cant find the issue"*
CA ([...])	*"sorry 10/14"*
DB ([...])	*"like a 0.30 mmy"*
CA ([...])	*"y bang on..chrs"*
DB ([...])	*"you should be able to sell those pups"*
CA ([...])	*"y"*

549 […]
550 […]

(508) [Crédit Agricole employee] has purchased 50mm of what appears to be Swedish sovereign bonds with a maturity of 10/14 (his initial indication of 12/14 is a typo). He asks [Deutsche Bank employee] for advice on where he should bid those bonds, which [Deutsche Bank employee] provides and [Crédit Agricole employee] agrees with.

(509) Crédit Agricole maintains[551] that this information would have been otherwise observable and/or available. As [Crédit Agricole employee] asks for [Deutsche Bank employee's] own bid pricing for the bond, that is not possible. Crédit Agricole also suggests that this exchange "*appears to relate to a potential trade between the traders*". This suggestion is, however, contradicted by [Deutsche Bank employee's] comment: "*you should be able to sell those pups*" (that is, you should be able to sell those bonds in the market).

(510) On **25 July 2013**[552], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Crédit Agricole) exchange competitively sensitive information, including their recent trading activities and current prices and positions, in KfW and CADES bonds.

25 July 2013	10:20:46 – 10:23:45
CA ([...])	*"got lifted in the new one this morn… 50mm… that issue is well rich"*
DB ([...])	*"i sold 500mm of them this morning"*
CA ([...])	*"ah nice!"*
DB ([...])	*"got them all back pretty much"*
CA ([...])	*"is it"*
DB ([...])	*"short 51mm"*
CA ([...])	*"what kind of buyer"*
DB ([...])	*"asia"*
CA ([...])	*"decent ticket… what level"*
DB ([...])	*"+10"*
CA ([...])	*"fck me… that's well expensive"*
DB ([...])	*"yeah"*
CA ([...])	*"i would have done 2 bps better than that"*
DB ([...])	*"for full 500mm?"*
CA ([...])	*"yep… had 100 on the book"*
DB ([...])	*"i had zero… on the book"*
CA ([...])	*"still got 50"*
DB ([...])	*"i lifted 14.5 everywhere… i got 150mm in [...] … on a no post… 100mm in [...] … about 50mm in [...] … and rest in house"*
25 July 2013	10:45:12 – 10:46:07
DB ([...])	*"where are those cades 18?… seen anything in them?"*
CA ([...])	*"im flat… got lifted in 50mm from an end custy at 51"*
DB ([...])	*"yeah i sold [...] my balance last week i think… in the bookies"*
CA ([...])	*"y"*
DB ([...])	*"but i am mean where are they now"*
CA ([...])	*"50/48 probs vs new 5"*

551 […]

552 […]

(511) [Deutsche Bank employee] and [Crédit Agricole employee] begin by disclosing volumes of the trades they have made in a new KfW issue that morning, with [Crédit Agricole employee] revealing he has sold 50mm and [Deutsche Bank employee] replying that he sold 500mm and had managed to recover most of his short by the time of the exchange with [Crédit Agricole employee]. [Deutsche Bank employee] revealed the type of buyer involved ("*asia*"), the price at which he had sold ("*+10*") to the buyer and that he had bought back the bonds to cover his short from a number of different sources at a single price ("*i lifted 14.5 everywhere*"[553]).

(512) Later, [Deutsche Bank employee] asks [Crédit Agricole employee] where he would price CADES 18 bonds. Both reveal they are flat, and [Crédit Agricole employee] suggests a price to [Deutsche Bank employee] ("*50/48 probs vs new 5s*") against a comparable US Treasury with a 5-year maturity[554].

(513) Crédit Agricole argues[555] that this communication: "*relates to trading activity that had already taken place, and general market colour.*" However, in reality, the two traders exchange sensitive information on client identity ("*asia*"), recent pricing to that client *("+10")* and current pricing ("*50/48*") and their own positions ("*still got 50", "im flat*") without any suggestion that this is in the context of 'sourcing liquidity' trades between them.

(514) Credit Suisse maintains[556] that the discussion between the traders on their trading activity and respective positions in the new KFW bond: "*helps the traders assess the true value of the bond and the level of liquidity in the market*". As for the discussion concerning the CADES bonds, Credit Suisse suggests that it is "*likely information gathering*" and "*to enable the market makers to gain market colour*" in the context of market making. In reality, there is no suggestion of liquidity sourcing between them, and they are discussing trades with identified third parties.

(515) On **9 August 2013**[557], in a persistent chatroom, […] (Credit Suisse) and […] (Crédit Agricole) exchange information on a trading strategy in relation to a customer who has asked both of them to offer a switch.

9 Aug 2013	14:56:50 – 15:10:04
CA ([...])	*"u olong nib 03/16… being asked a switch..."*
CS ([...])	*"yeah....we showed that switch out to them earlier...can't believe they're comping us..lol… edc 15s?... horribly expensive"*
CA ([...])	*"yep thats the one… they checkin around… told them i aint offering the nib… w4nkers"*
CS ([...])	*"where u got these edc? not sure where i"m gonna find a home for these"*
CA ([...])	*"i bid 100.10 cash"*
CS ([...])	*"i bid +12 and getting chiselled"*
CA ([...])	*"12...good bid!"*
CS ([...])	*"showd nibs out at -1"*
CA ([...])	*"great switch… hed be a knob not to do that… or even sell kfw*

553 […]
554 […]
555 […]
556 […]
557 […]

	09/.15 vs the nib..no brainer"
CS ([...])	*"i complained that we dont ever do anything in secondary with this account, so now they piled this on me... is it ulta competitive?... asking me to improve terms, but not sure if that's his target or seeing that away"*
CA ([...])	*"this a/c is a nightmare... better off NOT seeing them lol"*
CS ([...])	*"ah, ok... fk me...u aint wrong... just did it at +11 and -0.5"*
CA ([...])	*"lol"*

(516) [Crédit Agricole employee] tells [Credit Suisse employee] he has been "*asked for a switch*" by a customer, that is he has been asked to show an offer price for a bond (NIB[558]) and a bid price for another one (EDC[559]). [Credit Suisse employee] replies that the switch idea actually comes from Credit Suisse and expresses his incredulity at the fact that the client is now looking for prices elsewhere in the market ("*can't believe they're comping us*").

(517) [Crédit Agricole employee] then informs [Credit Suisse employee] that he has told the client he is not offering the NIB bond, thereby revealing he has declined to offer the switch (effectively disclosing to [Credit Suisse employee] that he would not compete for the trade). [Credit Suisse employee] then reveals he has been asked to improve terms but is unsure of the customer's true strategy. Thanks to the information he has received from [Crédit Agricole employee], he knows that at least one dealer contacted for the same switch has declined to offer, and this is information he can take into account in deciding whether to improve. Finally, [Credit Suisse employee] reveals he has done the switch and discloses the pricing terms.

(518) Crédit Agricole argues[560] that this exchange was: "*initiated by [Crédit Agricole employee] with the clear intention of setting up a back-to-back trade*" and that it: "*relates to bids already submitted*". This argument is contradicted by the fact that [Crédit Agricole employee] discloses that he has already told the customer that he was not selling the bond. He was therefore not sourcing liquidity in the NIB bond, but informing [Credit Suisse employee] that there is a customer in the market looking to take the bond, asking if [Credit Suisse employee] has it, and switching out of an EDC bond ([Crédit Agricole employee's] expression: "*i bid 100.10 cash*" for the EDC, indicates that he told the customer he would buy the EDC bond but not as a switch for the NIB). Contrary to Crédit Agricole's assertion that the conversation relates to prices already submitted, it is clear from the communication that the customer has approached both Crédit Agricole and Credit Suisse. Whilst [Crédit Agricole employee] will only buy the EDC bond, [Credit Suisse employee] is more willing to make the switch trade. Moreover, [Credit Suisse employee] is put under pressure to modify his terms whilst the two traders are discussing the trade, and in the end makes the switch price at different terms to his original bid and offer.

(519) On **14 August 2013**[561], in a persistent chatroom, [...] (Credit Suisse) and [...] (Crédit Agricole) discuss the trading of a CADES bond.

14 Aug 2013 10:41:20 – 10:43:09

558 Nordic Investment Bank, supra-national (www.nib.int).
559 Export Development Canada, Canadian agency (www.edc.ca).
560 [...]
561 [...]

CA ([...])	*"cades 04/17 what u doin… i have bonds fyi"*
CS ([...])	*"ah, ok....i'm long a couple only, but thought they'd come in too much, so left offer up there…. i can kill the offer if u like… didnt realise it was u"*
CA ([...])	*"ah k…yh i agree bought these og h dog last week at 81 lol"*
CS ([...])	*"lol"*
CA ([...])	*"i was about to slam the bid…and tulls told me your offer..so jus checkin"*
CS ([...])	*"ah, ok..so not your bid??... ok, go for it"*
CA ([...])	*"nop… cool will let you know"*
CS ([...])	*"I'm only long a scrap, so no biggie"*

(520) [Credit Suisse employee] and [Crédit Agricole employee] both take each other's trading interests into account and confirm each other's position and intentions, before either takes any action which could potentially harm the other. [Credit Suisse employee] offers to cancel ("*kill*") his own offer when he learns [Crédit Agricole employee] is long ("*i have bonds fyi*") in order for [Crédit Agricole employee] to be able to trade in the CADES 04/17 bond without a potentially competing price on screen.

(521) [Crédit Agricole employee] has been informed by a broker that an offer on the screen for these bonds is by [Credit Suisse employee]. There is also a bid for the same bonds on the screen, which [Crédit Agricole employee] intends to hit, and checks with [Credit Suisse employee] before doing so. [Credit Suisse employee] consents, saying his long position is small, and he is therefore not very interested in hitting that bid ("*I'm only long a scrap, so no biggie*").

(522) Crédit Agricole argues[562] that this communication: "*does not provide evidence that coordination took place between them, not does it demonstrate that [Crédit Agricole employee] was amenable to coordinating his trading activity*". They argue that [Credit Suisse employee's] offer price in the brokers screen is a "*non-competitive tester*" price and that he was not in a position to accept a large potential trade. However, in reality, the fact that [Crédit Agricole employee] agrees ("*ah k yh I agree*") to [Credit Suisse employee's] offer to withdraw his offer price, and then checks with [Credit Suisse employee] before 'slamming' the bid, that is traders' jargon for selling his bonds at the screen bid price, is clear contemporaneous evidence of both willingness to coordinate and actual coordination of trading activity.

(523) On **27 August 2013**[563], in a non-persistent chatroom, […] (Credit Suisse) offers to cancel his price in a broker's screen and subsequently refrains from making a bid to avoid impeding […]'s (Deutsche Bank)] interest.

27 Aug 2013	03:58:58 – 03:59:54 and 06:52:15 – 07:11:15
DB ([...])	*"also just bid 60mm bng 23"*
CS ([...])	*"ah… want me to lose that market?"*
DB ([...])	*"nah that's cool… good to see if a bid comes in for them"*
CS ([...])	*"cool… bng 23s … nice, that's exactly more of what you need!"*

562 […]
563 […]

DB ([...])	*"yeah tell me about it"*
DB ([...])	*"just maing 69/65 bng 23"*
CS ([...])	*"cool ... will stay out of it ... did you get them?"*
DB ([...])	*"yeah ... so now long 150mm"*

(524) [Credit Suisse employee] offers to cancel his price on a broker screen in order to support [Deutsche Bank employee's] trading strategy. His later comment: "*bng... nice, that's exactly more of what you need!*" suggest that he is aware of [Deutsche Bank employee's] position and interest in bonds. When [Deutsche Bank employee] updates him on his latest bid in BNG 23 bonds ("*just maing 69/65 bng 23*"), he assures [Deutsche Bank employee] that he "*will stay out of it*", namely he will avoid putting a price in the market which might hurt [Deutsche Bank employee's] chances of getting hit. [Deutsche Bank employee] eventually succeeds in his desired trade[564]. None of the parties has put forward any alternative explanation for this communication.

(525) On **4 September 2013**[565], in a non-persistent chatroom, […] (Deutsche Bank) offers to cancel his bid in response to […]'s (Crédit Agricole) comment.

4 Sept 2013	04:02:05 – 04:04:17
CA ([...])	*"dude u bidding these eib 06/18s in my face..will u stop that!"*
DB ([...])	*"oh in [...] ... sorry man ... I dint realise it was your offer"*
CA ([...])	*"haha"*
DB ([...])	*"will tell [...] to take my bid out!"*
CA ([...])	*"nah np"*[566]
DB ([...])	*"i long the 03/18 ... was trying to get lifted in those"*
CA ([...])	*"cool np"*

(526) [Crédit Agricole employee] tells [Deutsche Bank employee] that a price which [Deutsche Bank employee] has placed on a broker screen is affecting [Crédit Agricole employee's] trading efforts and asks him to stop. Although it is not clear how serious [Crédit Agricole employee's] comment is, as he later rejects [Deutsche Bank employee's] offer to cancel, [Deutsche Bank employee] is clearly willing to defer to him. He apologises: "*sorry man... I didnt realise it was your offer*" and continues: "*will tell […] to take my bid out*", advising [Crédit Agricole employee] of his intention to cancel his price in the broker's screen[567].

(527) Crédit Agricole states[568] that this communication "*does not reflect, or lead to any coordination on the part of CA-CIB*", because [Crédit Agricole employee's] original request is not serious or intended to result in any coordination. The fact that [Deutsche Bank employee] takes it entirely seriously reveals that such exchanges between the traders were routine. Moreover, it is not at all apparent that [Crédit Agricole employee's] original comment was a joke, as his "*cool np*" (rather than, for example: "*I was joking*") response to [Deutsche Bank employee's] explanation for his bid price on the Cantors screen indicates.

564 […]
565 […]
566 […]. "*np*" = no problem.
567 […]
568 […]

(528) **On 25 September 2013,** […] (Deutsche Bank) and […] (Credit Suisse) discuss their trading strategy concerning some "*Asia*" bonds on the phone[569]. [Deutsche Bank employee] calls [Credit Suisse employee] to let him know that he will let [Credit Suisse employee]: "*crack on*" with something: "*before, like, I, do you know what I mean, show them cheaper or whatever.*"

(529) [Credit Suisse employee] confirms [Deutsche Bank employee] is talking about certain Asia bonds, and initially tells [Deutsche Bank employee] it is unnecessary for him to wait for [Credit Suisse employee] to trade, but [Deutsche Bank employee] then tells him a broker has a bid up, which provokes [Credit Suisse employee's] interest. [Deutsche Bank employee] says: "*I am happy to just stay out of it until you clean up whatever you need to clean up and after that, you know, like how many have you got?*". [Credit Suisse employee] replies that he is long 25mm, and [Deutsche Bank employee] then says: "*Okay, so why don't you crack on with that and do whatever you gonna do and then after that let me know if he buys or whatever and we can go, or whatever….*" [Credit Suisse employee's] reply is: "*Cool. Brilliant.*" The two traders have thus agreed that [Deutsche Bank employee] will wait until [Credit Suisse employee] has hit the bid on the broker screen before posting any competing offer, which the bidder might have hit instead. None of the parties has put forward any alternative explanation for this communication.

(530) On **11 October 2013**[570], in a chat between […] (Deutsche Bank) and […] (Credit Suisse), into which [Deutsche Bank employee] has invited […] (Crédit Agricole), [Credit Suisse employee] withdraws a sale order from an interdealer broker, after liaising with [Deutsche Bank employee]. [Crédit Agricole employee] is present throughout.

11 Oct 2013	05:18:25 – 05:19:15
CS ([...])	*"bng 21s…I just hit […] in 7mm odd, but he told me it's u…if not a suiter, let him know and scrap it"*
DB ([...])	*"i am long bro…if ok to scarp it that would be better"*
CS ([...])	*"ah cool…killed it"*

(531) On **10 December 2013**[571], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) coordinate their strategy in relation to prices on a broker screen on an FMS[572] 10/16 bond.

10 Dec 2013	05:30:07 – 05:33:42
DB ([...])	*"i just bid 12 for the fms 10/16"*
CS ([...])	*"yo..ah, ok…[…] telling me now…i'm small short"*
DB ([...])	*"ah sorry bro…will kill it"*
CS ([...])	*"nah, tahts cool..no biggie…lets leave as is; someone else might*

569 […]; see also […] a chat between [Deutsche Bank employee] and [broker employee] in which at 05:09:14 [Deutsche Bank employee] informs [broker employee] that he is a seller of Asia 03/17 and [broker employee] informs him that [Credit Suisse employee] is also long. Later, from 09:01:01 [Deutsche Bank employee] and [broker employee] discuss their efforts to reach [Credit Suisse employee] to inform him that a bid of 25mm is up. After speaking to [Credit Suisse employee], [Deutsche Bank employee] tells [broker employee] at 09:10:37 that he will let [Credit Suisse employee]: "*get on with it.*"

570 […]

571 […]

572 This is likely to be FMS Wertmanagement, a German agency (www fms-wm.de).

	come in..are u short, or just trying to get long?"
DB ([...])	*"trying to get long..tink they look ok"*
CS ([...])	*"cool...lets leave 12/11 up there, to see if anyone else comes in"*
DB ([...])	*"ok cool...puit it back up"*

(532) When [Deutsche Bank employee] realises [Credit Suisse employee] has a short position in the FMS 10/16 bond, he offers to withdraw his bid price and apologises to [Credit Suisse employee]. The most likely explanation is that [Deutsche Bank employee] believes his bid will interfere with [Credit Suisse employee's] efforts to cover his short, hence the offer to kill his bid (and therefore not compete with [Credit Suisse employee]). [Credit Suisse employee] declines the offer and says that he does not mind if [Deutsche Bank employee's] bid stays up, as: "*someone else might come in*" (perhaps referring to a potential seller). Although [Deutsche Bank employee] ultimately left his bid up, the fact remains that the two competitors discussed and jointly determined their strategy for the broker screens in relation to this bond[573]. None of the parties has put forward any alternative explanation for this communication.

4.2.5. 2014/2015

(533) Although [Deutsche Bank and subsequently BAML employee], [Crédit Agricole employee] and [Credit Suisse employee] remained in regular contact in 2014 and 2015, the frequency of anticompetitive contacts between them in relation to USD SSA bonds appears to have reduced in these years, as compared with previous years. The latest communication for which the Commission holds any banks liable occurred on 24 March 2015.

(534) Several communications in the Commission's file from this period suggest that the traders perceived the USD SSA market as becoming more and more difficult and less lucrative, and that they increasingly traded other instruments to compensate for the reduced activity in USD SSA bonds. This may at least partially account for the reduced frequency in communications[574]. As noted in recitals (473) and (474), from early 2013 onwards, in an atmosphere of increased supervision in the investment banking industry, the traders were unable to log into persistent multilateral chatrooms and had to set up bilateral chats. In addition, although [Deutsche Bank employee] was officially employed by Deutsche Bank until the end of June 2014, he was on gardening leave from the end of March 2014 and started trading at BAML in mid-July 2014.

(535) On **3 February 2014**[575], in a non-persistent chatroom, […] (Deutsche Bank) has an interest in selling a bond but refrains from hitting a bid submitted by […] (Credit Suisse) at [Credit Suisse employee's] request.

3 Feb 2014	06:53:39 – 06:55:42
DB ([...])	*"eib 12/16... i was gonna make a 10 lock... i got a small amount i was gonna try and sell... 33mm... [...] said its your bid"*
CS ([...])	*"hey... i am long to be honest... so will let u run with it"*
DB ([...])	*"ah ok"*

573 […]
574 […]
575 […]

(536) [Deutsche Bank employee] tells [Credit Suisse employee] that he is planning to show a two-way price of "*10*" both on the bid and offer side, for EIB 12/16, and discloses that he is a seller and the amount of his position. He then indicates that a broker has informed him that [Credit Suisse employee] has a bid up on the broker screen for these bonds – in other words that [Credit Suisse employee] appears willing to buy the bonds. [Credit Suisse employee] responds that he is actually long in the bonds, and is therefore not really a buyer despite having placed a bid: "*so will let u run with it*" – that is, [Deutsche Bank employee] should go ahead and show his prices and try to sell on the market. [Deutsche Bank employee] complies ("*ah ok*").

(537) Credit Suisse asserts[576] that, - since [Credit Suisse employee] would be looking to flatten his book in the EIB bonds – he: "*placed a bid on the broker screen at [...] to carry out price discovery and help him measure the appropriate value to sell the bond*". When [Deutsche Bank employee] informed him that […] had mentioned that the bid price was [Credit Suisse employee's], [Credit Suisse employee] indicates that he does not actually wish to buy the bonds from [Deutsche Bank employee]. In any case, according to Credit Suisse, [Credit Suisse employee] would have only bought a minimum amount of bonds from [Deutsche Bank employee].

(538) Credit Suisse's assertions are unconvincing. Firstly, Credit Suisse's detailed interpretations of [Credit Suisse employee's] trading strategies and motivations are at odds with the fact that the bank declined to interview [Credit Suisse employee] with regard to his activities whilst he was still in their employment and considered itself unable to provide any interpretation whatsoever of the chats without his help in reply to a Commission RFI[577]. Secondly, it is apparent that [Deutsche Bank employee], looking to sell the EIB bonds, has approached the broker showing, presumably, the best price for them, that is, with the intention of selling at least some via the broker. When informed by the broker that the price was [Credit Suisse employee's] he checks with [Credit Suisse employee] before trading and, in response to [Credit Suisse employee's] comments, he 'runs with it' and goes elsewhere in the market. His trading activity has been modified by the discussion with [Credit Suisse employee].

(539) On **5 February 2014**[578], in a non-persistent chatroom, […] (Credit Suisse) adds […]'s (Deutsche Bank) position to his own offer to a customer for bonds both [Credit Suisse employee] and [Deutsche Bank employee] are interested in selling.

5 Feb 2014	06:05:49 – 05:24:18
DB ([...])	*"kfw 08/21..i am a seller..got 13mm"*
CS ([...])	*"hey mate…I'm showing some 7-10yr ideas out to someone so was just that up. Where u wanna show out? 39 your level?"*
DB ([...])	*"yeah sure"*
CS ([...])	*"cool…I'm showing 25mm out at 37…will let u know what they say"*
DB ([...])	*"sure man"*

(540) [Deutsche Bank employee] reveals to [Credit Suisse employee] that he is a seller of 13mm of KfW 08/21. [Credit Suisse employee] replies that he has a buyer for those

576 […]
577 See recital (584).
578 […]

bonds and includes [Deutsche Bank employee's] axe into his offer, for a total of 25mm. [Credit Suisse employee] asks the price level at which [Deutsche Bank employee] wants to show ("*39 your level?*") and [Deutsche Bank employee] agrees ("*yeah sure*"). [Credit Suisse employee] then comes back to [Deutsche Bank employee] saying he is offering the bonds at 37 (a tighter spread, and hence a higher price than the one just agreed with [Deutsche Bank employee]), to which [Deutsche Bank employee] agrees. The two traders have thus agreed on a jointly determined price to show to a client [Credit Suisse employee] is negotiating with, which is higher than the price [Deutsche Bank employee] may have shown on the market independently. None of the parties has put forward any alternative explanation for this communication.

(541) On **4 March 2014**[579], in a non-persistent chatroom, […] (Credit Suisse) kills an offer he has made on a broker screen for EIB 03/18 bonds in order not to interfere with […]'s (Crédit Agricole) trading strategy.

4 Mar 2014	11:03:41 – 11:06:52
CA ([...])	*"what u doin on these eib 03/18s dog… u have bonds"*
CS ([...])	*"i'm short, but have a slider….so early days still… been fishing since last week… but swap keeps moving away"*
CA ([...])	*"k im long… been lifted out of 50mm by custys so far… but i been keep buyin them in the screens lol"*
CS ([...])	*"i can stay out of screens actually"*
CA ([...])	*"nah np"*
CS ([...])	*"let me kill offer"*
CA ([...])	*"im just long cos they loo cheap vs new oe… one… 11 mos apart and 9 bps apart vs libo… k lemme know if you need to cover at any point"*
CS ([...])	*"cool, cool…have taken offer out, but someone else replacing it i think."*

(542) [Crédit Agricole employee] asks [Credit Suisse employee] whether he is a seller of EIB 03/18 bonds: "*u have bonds[?]*", to which [Credit Suisse employee] replies he is actually short but has a particular trading strategy, although he has been frustrated so far by adverse movement in the swap price[580]. [Crédit Agricole employee] reveals he is long and looking to sell, whereupon [Credit Suisse employee] proposes that he remove his offer in order to facilitate [Crédit Agricole employee's] attempts to sell by eliminating a potentially competing offer. [Crédit Agricole employee] compensates [Credit Suisse employee] by suggesting he will trade with [Credit Suisse employee] should [Credit Suisse employee] need to cover his position at a future time.

(543) Crédit Agricole states[581] that: "*to the extent that [Credit Suisse employee] changed his market conduct, that was not intended or agree by [Crédit Agricole employee]. This exchange therefore does not provide cogent evidence of coordination on the part of CA-CIB. Ideally, [Crédit Agricole employee] would have repeated his*

579 […]
580 NB. It is not entirely clear exactly what strategy [Credit Suisse employee] refers to as ('*slider*') in the chat.
581 […]

statement rejecting [Credit Suisse employee's] proposal to remove his offer, but that does not detract from the fact that [Crédit Agricole employee] did distance himself by telling [Credit Suisse employee] once not to do so and then ignored a second offer to stay out of the screens". This is contradicted by the fact that [Crédit Agricole employee] does not actively direct [Credit Suisse employee] to stay out of the screens at first – he simply states: "*nah np*" (no problem) and he certainly does not ignore [Credit Suisse employee's] proposal: "*let me kill offer*" – on the contrary, he explains why he wants to buy the particular bonds because they are attractively priced relative to a new issue, and offers to trade with him in the future. Certainly, [Credit Suisse employee's] response: "*cool cool*" indicates that is his understanding.

(544) In contrast, Credit Suisse takes the view[582] that [Credit Suisse employee's] offer to withdraw his price in the broker screen and stay out of the screens is not at all anticompetitive, as he had only placed an offer price in the first place for '*price discovery*'[583]. However, the fact that the price must have been the most competitive at that time via that particular broker and that [Credit Suisse employee] would have been obliged to trade at it, if requested, confirms that [Credit Suisse employee] placed the quote as part of regular trading business. A practice of '*price discovery*' via firm quotes on broker screens would be an unfeasibly risky trading strategy. In addition, Credit Suisse's argument that [Credit Suisse employee] only withdrew the offer to avoid selling to [Crédit Agricole employee] is not plausible, as he could simply have told [Crédit Agricole employee] to look elsewhere. The offer is withdrawn to assist [Crédit Agricole employee's] trading in the market, although [Credit Suisse employee] warns him that another trader appears to be showing the same offer.

(545) On **7 March 2014**[584], in a non-persistent chatroom, the two traders again discuss EIB 03/18s and [Crédit Agricole employee] asks [Credit Suisse employee]: "*u a buyer or seller now*". [Credit Suisse employee] affirms that he is a seller of these bonds and currently has 50 million and [Crédit Agricole employee] tells him he was about to hit [Credit Suisse employee's] bid (that is, his buying price). [Crédit Agricole employee] informs [Credit Suisse employee] that he will refrain from doing so ("*will leave off*"), and [Credit Suisse employee] thanks him. In this chat, the traders are acting in such a way that one trader's action does not hurt the interest of the other trader.

(546) Crédit Agricole argues[585] that: "*[Crédit Agricole employee's] comment reflected the reality that he would not have been able to sell a sufficiently high volume of the bond to [Credit Suisse employee], and does not reflect the coordination of trading activity*". Credit Suisse maintains[586] that [Credit Suisse employee's] bid price is, once again, merely price discovery and that [Crédit Agricole employee] is merely looking to his own interests in avoiding trading with [Credit Suisse employee]: "*The parties were each acting in their own interests to pursue market-making*". However, in fact, these discussions on 4 and 7 March 2014 reveal that the parties were considering each other's strategies and trying to align on a common position in order to reduce the risk of loss for one or more of them, rather than negotiate an actual

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582 […]
583 See recitals (704)-(713).
584 […]
585 […]
586 […]

trade. On 4 March both [Credit Suisse employee] and [Crédit Agricole employee] have particular trading strategies, and the latter's "*custys*" (customers) are a lower priority. [Crédit Agricole employee] tells [Credit Suisse employee] on 7 March that the reason he was about to "*wahck your bid*" was that it: "*looks good with mkt sell off*". The fact that they regularly exchanged information on positions and strategies, which normally they would not exchange with other competing traders on the market, helps them to avoid trading with each other in those cases where they would not otherwise know the identity of the trader having placed the offer on the screen, and therefore not impair the position of one of them (such as withdrawing an offer placed for a large quantity which would be matched by the other one who already has a "long" position).

(547) On **14 March 2014**[587], in a non-persistent chatroom, […] (Crédit Agricole) and […] (Credit Suisse) jointly devise a strategy concerning a potential buyer for 20mm of what appear to be newly issued CADES bonds of a maturity unspecified in the chat. They later disclose to each other the terms of trades both have just made, and market movements they are observing, in those bonds.

14 Mar 2014	09:43:35 – 14:49:30
CS ([...])	*"got a buyer of 20 cades fyi... not giving away"*
CA ([...])	*"k... 69?"*
CS ([...])	*"i showed 70, but he's looking for 71"*
CA ([...])	*"hmm... 70.5?... or do we hope he does the rounds"*
CS ([...])	*"exactly"*
CA ([...])	*"might be better to let him do that"*
CA ([...])	*"just hit in 24mm cades... 72.75 fyi... us [...]"*
CS ([...])	*"ah cool...cheers. i bough 12mm odd in gfi at 71.5... my 72 bid on the follow"*
CS ([...])	*"sold them at 71... 20mm"*
CA ([...])	*"still at least some buyers... good sign"*
CS ([...])	*"yeah true"*
CA ([...])	*"got 75 of those pusp now... pups... is that ure 71.5 bid"*
CS ([...])	*"nope... must be other lead"*
CA ([...])	*"k... either that or your boy did the rounds"*
CS ([...])	*"yeah possibly... either way, thats fine"*

(548) [Credit Suisse employee] reveals to [Crédit Agricole employee] that he may have a buyer for CADES bonds which they have previously discussed[588]. [Crédit Agricole employee] replies with a price level ("*69?*"), either suggesting a price to [Credit Suisse employee] or asking [Credit Suisse employee] what his intention is. [Credit Suisse employee] replies that he "*showed 70, but [the buyer is] looking for 71*" (the price is expressed in terms of yield[589]). [Crédit Agricole employee] then suggests a

587 […]

588 Idem, earlier in the chat at 08:05:40 *et seq*. The traders reveal the size of their long positions in an unspecified maturity of CADES bonds, apparently newly issued.

589 See recitals (23)-(25).

price of 70.5, but suggests it might be preferable to let the customer "*do the rounds*" rather than offer better terms. [Credit Suisse employee] agrees.

(549) [Crédit Agricole employee's] suggestion to let the customer do the rounds suggests that he and [Credit Suisse employee] believe the customer will not receive better terms by approaching other dealers, and may then come back and pay [Credit Suisse employee's] desired price. It is unclear whether the traders believe it is likely or possible that the customer may approach [Crédit Agricole employee] himself, in which case the traders would have a clear opportunity to fix the price offered to the customer based on the exchange they have just had, or whether they simply believe it is unlikely the customer will find better terms on the market. In any case, however, the two traders have at the very least exchanged information on how they intend to price a newly issued bond in which they both have significant long positions, and jointly discussed negotiating tactics to be used with a customer.

(550) In respect of this communication, Crédit Agricole states[590] that: "*[Credit Suisse employee] appears to approach [Crédit Agricole employee] to see if he is willing to sell certain bonds as [Credit Suisse employee] has a potential buyer for those bonds*". However, firstly, it is unlikely that [Credit Suisse employee] might be seeking to buy bonds from [Crédit Agricole employee] in the event that he trades with the customer who is wanting to buy them because there is no suggestion of any trade between them; indeed [Crédit Agricole employee] suggests prices for the third party but makes no mention of selling any to [Credit Suisse employee] (who later announces he has bought them via a broker, demonstrating that sourcing the bonds is no problem). Secondly, in any event, even if [Credit Suisse employee] were to have been seeking to buy bonds from [Crédit Agricole employee], this in no way justifies the discussion between them of what price should be offered to a customer who might well approach [Crédit Agricole employee] as well.

(551) On **28 March 2014**[591], in a non-persistent chatroom, […] (Deutsche Bank) and […] (Credit Suisse) discuss pricing for Italy 06/17 bonds.

28 Mar 2014	10:28:17 – 10:36:08
DB ([...])	*"you got 3mm italy 06/17 at atll?"*
CS ([...])	*"sorry bro…not working out today… short"*
DB ([...])	*"ah thats cool… where you got them marked?"*
CS ([...])	*"130/120…but think thats too wide… should be 5 tighter i think"*
DB ([...])	*"thanks man"*

(552) Here, [Deutsche Bank employee] asks if [Credit Suisse employee] wants to sell Italy 06/17 bonds, and [Credit Suisse employee] replies that he is short and has nothing to sell, hence making it clear that no bilateral trade is possible. The two nevertheless continue to discuss price, with [Credit Suisse employee] disclosing to [Deutsche Bank employee] where he is marking the bonds ("*130/120*" amounting to a bid-ask spread of 10) as well as his view that this spread is too wide and should be "*5 tighter*".

(553) Credit Suisse states[592] that: "*[Deutsche Bank employee] is essentially asking where [Credit Suisse employee] has valued these bonds for internal P&L purposes*". Given

590 […]
591 […]

that [Deutsche Bank employee] is looking to buy them it is rather more likely that he is price checking.

(554) On 1 April 2014, [Deutsche Bank employee] goes on gardening leave before officially leaving Deutsche Bank at the end of June 2014[593].

(555) On **1 May 2014**[594], in a non-persistent chatroom, […] (Crédit Agricole) and […] (Credit Suisse) discuss pricing for KfW 5⅛ 03/16 bonds. [Crédit Agricole employee] specifies the bonds and then asks: "*where u makring that sh1t*", to which [Credit Suisse employee] replies: "*got them marked +2 on the bid (2/-2)*". [Crédit Agricole employee] responds that this is: "*perfect*".

(556) Crédit Agricole argues[595] that, in this communication, [Crédit Agricole employee's] query "*where u marking*" "*appears to relate to marking bonds for risk purposes*". This is, however, not plausible given that [Crédit Agricole employee's] next comment is: "*bid +3 for a massive block...geezeer goes im way off...ok pal*". He is therefore price checking with [Credit Suisse employee].

(557) On **[…]**[596], [...] begins his employment at BAML.

(558) On **22 July 2014**[597], […] (BAML) offers to kill a bid he placed on a broker screen after discovering his bid was better than that placed by […] (Credit Suisse).

22 July 2014	08:29:55 – 08:30:38
BAML ([...])	*"sorry didnt realised kbn 19 in tullets was you… i went better bid… can kill it if you wanty… we are short 10mm… got so many line items here… of crud"*
CS ([...])	*"np"*

(559) [Credit Suisse employee's] reply of "*np*" almost certainly means *"no problem"*, which implies he turned down [BAML employee's] offer to kill his bid, which would eliminate a better competing bid which could prevent [Credit Suisse employee] from finding a customer. Even if the chat is inconclusive as to whether [BAML employee] ultimately killed his bid or not, the offer to do so shows that the agreement between the traders to protect each other's interests, and behave on the market as if they are trading a single book, is still in effect despite [BAML employee's] employment change.

(560) BAML makes several points[598] with regard to this communication. It suggests that [Credit Suisse employee] might have placed a two-way price in the broker screen without disclosing to the Tullett Prebon broker whether he was interested in buying or selling, that in fact he was not particularly interested in either buying or selling, that the broker had indicated to [BAML employee] that the price on the screen did not indicate a real seller, that even if [BAML employee] really wanted to buy the bonds he could try again later or from a different broker, and so forth. However, firstly, these detailed arguments about [Credit Suisse employee's] conduct are at

592 […]
593 See footnote 61.
594 […]
595 […]
596 […]
597 […]
598 […]

odds with the fact that BAML did not interview [BAML employee] in relation to his activities[599] and secondly, BAML's suggestions cannot obscure the fact that [BAML employee] offers to remove his price in [Credit Suisse employee's] favour.

(561) On **4 August 2014**[600], in a non-persistent chatroom, […] (Crédit Agricole) and […] (Credit Suisse) discuss pricing for AFDB 10/18 bonds. [Credit Suisse employee] notes that the issuer is complaining that his levels are *"too cheap"* and has apparently been told that [Crédit Agricole employee] is offering the best bid. [Credit Suisse employee] therefore asks [Crédit Agricole employee] where he is marking those bonds, and [Crédit Agricole employee] readily replies ("*got them ct3+59 bid*").

(562) Crédit Agricole maintains[601] that this exchange: "*relates to general market observations"*. However, in reality, it clearly relates to current pricing *(ct3+59 bid*) of one specific bond (AFDB 10/18). As noted in recital (721), Crédit Agricole confirms that a query about marking a bond relates to the current price[602].

(563) On **6 August 2014**[603], in a non-persistent chatroom, […] (BAML) and […] (Crédit Agricole) discuss pricing for KBN 03/18 bonds. [BAML employee] asks [Crédit Agricole employee] where he is marking these bonds, and [Crédit Agricole employee] replies ("*48/45*"), to which [BAML employee] responds "*sounds about right*".

(564) Crédit Agricole states[604] that [BAML employee's] query is made: "*presumably with a view to establishing whether a trade is possible*". BAML maintains[605] that this discussion: "*facilitates price discovery and liquidity sourcing*" and that: "*[Crédit Agricole employee] gives only a very rough estimate of value for this bond by stating a two-way market*" and, finally, there: "*is no suggestion that [BAML employee's] question has been prompted by a customer enquiry or that this discussion relates to a live customer enquiry received by either trader.*" Crédit Agricole's and BAML's arguments should be rejected. First, there is no evidence of liquidity sourcing, that is, any trade between the two traders. Second, given that [BAML employee] does not specify whether he wants a bid or offer quote (which he would normally have done if he actually wished to trade with [Crédit Agricole employee]), [Crédit Agricole employee's] two-way quote shows that he is disclosing how he is pricing the bond to the market. It is clear that [BAML employee] has enquired about [Crédit Agricole employee's] pricing strategy, almost certainly because [BAML employee] has received a customer enquiry.

(565) On **24 September 2014**[606], in a non-persistent chatroom, […] (BAML) and […] (Crédit Agricole) discuss pricing for a new NIB issue. [BAML employee] asks [Crédit Agricole employee] where he is marking these bonds, and [Crédit Agricole employee] replies ("*11/9?*"), to which [BAML employee] responds: "*yeah*".

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599 See recital (583).
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602 […]
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604 […]
605 […]
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(566) Again, Crédit Agricole[607] postulates that [BAML employee's] question was with a view to establishing whether a trade between the two was possible, whilst BAML argues that: "*[Crédit Agricole employee] appears to be sanity checking his internal marks*" and: "*may also have checked these marks with other dealers and brokers*". However, this view is contradicted by the evidence as [BAML employee] continues "*wouldnt short it htough*" and [Crédit Agricole employee] agrees. The two traders are thus discussing their pricing and trading strategies.

(567) On **29 October 2014**[608], in a non-persistent chatroom, […] (BAML) and […] (Crédit Agricole) discuss pricing for IADB 1⅜ 07/20. [Crédit Agricole employee] asks [BAML employee] where he is marking the bonds, and is then surprised at [BAML employee's] reply ("*really?... seems cheap… no… l+2 on bid?… cant be*"). [BAML employee] replies that this is the price he paid ("*thats where i got them*"). [Crédit Agricole employee] is now able to take [BAML employee's] pricing information into account from that point on.

(568) Crédit Agricole states[609] that: "*[BAML employee] confirms that he is a seller of a certain bond, and [Crédit Agricole employee] asks him to confirm where he is pricing the bond*", whilst BAML remarks[610] that "*[Crédit Agricole employee] clearly has a different view of the bond's value to [BAML employee], but there is no suggestion that either trader changes their view, or adjusts their internal marks or prices to customers, as a result of this discussion*". However, on the contrary, once [BAML employee] has confirmed that he just got the bonds at a price [Crédit Agricole employee] considers cheap, [Crédit Agricole employee] can take this into account in his own future strategy.

(569) Credit Suisse maintains[611] that: "*identifying the true value of the security was done for the legitimate purpose of enabling traders to act as market-makers and provide liquidity to the market*". Given that this discussion concerns an Inter-American Development Bank bond, a supra-sovereign bond which is highly liquid and low risk, this argument does not hold. Credit Suisse also points out that later on [Crédit Agricole employee] and [BAML employee] conducted a bilateral trade in the bond "*to enable [BAML employee] to cover a small short position*". However, this bilateral trade for [BAML employee] to source liquidity took place after [BAML employee] had sold the bonds which he had bought at the time of the communication and gone short (thereby demonstrating their liquidity), and has no relevance to the pricing discussion.

(570) On **7 January 2015**[612], in a non-persistent chatroom, […] (BAML) and […] (Crédit Agricole) discuss pricing for KBN 10/16 bonds. [BAML employee] asks [Crédit Agricole employee] where he is marking these bonds, and [Crédit Agricole employee] replies ("*+11… maybe 10*"), to which [BAML employee] responds: "*sounds tight*". [Crédit Agricole employee] then agrees and appears to think that spreads are generally too tight at the time ("*it all is"*).

607 […]
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(571) BAML argues[613] that this discussion: "*demonstrates how traders' marks…are likely to differ from the prices they would bid or offer, and are only a rough approximation of a trader's view of a bond's value*". As discussed in recitals (720)-(724), BAML's view on "marks" (in the context of discussions between the traders) are at odds with those of the other addressees. Moreover, the fact that generally tight spreads might mean that a bond's estimated current value is more 'tight' than traders would prefer does not invalidate the estimate (mark).

(572) On **27 January 2015**[614], in a non-persistent chatroom, […] (BAML) and […] (Crédit Agricole) discuss pricing for Italy 09/16. [BAML employee] asks [Crédit Agricole employee] where he is marking these bonds, and [Crédit Agricole employee] replies ("*106.65/107… something like that*"). BAML asserts[615] that this is: "*a very rough approximation of the bond's value*". However Crédit Agricole confirms that in responding to a query on where he is marking a bond, [Crédit Agricole employee] is providing [BAML employee] with his current pricing[616].

(573) On **12 March 2015**[617], in a non-persistent chatroom, […] (Crédit Agricole) and […] (Credit Suisse) discuss an offer [Credit Suisse employee] has just made to the same customer to whom [Crédit Agricole employee] has been asked to make an offer.

12 Mar 2015	14:28:46 – 15:10:09
CA ([...])	*"u still got bng 23"*
CS ([...])	*"dude… yeah…but being asked to price up too"*
CA ([...])	*"ahhhh"*
CS ([...])	*"same guy i think… […]* *14:13:25 Hello* *[CREDIT SUISSE EMPLOYEE]* *14:14:20 25mm BNG 4.375 FEB21 @ ct5 +42* *14:14:36 50mm BNG 2.5 JAN23 @ ct7 +34.5"*
CA ([...])	*"man this dude gets aroudn lol… np man u crack on"*
CA ([...])	*"u get lifted?"*

(574) [Crédit Agricole employee] asks [Credit Suisse employee] if he has a supply of BNG 23 bonds as he has been contacted by a buyer. [Credit Suisse employee] says he has them but has been asked to make an offer as well, and the two traders discover it is the same customer ("*this dude gets around*"). [Credit Suisse employee] pastes into the chat the terms of the offers he has shown the customer for two different maturities of BNG bonds, including volumes and prices. [Crédit Agricole employee] receives this information but then tells [Credit Suisse employee] he can have the

613 […]
614 […]
615 […]
616 See footnote 602.
617 […]

trade ("*np man u crack on*"), indicating he would not show a competitive offer to the customer upon learning [Credit Suisse employee] has already made an offer.

(575) Crédit Agricole asserts that[618]: "*There is no evidence to suggest…that by stating 'np [no problem] man u crack on [Crédit Agricole employee] was confirming that [Credit Suisse employee] 'can have the trade'…There is, in fact, no evidence to suggest that this phrase meant anything other than it was the end of the conversation. Indeed a more likely explanation is that, when [Credit Suisse employee] indicates the price and volume at which he was prepared to sell, [Crédit Agricole employee] was not interested in trading at that price or for that volume of bonds*". This assertion is, however, contradicted by the fact that [Crédit Agricole employee] has been been approached, probably by the "*same guy*" and would, in the normal course of events and certainly according to the concept of market making, be expected to provide a quote. Furthermore, the only reason that [Crédit Agricole employee] now knows the price and volume at which [Credit Suisse employee] is prepared to sell is because the two traders have shared sensitive information on an (identified) client approach and the details of [Credit Suisse employee's] quote – after the point in time at which it was clear that both had been approached and there would be no opportunity for [Crédit Agricole employee] to source from [Credit Suisse employee]. It is clear that "*np man u crack on*" is an invitation from [Crédit Agricole employee] to [Credit Suisse employee] to carry on and it is also clear that [Crédit Agricole employee] now has no intention of putting up a competing quote, despite being requested. His query "*u get lifted*" confirms this. Had he intended to make a quote he would no doubt have told [Credit Suisse employee]. Instead by standing aside, he has coordinated with [Credit Suisse employee] in the trading terms offered to the client. Credit Suisse has provided no alternative explanation for this communication.

(576) On **24 March 2015**[619], […] (Credit Suisse) sends an email entitled: "*CS US$ SSA BID AXES - month end: offer side bids*" containing information on the levels he is offering for a variety of bonds. […] (Crédit Agricole) is a recipient in blind copy.

(577) Crédit Agricole maintains[620] that: "*The low volumes given in the axe list …suggest that this was not Credit Suisse's complete axe list but more likely a summary of the 'scraps' positions that Credit Suisse would like to clear.*" As noted in recital (53), an axe sheet or list is a price list of bonds that a trader is willing to buy or sell, that are already on his orher book. This is exactly such a list, covering 21 bonds. The fact that there might have been a longer list is irrelevant.

4.3. Allegations concerning the evidence

(578) BAML, Crédit Agricole and Credit Suisse have argued that the Commission has overly relied on an immunity applicant who had its own incentives to apply under the Leniency Notice. As Credit Suisse put it[621] :"*The SO relies unduly on self-serving admissions by the immunity applicant…Deutsche Bank is alone in admitting an infringement, in the context of seeking immunity from the imposition of a fine*". BAML claims[622] that the: "*Commission adopts DB's high-level, self-serving view as*

618 […]
619 […]
620 […]
621 […]
622 […]

the definitive legal position in the SO" and Crédit Agricole asserts[623] that: "*the EC has relied wholesale on statements made by Deutsche Bank*".

(579) The non-leniency parties (BAML, Crédit Agricole and Credit Suisse) maintain that, in putting forward its immunity application, Deutsche Bank itself was overly reliant on the input from one USD SSA trader, [Deutsche Bank employee], who is described as: "*never a full-time SSA bond trader…the junior trader on the Tokyo USD international desk…tasked with helping […] during Asia trading hours/outside London trading hours*" and therefore: "*lacking sufficient experience to provide the necessary context*"[624].

(580) With regard to the context of the Deutsche Bank application for immunity on 4 August 2015 and any underlying incentives, Deutsche Bank explains[625] that this was the result of an internal investigation in which apparent collusive behaviour was uncovered and led to the analysis of documents and individuals. Deutsche Bank has further stated[626] that the decision to apply for immunity was not taken lightly in view of the legal consequences and reputational impact and was the result of a thorough and comprehensive internal review of over two years' duration, which involved the bank's business, compliance and legal teams and was assisted by external lawyers and external financial experts, in particular a senior USD SSA trader. Against this background, the investigative steps taken by Deutsche Bank to compile the evidence submitted with its immunity application support the veracity of those statements. Furthermore, while a successful immunity application would result in Deutsche Bank being awarded immunity from fines imposed by the Commission in the present situation, the risk that false statements might result in the conditional immunity being removed[627], and the concurrent exposure to private litigation[628], minimises the scope for Deutsche Bank to make "*self-serving*" statements.

(581) Furthermore, the evidence submitted by Deutsche Bank alongside its Oral Statements, overwhelmingly consisted of direct contemporaneous evidence in the form of electronic communications – thereby providing a written record of the actual discussions between the traders. The individuals involved in the cartel operated in a working environment in which - in contrast to most other sectors - a considerable volume of their communications are customarily recorded. As regards the period after [Deutsche Bank employee] left Deutsche Bank at the end of June 2014, the Commission obtained and analysed further direct contemporaneous evidence at the premises of BAML and Credit Suisse during announced inspections in November 2016[629].

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627 Leniency Notice, paragraph 12(a).

628 See, for example, Bloomberg Article of 18 May 2016 "*Banks Sued by Investor Over Agency-Bond Rigging Claims*", which notes inter alia that Deutsche Bank was amongst five banks being sued and that "*US and UK*" authorities were investigating the market. Available at: https://www.bloomberg.com/news/articles/2016-05-18/banks-sued-over-manipulation-on-9-trillion-agency-bond-market

629 See recital (81).The contemporaneous evidence obtained included extensive communications involving the Crédit Agricole trader.

(582) As concerns the status and role of [Deutsche Bank employee], whereas Deutsche Bank made an application for immunity on 4 August 2015, it was not until its third Oral Statement of 29 September 2015[630] that the bank explained that it had identified two chats involving [Deutsche Bank employee]. He was at the time based in Tokyo but traded USD SSA bonds outside London hours and covered for [Deutsche Bank employee] in London during the latter's holiday periods. Only after the discovery of further communications involving [Deutsche Bank employee], and at the request of the Commission, did Deutsche Bank interview him […][631] in early 2016. It is therefore wholly inaccurate to state[632] that: *[...]*". As regards the value of the explanations provided by [Deutsche Bank employee], in a global financial market with twenty-four hour trading, the fact that [Deutsche Bank employee] was usually located in Tokyo during this period is irrelevant in any assessment of his knowledge of the USD SSA bond sector, the links between his colleague and the other traders and the language used within chatrooms. [Deutsche Bank employee's] contribution had an added value as he was directly involved in the infringement.

(583) The other addressees did not seek either to obtain or forward information from their own USD SSA traders when they had the opportunity to do so. BAML, Credit Suisse and Crédit Agricole were first alerted to the Commission's investigation into the USD SSA bond market by an RFI in December 2015, at which point [BAML employee] was still employed by BAML and [Credit Suisse employee] by Credit Suisse. Credit Suisse did not interview [Credit Suisse employee] and whilst BAML did interview [BAML employee] on 22 December 2015, the bank has neither provided any record of this interview to the Commission nor explained whether information obtained concerning [BAML employee's] activities whilst at BAML has been taken into account in any way in their response to the SO[633]. In addition, whilst [Crédit Agricole employee] had left Crédit Agricole on […], the bank was alerted to the possible involvement in the infringement of its current employee, [Crédit Agricole employee], by an RFI of 6 September 2016. There is, however, no evidence that Crédit Agricole has sought any information from [Crédit Agricole employee].

(584) Furthermore, as noted in recital (79), in September 2016 the Commission sent RFIs under Article 18 of Regulation (EC) No 1/2003 asking BAML, Crédit Agricole and Credit Suisse to clarify the content of certain extracts from communications of their traders. BAML, Crédit Agricole and Credit Suisse are responsible for the completeness and accuracy of their replies to those RFIs, since supplying information which is "*incorrect or misleading*" is sanctionable by fines pursuant to Article 23(1) of Regulation (EC) No 1/2003[634]. In this case, the three banks claimed they were unable to interpret or explain most of the communications, because they no longer employed the relevant trader and had no access to them[635]. Despite stating that they were unable to provide such explanations within the context of replies to RFIs, all three banks nevertheless provided extensive alternative interpretations of their traders' communications in their responses to the SO. The Commission notes that the obligation under Article 18(2) of Regulation (EC) No 1/2003 to supply

[630] […]
[631] […]
[632] […]
[633] […]
[634] See Article 18(4) of Regulation (EC) No 1/2003.
[635] […]

correct and not misleading information and the sanctions set out at Article 23(1) of Regulation (EC) No 1/2003 do not apply to responses to statements of objections.

(585) In contrast, Deutsche Bank provided evidence, market background and analysis of particular communications from the relevant individual with whom they had an employment relationship, as well as consulting other market experts.

(586) Concerning trader presence in chatrooms, BAML has argued[636] that a trader might be automatically logged as having entered a number of chatrooms on a particular day and that: "*even if a particular chatroom was open in a separate window, the Commission cannot presume that, at any particular time, a trader was paying attention to or reviewing the discussion taking place in that chatroom if he/she was not actively engaging in the communication.*" BAML thus argues that presence in a chatroom: "*is wholly distinct from, for example, participation in a meeting, where there may be a presumption that information disclosed is taken into account by all participants*".

(587) Whilst a trader might be automatically logged into several chatrooms and have other market data sources at hand, it is clear that the communications between those traders involved in the cartel were of particular value to them in terms of keeping up with each other's trading activities[637]. Furthermore, the content of such chatrooms was preserved and available for viewing (by scrolling up). Periodic lack of active involvement in a chatroom into which one was logged is not, therefore, the equivalent of, for example, missing a conference call, as the communication was always available for review. In any case, the review of the chats mentioned in this Decision reveals that the involved traders were communicating to each other in various chatrooms on a continual basis, and in many instances from the moment they started trading in the morning until they left their desks in the evening. They reported continuously, sometimes with very few breaks of maximum 30 minutes, and kept each other updated on most moves: their strategies on the market, bids asked, bids offered, identity of clients, long or short positions and corresponding amounts, attempts to guess the strategy of other competing traders and other information[638]. In fact, there were moments when the involved traders make it clear that they keep in mind information from previous chats to be able to assess the availability of certain bonds on the market and estimate pricing as exemplified in the excerpt below[639]. It is therefore clear that each of the involved traders knew what the chat was being used for and, even when not pro-actively participating in a discussion, he was at the very least aware that the other traders would continue the chat and any of them might later retrieve that information and use it to mitigate their own market uncertainty. They can, therefore, be held liable for the other traders' conduct even when not actively contributing to the exchange[640].

5 February 2010	02:45:00 – 02:46:15
DB ([...])	*"is this the enquiry from the other day? "*
BAML ([...])	*"yep"*

636 […]
637 See recital (473).
638 See also recital (95).
639 […]
640 See also section 5.2.3

(588) Finally, the non-leniency parties have argued that, in referring to certain chat extracts exclusively in an Annex to the SO[641], the Commission infringed their rights of defence by not providing sufficient explanations of why it considered that those extracts demonstrated an infringement[642]. The tables in the Annex to the SO contained detailed information concerning each contact, including the date and chatroom identification of the respective contact, the individuals involved in the contact, the Commission's preliminary conclusion as to the anticompetitive nature of the contact, and the source of the evidence relied upon which could be consulted in its full context. The Annex to the SO was therefore sufficiently clear to allow the parties to identify the evidence held against them and it is clear from the parties' responses to the SO and at the oral hearing that they understood the allegations in the SO and were able to defend themselves against all anticompetive contacts, whether they were mentioned in the SO or in the Annex to the SO[643]. Furthermore, the Annex to the SO, which was referrred to in the SO, complemented the allegations contained in the main body of the SO and was used to support the Commission's findings. According to the case-law, regard for the rights of the defence requires that the undertaking concerned shall have been able to make known effectively its point of view on the documents relied upon by the Commission in making the findings on which its decision is based[644]. Despite claims that they were unable to defend themselves in relation to these extracts, the parties did refer to chats listed solely in the Annex to the SO as part of their argumentation in their responses to the SO and/or at the oral hearing.

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

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

(590) Article 53(1) of the EEA Agreement is modelled on Article 101(1) of the Treaty[645]. References in this Decision to Article 101 of the Treaty therefore apply also to Article 53 of the EEA Agreement.

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641 See footnote 118. Of the extracts referenced exclusively in the Annex to the SO, only one is included in this Decision.

642 […]

643 Judgment of the General Court of 5 October 2020, *Heidelberg Cement AG and Schwenk Zement KG v Commission*, Case T-380/17, ECLI:EU:T:2020:471, paragraph 638

644 Judgment of the General Court of 30 September 2003, *Atlantic Container v Commission,* Joined Cases 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.

645 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

5.1. Jurisdiction

(591) In order to justify the Commission's jurisdiction, it is sufficient that conduct is either implemented in the EEA ("implementation doctrine") or is liable to have immediate, substantial and foreseeable effects in the EEA ("qualified effects doctrine"[646]). The implementation doctrine and the qualified effects doctrine constitute alternative and not cumulative approaches to establishing the Commission's jurisdiction[647].

(592) 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 Union/EEA (notably London at a time when the United Kingdom was a Member State of the EU with full capacity) and the conduct had an appreciable effect on trade between Member States and the Contracting Parties to the EEA Agreement (see section 5.2.4). The restrictive arrangements described in this Decision applied to all countries in the EEA, this is to say all the Member States of the Union together with Norway, Liechtenstein and Iceland. In this present case, the addressees of the Decision are multinational financial institutions engaged in worldwide trading services, including USD SSA bonds which are issued by various European and international financial institutions such as the World Bank and the European Investment Bank. Due to the fact that they are issued by sovereign and regional institutions, USD SSA bonds are considered safe investments. The financial institutions and the employees acting on their behalf placed USD SSA bonds on the secondary market and traded them on a worldwide basis, including through inter-dealer brokers located in the EEA and the client trades with EEA counterparties, as mentioned in recital (893). Their conduct was therefore capable of affecting trade between Member States and between the Contracting Parties to the EEA Agreement.

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

5.2.1. Agreements and concerted practices

5.2.1.1. Principles

(593) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements and concerted practices between undertakings and decisions of associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition within the internal market or the territory covered by the EEA Agreement.

(594) An agreement under Article 101(1) of the Treaty and Article 53(1) of the EEA 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. Such an

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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.

646 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.

647 See, to that effect, Judgment of the General Court of 12 July 2018, *NKT Verwaltungs GmbH a.o.* v *Commission*, T-447/14, ECLI:EU:T:2018:443, paragraphs 79-82.

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. Furthermore, it is not necessary, in order for there to be an infringement of Article 101(1) of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan. The concept of agreement in Article 101(1) of the Treaty would apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement[648].

(595) 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[649].

(596) Agreements may be entered into expressly or tacitly. A party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content or reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery[650].

(597) An agreement for the purposes of Article 101(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. It may arise not only from an isolated act but also from a series of acts or from a course of conduct[651]. The term agreement can be properly applied not just to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose.

(598) Article 101(1) of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of “concerted practices” and “agreements between undertakings”, however, but the object of this distinction is also to bring within the prohibition of Article 101(1) of the Treaty the forms of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition[652].

(599) The criteria of co-ordination and co-operation 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 it intends to adopt in the

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

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

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

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

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

internal market[653]. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market[654].

(600) 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[655]. 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.

(601) Although in terms of Article 101(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 101(1) of the Treaty even in the absence of anticompetitive effects on the market[656].

(602) Moreover, it is established case law of the Court of Justice of the European Union that the exchange, between undertakings, in pursuance of a cartel falling under

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653 Judgment of the General Court of 24 September 2019, *HSBC Holdings plc a.o. v Commission,* T-105/17, ECLI:EU:T:2019:675, paragraph 59: "*With regard, in particular, to the exchange of information between competitors, it should be recalled that 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 (judgments of 4 June 2009, T-Mobile Netherlands and Others, C 8/08, EU:C:2009:343, paragraph 32, and of 19 March 2015, Dole Food and Dole Fresh Fruit Europe v Commission, C 286/13 P, EU:C:2015:184, paragraph 119).*" As stated at paragraph 145 of the same judgment: "*Further, 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' […] From the point of view of competition on the market, it is particularly fundamental that prices be determined independently*.". See also Judgment of the Court of 4 June 2009, *T-Mobile Netherlands a.o.*, C-8/08, ECLI:EU:C:2009:343, paragraph 32; Judgment of the Court of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraph 119; Judgment of the General Court of 10 November 2017, *Icap a.o. v Commission*, T-180/15, ECLI:EU:T:2017:795, paragraph 49.

654 Judgment of the Court of 16 December 1975, *Suiker Unie a.o. v Commission,* Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, ECLI:EU:C:1975:174; Case C-8/08, *T-Mobile Netherlands a.o.*, paragraph 33; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, paragraph 120; Case T-180/15, *Icap a.o. v Commission*, paragraph 50; Case T-105/17, *HSBC Holdings plc a.o. v. Commission,* , paragraph 60.

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

656 See also Judgment of the Court of 8 July 1999, *Hüls v Commission*, C-199/92 P, ECLI:EU:C:1999:358, paragraphs 158-166;. Case T-180/15, *Icap a.o. v Commission*, paragraphs 56-57.

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[657].

(603) 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 since the circulation of price information limited to the members of an anticompetitive cartel has the effect of increasing transparency on a market where competition is already much reduced and of facilitating control of compliance with the cartel by its members[658].

(604) 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 however be artificial to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore consist of one or several agreements and concerted practices subsequently or at the same time[659].

(605) In *Rhône-Poulenc SA v Commission*[660], it was held that *"the Commission was also entitled to characterize that single infringement as 'an agreement and a concerted practice', since the infringement involved at one and the same time factual elements to be characterized as 'agreements' and factual elements to be characterized as 'concerted practices'. Given such a complex infringement, the dual characterization by the Commission in Article 1 of the Decision must be understood not as requiring, simultaneously and cumulatively, proof that each of those factual elements presents the constituent elements both of an agreement and of a concerted practice, but rather as referring to a complex whole comprising a number of factual elements some of which were characterized as agreements and others as concerted practices for the purposes of Article 85(1) of the EEC Treaty, which lays down no specific category for a complex infringement of this type."*. In its *PVC II* judgment[661], the then Court of

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657 See, in this sense, Judgment of the Court of First Instance of 6 April 1995, *Société Métallurgique de Normandie v Commission,* Case T-147/89, ECLI:EU:T:1995:67, Judgment of the Court of First Instance of 6 April 1995, *Trefilunion v Commission,* Case T-148/89, ECLI:EU:T:1995:68, Judgment of the Court of First Instance of 6 April 1995, *Société des Treillis et Panneaux Soudés v Commission, Case* T-151/89, ECLI:EU:T:1995:71, paragraph 72.

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

659 See Case T-7/89, *SA Hercules Chemicals NV v Commission,* paragraph 264.

660 Judgment of the Court of First Instance of 24 October 1991, *Rhône-Poulenc SA v Commission*, T-1/89, ECLI:EU:T:1991:56, paragraph 127.

661 See 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, *Limburgse Vinyl Maatschappij N.V. a.o. v Commission* (PVC II), , ECLI:EU:T:1999:80, paragraph 696.

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"*.

5.2.1.2. Application in this case

(606) The facts described in Section 4 of the Decision demonstrate that USD SSA bond traders employed by the parties engaged in bilateral or multilateral communications with each other in respect of the trading of USD SSA bonds on the secondary market.

(607) Through these contacts the operators involved agreed at times to coordinate prices, whether for the purposes of individual transactions with customers or prices to show to the market in general.

(608) The constant flow of information between the traders (primarily via chatrooms) also enabled them to identify and engage in other coordinated trading strategies. In some instances, this coordinated action would take the form of one or more of the traders acting differently than he otherwise would, for example by refraining from placing a bid or offer on a broker screen while another member of the cartel had a bid or offer up; or by not hitting a bid (or lifting an offer) placed by another member of the cartel if doing so would worsen that trader's position.

(609) These instances of sharing sensitive market information allowed the parties to opportunisticly coordinate their conduct with respect to pricing and trading conditions and strategies and enabled them to avoid undercutting each other when bidding or offering bonds, thereby gaining an advantage vis-à-vis customers and competing traders. The cooperation between the traders and their regard for each other's interests was at times so close that they essentially acted as if they were trading the same bond portfolio on behalf of a single undertaking instead of competing[662].

(610) Through their contacts and coordination the parties therefore either influenced the conduct on the market of an actual or potential competitor or disclosed to such a competitor the course of conduct which they themselves had decided to adopt or contemplated adopting on the market. The close contacts were therefore capable of influencing the parties' conduct by discouraging them from determining their commercial policies independently of one another[663].

(611) By pooling their information, the traders would have been better able to track supply and demand on the market from (unwitting) counterparties, to use that information

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662 See, for example, recitals (215)-(218), (230)-(231), (341)-(342), (392)-(393), (468)-(470), (475)-(476).

663 See Case T-105/17, *HSBC Holdings plc a.o.* v *Commission*, , paragraph 67: "*In that regard, the Court of Justice has held that, subject to proof to the contrary, which the economic operators concerned must adduce, it must be presumed that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors in determining their conduct on that market. In particular, the Court of Justice has concluded that such a concerted practice is caught by Article 101(1) TFEU, even in the absence of anticompetitive effects on that market (judgments 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).*"

for the benefit of their own self-selected group[664]. To this end, the traders routinely shared information on approaches made to them, including customer identities and trading requests, as well as exchanging information on their own trading positions, strategies and trading terms (for example by identifying their prices, whether posted on brokers' screens or offered directly to a customer). They also, at times, refrained from trading if this could be detrimental to another party's interests and thus limited their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market[665].

(612) Normally, a bond trader would carefully guard this type of information from competitors. In the case of this group of traders, however, the relationship of mutual trust between them allowed them to pool this information, essentially giving each of the traders access to a greater amount of commercially sensitive information than any one of them could have had on his own, without fear that it could be used against any of them.

(613) As is evident from the description of the events in Section 4, the conduct consisted of the following related, and sometimes overlapping forms of conduct, which amount to agreements and/or concerted practices[666]:

(1) Coordination on prices quoted to specific counterparties: parties agreed on the prices they would bid and/or offer to specific clients when they were (or potentially would be) in direct competition with each other for trades;

(2) Coordination on prices to show to the market generally: parties agreed on the prices they would show for specific bonds to the market (which included customers, brokers and competing traders) generally at a given time, either on the broker screens or in response to any incoming customer requests;

(3) Exchange of current, or forward-looking commercially sensitive information on their trading activities and trade flows in the secondary market: parties freely discussed information gained from internal sources of each bank in relation to the real-time strategies and activities of specific clients, upcoming flows and syndications in a manner that went beyond what was necessary for the legitimate negotiation of specific USD SSA trades;

(4) Exchange, confirmation and alignment of trading and pricing strategies: parties disclosed their recent prices or current pricing strategies for specific bonds and maturities in terms of spreads or prices throughout the trading day, allowing each other to adjust and align their strategies and protect each other; and

(5) Coordination of trading activity: parties agreed to refrain from bidding or offering, or to remove (or "kill") a bid or offer from the market (typically from a broker screen) when they might come into competition with or otherwise interfere with one another, for a particular time window on account of another trader's announced position or trading activity. They also agreed to split trades between each other and amalgamate or reduce their respective positions to meet a specific customer's demands (as disclosed between them).

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664 […]. See, for example,recitals (434)-(436), (444)-(445).

665 See, for example, recitals (131)-(132), (211)-(212), (216)-(217) and (430)-(432).

666 See recital (605).

(614) The coordination on prices noted in elements (1) and (2) of recital (613) is evidenced by the use of language such as: "*gonna show the same..[…]*"; *"ok i will show the same"; "yeah cool…I am going 28/25 in […]"; "lets both bid same level"; "where/what shall we show[?]"; "I will bid the same"; "where you want to bid/show?"; "lets both bid 41?... and split the trade?"; "being asked to offer 20mm… you might see it in a sec so lets shjow at the same level… 50?"; "ok cool will show same level… and wont improve"; "just seen the same […] enquiry… i'll bid 44 tooo"; "Let's just keep that price up because I am not going to improve from there. Because they are just going to try and play one place against another"; "140 is fine man… will show that"; "will offer to miss"; "shall we switch prices etc at the same level?"; "in case he comes to [you]..maybe worth showing same level..so we can max the dough"; "tell him you see them like 20/17 or something"; "perfect…i'll show the same"; "will show a worse price"; "lets leave it up there for 100mm?"; "then move it back a bps after that"; "shall we just lift 65…and see wha thappends" "We'll go 66.5 bid first, that's what I was going to write in the chat"*[667].

(615) The disclosure of sensitive information on a trader's own motion or upon request in order to be used as intelligence by other traders on trading activities and trading and pricing strategies noted in elements (3) and (4) of recital (613) is evidenced by the use of language such as: *"just got an order from custy to sell 100mm germs… where do you see correct bidside"; "WHAT THE RIGHT BIDSIDE"; " where [you] got them marked?"; "where u buy cades 10/14..i was aske those", "being asked to offer 20mm eib 2.75 15… where are these things at?"; "where you show?... i have those as well"; "that's what client is telling me they've seen away"; "where u gonna be bidding kfw 20's if asked?"; "where you bidding the spain?... seeing ti now as well"; "i think they must be sellers"; "is he the one that hit you[?]","where oyu guys marking these now?"; "oh yeah …that […]. Cool, thks for headsup"; "where u got them marked?... i like that bond….have them +53 bid here"; "he shouldnt have bothered as i know your axes anywya lol"; "where would u bid that just out of interest"; "where are those cades 18?... seen anything in them?","no cb seller…outright"; "i sold at 100.9125"; "where u marking"; "just bid eib 08/16…50mm…sprayer"; "where would you bid that"; "i showed 70, but he's looking for 71"; "being asked to price up too…same guy i think"*[668].

(616) The coordination of trading activity noted in element (5) of recital (613) is evidenced by language such as: *"I'll remove my offer"; "i'm gonna show this 215 bid a 200 offer if that doesn't get in the way of what you're doing"; "you want me to kill the bid?"; "ok I will show the same"; "where you want me to show"; "shall i kill me 144 offer"; "take it out for now man…don't want [to] have to pay 15!"; "can i lift them first and cover my short?" "no worries…let me know when you're done"; "i'll stay out of it for a while until u're done"; "don;t worry man i#ll look after your posis while away"; "can show them tighter if it helps"; "i can kill it if u want"; "want me to show cheaper?"; "can u do me a favour and kill the bid if possible"; "i told him I'd sell once you're out the way"; "can [you] kill that bid in the 08/15 pls"; "kill it for now if you can… just while i get the bid in"; "can you just stay out of it for the*

667 See recitals (127), (129), (377), (131), (143), (148), (157), (298), (300), (169), (403), (173), (174), (190), (215), (236), (271), (277), (283), (294), (309), (337), (403), (418) and (468) respectively.

668 See recitals (116); (121); (124); (551); (131); (153); (165); (185); (222); (228); (304); (351); (388); (403); (434); (477); (482); (507); (510); (477); (480)-(484); (488); (507); (547) and (573) respectively.

moment…as in don't bid them up…and i will add your 5mm wherever i get mine back?...cool?"; "get yours down to a managable position and then i'll worry about mine"; "gonna go 23 offered? do u mind..dont want to do in your face"; "i can kill the offer if u like"; "let me kill offer"[669].

(617) These practices run counter to the requirement that each economic operator must determine independently the policy which it intends to adopt on the market, since the requirement of independence strictly precludes any direct or indirect contact between such operators with the object or effect of either influencing the conduct on the market of an actual or potential competitor or of disclosing to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market[670].

5.2.1.3. Assessment of the parties' arguments concerning agreements and concerted practices

(618) BAML[671] argues that the Commission has misunderstood "*key features*" of the USD SSA bond market – in particular: the necessity to source liquidity; the way in which price discovery works; the objectives and incentives of traders in servicing issuer and investor clients; the role of trading via inter-dealer brokers; the commercial value of pricing information; and the role of secondary market traders in the primary issuance of USD SSA bonds. BAML concludes that, as a consequence: "*the Commission cannot satisfy the burden upon it to demonstrate the existence of relevant agreements and concerted practices for the purposes of Article 101. Put simply, if the Commission thinks that a communication means one thing but, when the proper context is taken into account, it means something quite different, the Commission cannot demonstrate the existence of the agreement or concerted practice it erroneously thought existed".*

(619) BAML's specific arguments concerning the market context of the traders' activities will be examined in further detail in Section 5.2.2.[672]. Its contention that the communications between the traders described in Section 4, and from some of which the statements highlighted in recitals (614)-(616) are taken, could not be classified as agreements and concerted practices is inconsistent with the evidence. For example, statements such as "*lets both bid same level*", "*will show a worse price*", and "*i can kill it if you want*" clearly demonstrate that the traders in question are subscribing to a common plan defining their action in the market or, at the very least are knowingly adopting or adhering to collusive devices which facilitate the co-ordination of their commercial behaviour, within the meaning of the settled case law of the Court of Justice of the European Union[673]. This conclusion is supported both by the general context in which the statements were made – that is, within chatrooms established and consistently used by the traders in order that they could cooperate to their mutual benefit – and the specific context of the communications seen in their entirety[674].

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669 See recitals (131), (208), (211), (216), (230), (243), (248), (260), (262), (322), (341), (356), (392), (430), (434), (440), (461), (475), (501), (519) and (541) respectively.

670 See recitals (599)-(600).

671 […]

672 See Section 5.2.2.

673 Case T-105/17, *HSBC Holdings plc a.o. v Commission,* , paragraph 59. See also recitals (598)-(601).

674 The statement: '*lets both bid same level'*, for example (see recital (143)) is in the context of [Deutsche Bank employee] and [BAML employee] both receiving a customer enquiry for the same bond, the statement '*will show a worse price*' (see recital (403)) is in the context of [Deutsche Bank employee]

5.2.1.4. Conclusion

(620) By coordinating their conduct on the USD SSA market in the ways described at recitals (613) to (616), the parties knowingly substituted practical cooperation between them for the risks of competition, operating together and protecting each other in their attempts to increase their trading revenues on the secondary market on which they were all active.

(621) On the basis of these considerations, the Commission considers that, in this case, the instances of coordination on pricing, exchange of sensitive information and other trading-related collusive practices – such as withholding or withdrawing prices and agreeing to split trades – present all the characteristics of an agreement and/or a concerted practice in the sense of Article 101(1) of the Treaty.

5.2.2. Restriction of competition

5.2.2.1. Principles

(622) Article 101(1) of the Treaty expressly prohibits, as restrictive of competition agreements and concerted practices which:

(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.

(623) In that regard, according to settled case-law of the Court of Justice of the European Union certain types of coordination between undertakings reveal a sufficient degree of harm to competition for the examination of their effects to be considered unnecessary. The distinction between 'infringments by object' and 'infringments 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[675].

(624) That case-law arises from the fact that some forms of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition and thus are classified as "infringements by object"[676].

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and [BAML employee] discussing how to respond to the same customer enquiry and the statement '*I can kill it if you want*' (see recital (341)) is in the context of an agreement between [Credit Suisse employee] and [Deutsche Bank employee] that [Credit Suisse employee] will remove a price quote he has made to the market via a broker screen.

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

676 Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraph 114 and the case-law cited. Case C-32/11, *Allianz Hungária Biztosító a.o.*, paragraph 35.

(625) For example, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, 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 pursposes of applying Article 101 of the Treaty, to prove that they have actual effects on the market[677]. Consequently, when the coordination between undertakings involves a restriction of competition by object, the Commission is not required to prove the actual effect on competition[678].

(626) To determine whether an agreement or concerted practice or a combination of them satisfies this criterion, regard must be had to the content, objectives and the economic and legal context of which the conduct forms a part[679]. 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. Intention is not a necessary factor, but it may be taken into account as well[680].

(627) 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[681].

(628) 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 of 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 by which an undertaking may influence 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, 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[682].

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677 Judgment of the Court of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13 P, ECLI:EU:C:2014:2204, paragraphs 50 and 51.

678 Case C-67/13 P, *Groupement des cartes bancaires v Commission*, 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; Case T-472/13, *Lundbeck v Commission*, paragraph 341.

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

680 See Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraphs 117-118. Case C-32/11, *Allianz Hungária Biztosító a.o.*, paragraphs 36-37. See also to that effect Case T-472/13, *Lundbeck* v *Commission*, paragraph 438.

681 Case C-8/08, *T-Mobile Netherlands a.o. v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, paragraph 38.

682 Case T-105/17, *HSBC Holdings plc a.o. v Commission*, , paragraph 144; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission,* C paragraphs 119-120.

(629) The disclosure of competitively sensitive information reduces uncertainty as to the future conduct of a competitor and thus directly or indirectly influences the strategy of the recipient of the information[683]. Exchanges of information about the future intentions of competitors in relation to their market conduct are likely to enable competitors to reach a common understanding on the coordination of competitive conduct amongst themselves (as they remove strategic uncertainty) and consequently facilitate collusion[684]. Therefore exchanges of information about such future intentions are, by their very nature, harmful to the proper functioning of normal competition. This is the case, in particular, with respect to exchanges of forward-looking information and price information, which are particularly likely to lead to a collusive outcome on the market.

(630) Agreements and concerted practices which fix or coordinate prices represent particularly serious restrictions of competition[685]. Such practices may have an anticompetitive object if they directly or indirectly fix purchase or selling prices or any other trading conditions[686]. It has also been held by the Court of Justice of the European Union that concerted action on indicative prices has an anticompetitive object because it allows the participants in such arrangements to foresee with a reasonable degree of certainty what pricing policy will be pursued by their competitors[687].

(631) It is well established that exchanges of information between competitors in respect of pricing matters replace the risks of pricing competition with practical cooperation[688].

(632) An exchange of information between competitors (such as pre-pricing communications) which reduces uncertainty for each of the participants as to the foreseeable conduct of their competitors must be regarded as pursuing an anticompetitive object[689].

(633) An exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted[690].

(634) In the specific context of financial services markets, the General Court has held that 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', who are generally and continuously

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683 Judgment of the Court of 23 November 2006, *Asnef-Equifax a.o. v Ausbanc*, C-238/05, ECLI:EU:C:2006:734, paragraph 51.

684 Horizontal Guidelines on the applicability of Article 101 of the TFEU Treaty to horizontal co-operation agreements, paragraphs 66, 73 and 74, OJ, C11/1 of 14.01.2011.

685 Case C-469/15 P, *FSL Holdings v Commission*, paragraphs 106-107.

686 Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraphs 115, 123-124.

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

688 Judgment of the Court of First Instance of 15 March 2000, *Cimenteries CBR a.o. v Commission*, Joined cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, ECLI:EU:T:2000:77, paragraphs 1936-1937.

689 Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraphs 119-122, 134.

690 Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraphs 120-121.

active on the market and therefore enter into a larger number of transactions than other market participants[691].

(635) The Commission is not required to show systematically that the agreement on prices allowed the cartel participants to obtain different prices from those they would have obtained in the absence of such agreements. It is sufficient that agreed prices serve as the basis for individual negotiations as they limit the clients' margin of negotiation[692].

(636) In so far as the undertaking participating in the concerted action remains active on the market in question, there is a presumption of a causal connection between the concerted practice and the conduct of the undertaking on that market. Subject to proof to the contrary, which the economic operators concerned must adduce, it must be presumed that the undertakings taking part in a concerted action and remaining active on the market take account of the information exchanged in that context with their competitors in determining their conduct on that market[693].

5.2.2.2. Application in the present case

(637) For the reasons set out in detail in the following recitals, having regard to their content, objectives and the economic and legal context of which they formed part, it is considered that the collusive contacts engaged in by the parties and described in Section 4 can be regarded, by their very nature, as being sufficiently harmful to the proper functioning of normal competition such that it is not necessary to assess their effects (that is, the conduct can be considered as having the object of restricting and/or distorting competition within the meaning of Article 101(1) of the Treaty[694]).

(638) In this regard, the parties coordinated on prices and trading activities and exchanged commercially sensitive market information on trading activities, prices and trading and pricing strategies in the USD SSA sector, thereby gaining a competitive advantage vis-à-vis customers and competing traders. Such conduct was carried out in pursuit of a common plan to maximise their revenues from trading USD SSA bonds on the secondary market, the elements of which are set out in recital (613).

(639) As explained in Section 2, the international bond markets, of which the market for USD SSA bonds forms a part, are designed for the efficient raising and trading of debt capital in what are normally highly competitive conditions. The parties are well known international banks with extensive experience in these markets.

(640) Instead of competing with each other, USD SSA bond traders employed by the parties collaborated with each other with regard to pricing and trading conditions, whilst competing with the rest of the market.

(641) In the context of their coordination on prices and trading activity, as well as their exchanges and confirmations of pricing and trading strategies, the traders discussed current or forward looking sensitive commercial information such as prices, volumes, yield spreads, specific customers, trade flows, trading activities and

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691 Case T-105/17, *HSBC Holdings plc a.o. v Commission*, , paragraph 145.

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

693 See Case C-8/08, *T-Mobile Netherlands a.o.*, paragraph 62.

694 See recital (623).

strategies and other information relevant to their commercial conduct on the secondary trading market for USD SSA bonds.

(642) As part of the coordination of their trading activities, the parties agreed to refrain from bidding or offering, or to remove (or "kill") a bid or offer from the market when they might come into competition with or otherwise interfere with one another, for a particular time window on account of another trader's announced position or trading activity. They also agreed to split trades between each other and amalgamate or reduce their respective positions to meet a specific customer's demands (as disclosed between them).

(643) The parties behaviour operated to the detriment of the competitors who were their customers in USD SSA bond transactions and also distorted competition for competitors that were not counterparties at that stage. The parties coordinated prices rather than acting independently as competitors normally would. The goal was to increase their revenues and, even if this meant one of them might hold back on a specific trade or share a profitable trade, the overall understanding was that they helped each other in the interests of their mutual benefit over time.

5.2.2.2.1. Coordination on prices shown to specific customers or to the market

(644) There are numerous instances of coordination on pricing both as regards pricing for specific customers and the market in general.

(645) In the case of coordination on prices for specific customers, as noted in recital (613) element (1), the traders were frequently in communication with each other at the same time that they were in parallel negotiations with the same customer for the same bonds, either simultaneously or in close proximity of time. The traders agreed on the prices each would show to that customer, either by fixing identical prices to the customer or by agreeing that one would show a more competitive price than the other[695].

(646) In these situations, the traders were supposed to be in direct competition with each other during a live negotiation, and used the chatrooms to fix the prices they would offer to the customer. This is clearly evidenced by the use of language such as: *"ok I will show the same"; "where you want me to show"*; *"agree…gona show him a piece of 25mm or 50mm but tight"*; "*can show them tighter if it helps"; "ok cool what you showing…will show them back"; "I'm gonna show him, like, 53 (...) I'll show him a little bit wider.."; "where you wanna show them"; "...show them cheaper or whatever"*[696]. In addition to price fixing, this conduct amounts to dividing markets and customers rather than competing for them, which is "*among the most serious breaches*" of Article 101 of the Treaty[697].

695 Although the Commission considers both scenarios as price fixing in the context of this case, an agreement that one trader will show a less competitive price than the other (rather than agreeing to show the same price) could constitute a form of customer allocation as well. In these scenarios, parties focus on allocating individual trades to each other, rather than customers as such. In any case, regardless of whether they agreed to show the same price or different prices, the traders always retained the possibility to share the benefits of their rigged trades by executing a bilateral trade via a broker to even out their positions once the customer trade had been concluded.

696 See recitals (129), (139), (198), (322), (325), (397), (403) and (528) respectively.

697 Judgment of the General Court of 13 July 2011, *General Technic Otis a.o. v Commission*, Joined Cases T-141/07, T-142/07, T-145/07, T-146/07, ECLI:EU:T:2011:363, paragraph 158.

(647) Such instances of price fixing directed at specific customers are reproduced and explained in recitals (121)-(122), (127)-(128), (129)-(130), (139)-(140), (143)-(145), (148)-(149), (173), (174)-(175), (176)-(177), (180)-(181), (190)-(191), (195)-(196), (198)-(200), (211)-(212), (236)-(238), (239)-(240), (253)-(255), (265)-(267), (268)-(269), (277)-(278), (279)-(281), (283)-(284), (287)-(292), (294)-(296), (297), (298)-(299), (301)-(302), (313)-(315), (320)-(321), (322)-(324), (325)-(326), (329)-(332), (335)-(336), (337)-(338), (339)-(340), (348)-(349), (355)-(357), (358)-(359), (377)-(378), (386)-(387), (396), (397)-(399), (403)-(404), (410)-(411), (412)-(413), (528)-(529), (539)-(540) and (573)-(574).

(648) On occasion, two of the traders also discussed and agreed prices that one of them would offer to a specific customer who had only contacted one of the traders among the group. This situation may arise when a trader receiving an inquiry has a position to close, but the inquiry exceeds the size of his position or interest. That trader then approaches one of the other participants, and if their interests align, the trader will combine his position with that of his competitor and offer the customer the combined size of both. The two traders would then execute a bilateral trade (typically via a broker) in order to offset the short position entered into by the trader making the client trade, meaning two separate transactions take place.

(649) Such sourcing of liquidity between traders is in principle legitimate where it does not involve discussion or agreement on the price being shown to the client. Where a trader has executed a trade with a client, he will seek to cover the resulting position by approaching a broker or another trader. The usual business practice would be to do so after the trade with the client has already taken place, in which case the discussion between the two traders (or the trader and broker) can no longer have any influence on the price paid by the client. It is also legitimate for the trader to attempt to cover the position before the client trade is executed, provided he or she does not discuss with another trader the price at which the first trader will make the trade with the client[698].

(650) By contrast, the participants in the infringement typically discussed and even agreed the price at which the trader in contact with the client would offer the bonds to the client. This is tantamount to price fixing, regardless of the fact that the customer was only in contact with one of the traders at the time. First, the traders must have been (or, at the very least, ought to have been) aware that a customer in contact with one or more dealers[699] about a specific bond could, at any time, choose to contact additional dealers before deciding whether to make a trade. There is thus always the potential that a client could contact a second member of the cartel after receiving a bid or offer from the first. In this scenario, the negotiation would already be tainted by the initial pricing discussion between the traders[700].

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698 […]

699 See footnote 14. Here, dealers refers to the USD SSA trading desks of different banks, although it would be equally correct to say that a customer may contact traders directly.

700 See for example recital (236), [13/10/2010, […])] in which [Deutsche Bank employee] contacted [BAML employee] seeking to combine their long positions in an offer to a client who subsequently contacted [BAML employee] about the same bonds. The two proceeded to coordinate their offers based on their initial discussion. Deutsche Bank has referred to this type of collaboration, as distinct from a legitimate sourcing of liquidity, as a […], […].

(651) Second, the cartel participants are taking advantage of their close relationship to secure trading opportunities for each other, as if they are trading the same book[701] rather than competing. This distorts the market and deprives other traders of trading opportunities, as clients will not seek additional trades in the relevant bonds if they have their desired positions filled by the cartel[702].

(652) Accordingly, the manner in which the participating traders jointly determine the price at which to deal with the customer by the traders involves price fixing and also involves customer allocation and market sharing. See recitals (116)-(118), (291)-(292), (297), (307) and (339)-(340) in which, in addition to price coordination, explicit customer allocation and market sharing are evident.

(653) In the case of prices shown to the market in general as noted in recital (613) element (2), the traders often discussed and jointly formulated their pricing for bonds that they would present to the market via their sales desks or via brokers. The participants agreed on several occasions to coordinate their bidding and offering prices to the market generally, prior to any live customer request. This could take the form of agreements to submit bids and/or offers to brokers at coordinated prices, or agreements to send 'axe sheets' or 'comps lists' to their respective sales desks with coordinated prices: *"you need my spreadsheet"*; "*do we prepare comps for FINL?...sent yo guys the comps I sent out last night…ok lets send the same comps list"; "[…] can you sen me the comps you send out…will send the same thing"; "is that yopur axe sheet?...i know your axes anyway lol"*[703].

(654) On a few occasions, the traders would engage in recurring discussion of the same bonds over a period of hours, coordinating the prices they would show for the bonds not just once, but repeatedly in order to jointly respond to market movements and hedge their risk.

(655) Instances of price fixing directed at the market generally are reproduced and explained in recitals (124)-(125), (150)-(151), (157)-(158), (169)-(170), (228), (243)-(245), (271)-(272), (274)-(276), (283)-(284), (285)-(286), (287), (361)-(364), (416)-(417), (418)-(419), (421), (422), (464)-(465), (468)-(470), (482) and (501)-(502).

5.2.2.2.2. Exchange of commercially sensitive information

(656) As noted in recital (613), element (3), coordination of prices took place in the context of and alongside the exchange of commercially sensitive information between the participating traders that went significantly beyond that necessary for the conduct of legitimate trades between them.

(657) Section 2.1.4 outlines the mechanisms of trading in the USD SSA bonds market. Although traders frequently use brokers for the purposes of liquidity, anonymity and reliability of settlement – and therefore have access to market prices via the brokers' screens and can see when a trade has been concluded – there remains considerable uncertainty in the market regarding the activities, positions, trading interests and intentions of end customers and competing traders. Indeed the use of brokers in order

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701 A *'book'* or '*trading book*' in securities secondary markets is a record of all the positions held by a trader and hence available for trade.

702 This should nevertheless not be understood as a benefit to the client, who, it must be remembered, is being offered a price fixed jointly agreed between two competitors protecting each other's interests.

703 See recitals (124), (285), (361)and (482) respectively.

to increase anonymity tends to increase such uncertainties. There is therefore a lack of transparency in the market.

(658) By disclosing amongst themselves the market intelligence gained from customer inquiries, as a complement to the exchange of price information, the colluding traders considerably reduced this market uncertainty. This shared information concerned the activities of customers active on the market on a given day, their trading interests and preferences as expressed to each individual bank, including which bonds the customer might be holding or seeking and in what size (volume), whether the customer was likely to continue to buy or sell, and the price levels at which it wished to execute or had concluded recent trades.

(659) The colluding traders also engaged in a frequent and recurring exchange of information on the prices, yields or spreads of bonds recently traded and the price levels of bids or offers they had just made or intended to make, or their views on the appropriate price of a given bond without explicit reference to an executed or potential trade. The disclosure of such information reduced their uncertainty as it helped each of them to judge how competitive his own pricing was, and whether he was reading the market correctly[704].

(660) These recurrent exchanges, even if not referring to a specific executed or potential trade, allowed them to adjust and determine their strategy towards the market and each other with significantly more information than they would otherwise have possessed, comfortable in the understanding that their collaborators would have regard to each other's interests. The exchange of sensitive information between them, including details of third party customer identities and trades and proposed trades, went far beyond that required for the negotiation of legitimate trades between them, and created market asymmetry. The colluding traders possessed far more sensitive information, regarding prices, volumes, spreads and counterparties, than customers or other competing traders. At times, two traders might be simultaneously coordinating their approaches towards an unsuspecting customer who had contacted them both independently and would expect them to be behaving as competitors.

(661) Whilst it is necessary for market liquidity and it is inherent to the operation of bond traders to exchange information and trade with each other (whether directly or via brokers), the exchanges between the parties referred to in Section 4 took place outside the context of a discussion on a potential bilateral (or trilateral) transaction between them. These communications were not necessary for liquidity sourcing or to offset risk and hedge a particular trade or position but only for the parties to gain a competitive advantage to the detriment of other market actors. In sharing such information, the traders significantly reduced the uncertainty inherent to a market in which risk and uncertainty management is one of the key parameters of competition and enabled pricing coordination.

(662) The Commission is aware that the correspondence between the traders over the period of the infringement was voluminous, and does not take issue with exchanges exclusively intended to negotiate and execute bilateral trades and net off risks in the inter-dealer market. Further, a large proportion of all the communications between the traders was of a purely social nature.

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704 See recitals (611)-(612); […].

(663) However, the communications set out in Section 4 concern current or forward-looking competitively sensitive information, the exchange of which went well beyond what was legitimately necessary for the purposes of price discovery to negotiate bilateral trades (see recital (43)). The commercially sensitive information that was exchanged included discussion of specific requests from customers, or their likely behaviours and intentions; prices and volumes at which the traders had just (or recently) concluded transactions; details of trading positions and the traders' preferred strategy for given bonds at a given time[705].

(664) This information was capable of influencing the traders' conduct and increased transparency on each other's future prices and volumes in bids and/or offers, as well as the likely behaviour of other market participants including customers, without having any relationship to potential bilateral transactions between them. As a result of the exchange of this information, the traders cannot be deemed to have been determining their conduct on the market independently.

(665) The value of the information exchanged in each instance depends on the specificity and the timing of the information. Disclosure of a trader's current pricing intentions, or the terms of recent trades, could be of significant value for another trader. Disclosure of more historic prices would, by comparison, be less valuable[706].

(666) Whether information about a price or trade is historic can also depend on the specific USD SSA bond. The bonds of certain more prolific issuers, such as the EIB or KfW, are generally liquid enough that price information may become stale as of a few minutes or hours. By comparison, certain other bonds are less liquid, to the point that information on price which is several days old, or even older, could still have some value[707].

(667) The traders routinely disclosed their position in specified bonds at a given time (whether they were long or short, and often the size of the position or a general indication of it). The regular and open sharing of open risk positions with competitors provided the traders with information which may be, for a particular time window or until new information supersedes it, relevant to their subsequent trading decisions and enabled them to identify opportunities for coordination.

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705 The traders not only exchanged information on their positions among themselves, but also requested from certain brokers with which they had established relationships that the brokers inform the traders when one of them has posted a price onscreen, which alerted the traders that one of them may have a particular interest or position in a bond that the others should be aware of and not interfere with. […].

706 […]

707 […] (the varying liquidity is discussed in the context of the value of information on a trader's position in a given bond, but there is no reason why this should not apply to the price as well). There are examples in the Commission's file of exchanges of pricing information phrased not in terms of where a trader has just priced or may intend to price a bond at that point in time, but rather where pricing information is requested by reference to specific trades another trader may have concluded minutes, hours, or even the day before. In these exchanges, the explicit link between the historic information requested and the potential live trade demonstrate that, at least with respect to certain bonds, the traders could consider the exchange of pricing information between them potentially relevant to their current trading activity, even when the information concerned trades which occurred as far back as the previous day. See for example the chat communications reproduced in recitals (329) ("*did you get lifted yest?... sweet where u show… I guess he checking vs your offer*"); (337) ("*bidding sfer 09.14…any idea what […] paid for his…yesterday?*"); (418) ("*what you wanna open new EIB?*" "*66/63…i got hit last night at 66 in 5mm*").

(668) Knowing the exact amount of a long or short position is even more valuable. As Deutsche Bank explains: […][708].

(669) Furthermore, the traders often discussed some of their recurring customers without explicitly typing their names in the chatroom, by referring to them using agreed nicknames understood and used by everyone in the group. The knowledge of a client's identity along with intelligence gained from another trader in relation to their conduct on the market is clearly of value when that client is already known to all of the traders, in particular (but not only) as it relates to some of the larger clients whose buying and selling behaviour might affect flows in the market generally, such as a '*cb*' (Central Bank).

(670) To the extent that certain clients known to all of the traders tend to use similar strategies repeatedly, the traders sharing the information must inevitably have taken it into account, and potentially adapted their strategy if faced with that client for particular trades[709]. There are numerous instances in the file where the traders discuss behaviour and speculate on strategies used by specific clients using such agreed nicknames as "*smalls*" (or "*biggie*" or "*biggie smalls*")[710], "*t+2*"[711], "[…]"[712], and so forth[713].

(671) There are also numerous instances in which the traders disclose the identity of the client by way of some identifying characteristic, such as "*real money*", "*down south cb*" or "*european cb*" (the cb refers to a central bank), which narrows down the identity of the client without naming the client specifically. Depending on the context of the exchange and the information previously disclosed, however, the recipient of the information may have a particular customer in mind when asking, and may be able to deduce to a reasonable likelihood that the traders have the same client in mind based on the descriptive term[714].

(672) Irrespective of the exact value of any individual piece of information the traders may have exchanged, the detail of the exchanges (usually disclosing the exact bond, maturity, price and volume), together with the broad variety of bonds and maturities being discussed, contributed to reducing uncertainty on the market for each of the traders. The exchange of such information served to increase the amount of information available to the trader (which exceeded that which would have been available within any one bank) and provide a reliable indication of the "right" price of a bond at a given time, the impact that incoming flows might foreseeably have on prices in the immediate future, or the likely intentions of major customers and other market participants. All of these could be factors the trader might take into account in formulating his own prices or trading strategies.

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709 […] Case T-105/17, *HSBC Holdings plc a.o.* v *Commission*, , paragraph 67.

710 See recitals (311)-(312), (320)-(321), (329)-(330), (334), (351)-(352), (377)-(378), (394)-(395), footnotes 213 and 420.

711 See recitals (222)-(223), (248), (253)-(254), (294)-(295), (297) and (392)-(393).

712 See recitals (174)-(175).

713 There are other examples: in one instance they identify a customer by the term "*philli* " and in another by the term or nickname "*the vodkas*". See recitals (222) and (309).

714 See, for example, recitals (163)-(164), (234)-(235), (248)-(249), (253)-(254), (279)-(280), (283), (358)-(359), (388)-(389), (406)-(408), (428)-(429), (434)-(435), (444)-(445), (480)-(481). […].

(673) It should be noted as well that the traders exchanged such information not only on trades made via brokers, in relation to which the price and volume of a trade would be visible on a broker screen (but not the identity of the traders involved), but also on trades made directly to clients via their sales desk, the details of which would in principle not be visible to the market generally[715].

(674) Communications in which the traders exchange sensitive information on the behaviours and intentions of customers, upcoming trade flows and other market developments, are reproduced and explained in recitals (116)-(125), (163)-(164), (174)-(175), (180)-(181), (185)-(189), (190)-(192), (195)-(196), (211)-(215), (222)-(225), (228)-(229), (230)-(231), (234)-(235), (236)-(238), (239)-(240), (242), (243)-(245), (248)-(251), (253)-(255), (279)-(281), (283)-(284), (294)-(295), (297), (307), (311)-(312), (317)-(318), (320)-(321), (322)-(324), (329)-(334), (335)-(336), (337)-(338), (339)-(340), (341)-(342), (343)-(346), (351)-(353), (356)-(357), (358)-(359), (361)-(364), (367)-(374), (377)-(381), (383)-(385), (388)-(390), (392)-(393), (394)-(395), (406)-(408), (410)-(414), (418)-(420), (426)-(427), (428)-(429), (430)-(433), (434)- (436), (437)-(439), (440), (444)-(445), (446)-(449), (452)-(454), (456)-(459), (461)-(462), (464)-(465), (468)-(470), (475)-(476), (477)-(478), (480)-(481), (488)-(490), (495)-(499), (504)-(505), (510)-(512), (515)-(517), (519)-(521), (523)-(524), (525)-(526), (528)-(529), (531)-(532), (535)-(536), (539)-(540), (541)-(542), (545), (547)-(550), (551)-(552), (558)-(559), (567) and (573)-(574).

5.2.2.2.3. Pricing and Trading Strategies

(675) As set out in recital (613), element (4), the traders also exchanged information and confirmed and aligned pricing and trading strategies. Among the most commonly occurring practices throughout the communications on the Commission's file are very brief exchanges in which one of the traders asks the others in the chatroom *"where are you marking"* or *"where would you mark"* a particular bond. The reply could come in the form of a two-way price, a mid-price, or either a bid or offer price if the trader providing the information knew whether the recipient was more interested in buying or selling. Such exchanges are reproduced or described in recitals (124), (129), (165), (166), (195), (205), (228), (313), (355), (361), (400), (434), (477), (485), (485), (492), (495), (551), (555), (561), (563), (565), (567), (570) and (572), but numerous additional examples can be found in the file.

(676) Deutsche Bank has explained that, strictly speaking, marking a bond: […]. Deutsche Bank submits that knowledge of another trader's end-of-day price mark used for this purpose would be of comparatively limited value for another trader[716].

(677) However, as Deutsche Bank explained, in most of the communications in the Commission's file (including those described in Section 4), the question about other traders' "marking" of a bond is posed in a different sense. In these instances, the question is asked in circumstances in which: […]. In this respect, Deutsche Bank has explained that the question should be understood as […][717]. When seen in their correct context, therefore, it is clear that the purpose of the communications was for

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715 As is evident from the explanations provided in Section 4, certain customers who had established relationships with more than one of the parties, such as *"t+2"* and *"smalls"*, were frequent subjects of the exchanges.

716 […]

717 See recitals (720)-(724) on the meaning of '*marking*'.

the traders to provide each other with information on their current pricing of particular bonds and thus enable each other to act in the market with the benefit of knowing a competitor's pricing.

(678) Additional communications in which the traders exchange information on recent prices or current pricing intentions, apart from the "*where are you marking*" examples listed in recital (675), and distinct from instances of price fixing and coordination described (which inherently also involve the exchange of price information), are reproduced and described in recitals (116)-(118), (124), (129), (131)-(132), (139)-(142), (153)-(154), (156), (161)-(162), (163)-(164), (165)-(166), (176)-(178), (180)-(181), (185)-(189), (190)-(192), (193), (195)-(196), (198)-(201), (205)-(206), (208)-(209), (211)-(212), (216)-(218), (222)-(225), (228), (234)-(235), (239)-(240), (242), (243)-(245), (248)-(251), (253)-(255), (260)-(261), (262), (265)-(267), (268)-(269), (271)-(272), (283)-(284), (285)-(286), (287), (291)-(292), (294)-(296), (297), (298)-(299), (300)-(302), (304)-(305), (307), (313)-(315), (320)-(321), (322)-(324), (325)-(332), (335)-(336), (337)-(338), (339)-(340), (341)-(342), (343)-(346), (348)-(349), (351)-(353), (355)-(357), (358)-(359), (361)-(364), (367)-(374), (377)-(381), (383)-(385), (386)-(390), (394)-(395), (396)-(399), (400)-(404), (410)-(414), (418)-(421), (423), (426)-(427), (428)-(429), (430)-(433), (434)-(436), (437)-(439), (440), (444)-(445), (446)-(449), (452)-(454), (456)-(459), (461)-(462), (464)-(465), (468)-(470), (475)-(476), (477)-(478), (480)-(486), (492)-(493), (495)-(499), (501)-(502), (507)-(508), (510)-(512), (515)-(517), (519)-(521), (531)-(532), (547)-(549), (551)-(552), (555), (561), (563), (565), (567), (570), (572), (573)-(574) and (576)[718].

(679) These communications represent the exchange of pricing (or, at the very least, pre-pricing) information between competitors. This information is often requested when a trader needs to set his pricing strategy for bidding or offering. Accordingly, far from being a purely hypothetical valuation for accounting purposes, this information can be valuable to the trader receiving it as a starting point for formulating his price, as a re-affirmation of his own estimation, or if he has not been active in trading the relevant bonds lately and is unsure how to price them. The trader giving the information would very likely, in the event of a particular trade, use the same starting point.

(680) These communications are, moreover, an integral part of the intense exchange of information between the participating traders, providing each trader with access to more information than would have been available to him absent the cooperation. By disclosing and receiving such information, the colluding traders could not fail to take into account, directly or indirectly, the information obtained in order to determine the policy which they intended to pursue on the market[719]. The parties also distorted competition insofar as the collusive behaviour resulted in an informational asymmetry between market participants, in that the colluding traders were better able to anticipate the demands of customers than their competitors.

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718 See also footnote 707, which identifies a few communications in which pricing information going back to the previous day is clearly considered relevant by the traders.

719 See Judgment of the Court of First Instance of 12 July 2001, *Tate & Lyle a.o. v Commission*, Joined cases T-202/98, T-204/98 and T-207/98, ECLI:EU:T:2001:185, paragraph 58.

5.2.2.2.4. Coordination on Trading Activity

(681) As set out in recital (613), the coordination on trading activity of the parties (element (5)) extended to agreements to refrain from trading or withdraw prices and to split trades between themselves. Such collaboration does not constitute a direct agreement on price, but amounts to an agreement to share markets and allocate customers rather than competing which, as noted in recital (646), is among the most serious breaches of competition law.

(682) On several occasions, the participating traders coordinated their behaviour so that one trader's action would not harm an overall coordinated strategy or that of the other individuals participating in the collusion. This is evidenced by the use of language such as: *"yeah man u go ahead"*; "*I'll stay out of it"*; "*happy to leave it"; "will leave it alone"*; "*crack on man"*; "*can you just stay out of it"*; "*will stay out of it"*; "*I can stay out of screens"*[720].

(683) In addition, on a number of occasions the traders agreed to refrain from showing, or to withdraw already shown bids or offers (generally on broker screens), in order to facilitate a member of their group securing a trade at terms less advantageous to the customer. This behaviour essentially aimed at deceiving the market as to the level of demand or supply of a particular bond, and the price level at which it might be bought or sold, at a particular time.

(684) These instances, often characterised by one of the traders offering to "kill" his bid or offer, eliminate bids or offers which might interfere with one trader's attempt to buy or sell bonds at his preferred terms. This is clearly evidenced by the use of language such as: *"can you kill by bid kfw 15 please"*; "*you want me to kill the bid?...or I can kill offer?"*; "*shall I kill me 144 offer?...I can kill the bid"*; "*shall I kill it?...shall I kill price?"*; "*...I can kill it if u want"*; "*you want me to kill it?...can u do me a favour and kill the bid if possible...killed"*; "*can you kill that bid in the 08/15 pls"*; "*...can you kill it for a sec"*; "*kill it for now if you can...killed it"*; "*you want me to kill the bid?"*; "*...I can kill the offer if u like..."*[721].

(685) There are instances among those mentioned above in which a trader does not make use of the offer of another trader to kill the competing price ("*nah its cool leave itl*", "*leave it up there*", *"cool...lets leave 12/11 up there"*)[722]. Nevertheless, the fact that these competitors discuss the possibility of one of them withdrawing their offer, and ultimately commonly agree that both offers should remain on the market, far from constituting any form of rejection of anticompetitive conduct, constitutes evidence of the traders' consulting with one another and coordinating their behaviour in the market in respect of matters that they should be determining individually (that is, whether or not to offer to buy or sell a particular bond at a given time) and not in collaboration with their competitors[723]. Even where no active coordination was undertaken after such discussions, there was a joint intention to coordinate behaviour over time[724].

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720 See recitals (211), (260), (268), (426), (456), (461), (523) and (541) respectively.

721 See recitals (208), (216), (230), (232), (341), (392), (434), (437), (440), (446) and (519) respectively.

722 See recitals (434), (418) and (531) respectively.

723 See recitals (211), (216), (274), (383), (446), (456), (501), (519), (525), (531) and (558).

724 See Case T-9/99, *HFB v Commission*, , paragraph 206: "*It is apparent... that, at least at a certain time, the undertakings in question expressed their joint intention to conduct themselves on the market in a*

(686) Instances of coordination with conduct corresponding to element (5) of recital (613) are reproduced and explained in recitals (131)-(132), (208)-(209), (211)-(212), (216)-(218), (228)-(231), (232)-(233), (243)-(245), (248)-(251), (260)-(261), (268)-(269), (274)-(276), (279)-(281), (285)-(287), (291)-(292), (297), (313)-(315), (317)-(318), (339)-(340), (341)-(342), (348)-(349), (383)-(385), (392)-(393), (418)-(419), (426)-(427), (430)-(432), (434)-(436), (437)-(439), (440), (446)-(449), (452)-(453), (456)-(459), (461)-(462), (475)-(476), (501)-(502), (519)-(521), (523)-(524), (525)-(526), (528)-(529), (531)-(532), (535)-(536), (539)-(540), (541)-(542), (545), (558)-(559) and (573)-(574).

5.2.2.3. Assessment of the parties' arguments in relation to the restriction by object

(687) BAML, Crédit Agricole and Credit Suisse have argued that the Commission has failed to take into account the market context in which the participating traders operated and therefore failed to understand that the exchanges of information and coordination of behaviour observed during the infringement were in fact legitimate within the market structure and trading environment in which they operated.

(688) In particular, BAML, Crédit Agricole and Credit Suisse have argued that the role of their traders was primarily that of market makers[725] and, as such, they were required to source liquidity: "*by locating counterparties with whom to off-set, or hedge, the positions resulting from their customers' trades*"[726]. In this context, they claim that many of the communications in which customer trades and pricing were discussed between the traders were within the context of sourcing liquidity and not anticompetitive. A second strand of their argument is that it is a feature of this particular market, as opposed to more traditional sectors, that the traders needed to engage in "price discovery" and that other mutual pricing and trading disclosures should not be considered as agreements and/or concerted practices.

(689) BAML and Credit Suisse also argue that the need to support new bond issues for which their employers were acting as lead managers justified many of the communications and trading activities of the traders in the period before and after the issue.

5.2.2.3.1. The role of market makers

(690) As noted in recital (19), banks and individuals in the USD SSA bond market - as in other OTC bond markets - may act as market makers, although they are not designated market makers. In some other financial markets there are designated market makers, who are then required to operate according to codified rules. For USD SSA bonds, it is open to firms and to individuals to perform such a role; there is, however, no obligation to do so.

(691) The USD SSA bond traders of all the addressees of this Decision had an important market making function, but this was not their sole role. [BAML employee], for example, was employed by BAML as a "*[...]*" from […], with the following job description: "*Works independently and is responsible for risk management and*

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specific manner... it must be held that, even if there was not an agreement on all the matters forming the subject-matter of the negotiations, a joint intention to restrict competition... governed the negotiations during a certain period...".

725 […]

726 […]

trading activities. Executes transactions in accordance with established trading strategies and risk parameters. Also contributes to the formulation of strategies"[727]. [BAML employee] could not have contributed to the formulation of trading strategies if his sole strategy was to take the opposite side of customer trades and then hedge. When employed by Crédit Agricole from […], [Crédit Agricole employee's] job description[728] noted that: "*the position is to act as market maker*" and yet the first '*Key Responsibility*' of [...] was to: "*Formulate trading strategies daily by analysing the latest market data and establishing positions to take advantage of market moves*" and the third '*Key Responsibility*' was to: "*Formulate trading activities and relate these to market opportunities*". Again, these primary responsibilities are difficult to reconcile with a market making position in the traditional sense of purely reacting to client demand.

(692) As another bank trading in the USD SSA bond market in the relevant period explained[729]: "*In practice, the designated trader is likely to have a greater interest in either buying or selling at any particular point in time, depending on a range of factors including, in particular, the proprietory position they hold in the bond (long or short) and underlying client demand.*" BAML's expert report notes that[730]: "*The SSA bond market is an OTC market in which dealers provide liquidity by taking inventory risk and/or matching counterparties… Dealers may decide to engage in a risk-bearing principal trade – ie take a long or short position in the bond on their own books…*".

(693) In this respect, there is evidence on the file of the traders involved in the cartel taking and holding positions in USD SSA bonds in order to profit from anticipated price movements, even where they are not necessarily successful. For example:

5 Feb 2010[731]	05:01:14 – 05:10:46
DB ([...])	*"we feel like a jackass…saw this move coming and we didnt max it at all"*
BAML ([...])	*"fcked it… again"*
DB ([...])	*"we really need to improve our prop trading…our views are good but we just don't sit with stuff long enough…or in enough size"*

29 July 2010[732]	09:43:07 – 09:43:17
BAML ([...])	*"waithing for one more flush then gtting long…want to be long oming out of auctions"*[733]

16 Nov 2010[734]	08:19:25 – 08:19:41

727 […]
728 […]
729 […]
730 […]
731 […]
732 […]
733 [BAML employee] states: "*want to be long*"; in other words he wishes to take a position rather than hedge off a position.
734 […]

CS ([...])	*"how have u hedged your ibps?"*
DB ([...])	*"theres me talking my posie again!...unhedged...long outright...need that shite to come in 300bps"*
CS ([...])	*"hopefully you'll get some joy on those"*

2 July 2013[735]	03:22:21 – 03:23:13
DB ([...])	*"eib 04/16 up at +11...lib+1.35"*
CA ([...])	*"that's fckin reatrded...already short and staying short here"*[736]

10 Dec 2013[737]	05:01:14 – 05:10:46
CS ([...])	*"are u short, or just trying to get long?"*
DB ([...])	*"trying to get long...tink they look ok"*

(694) As illustrated in recital (729), the traders actively bought and sold bonds via broker screens in the interests of taking profits and making a "*nice trade*", rather than simply fulfilling client demand and sourcing liquidity or covering positions. Such trading contributed to their revenues in the same way as any other transactions.

(695) In taking positions, the traders were subject to individual risk and desk limits determined by their employers (that is, limits to the value of any exposed position). Nevertheless, it is clear that their trading role was not merely: "*to promote liquidity to support the bank's clients wishing to trade SSA bonds*"[738].

(696) Moreover, the traders did not feel obliged to quote two-way prices on demand from potential customers. On 18 January 2012, for example[739], [Deutsche Bank employee] refuses to quote a two-way price to the (regular) customer '*smalls*', telling [BAML employee] and [Credit Suisse employee]: "*told them order only...aint buying that crapo*". His refusal underlines the fact that the traders were not officially designated market makers with formal obligations.

(697) Even within the context of market making, however, the type of sensitive information exchange and coordination on pricing engaged in by the traders went well beyond the pursuit of transactions between themselves for the purposes of hedging/liquidity sourcing and the fact that they were continuously active on the USD SSA market underlines the significance of their activities[740].

735 […]
736 […]
737 […]
738 […]
739 See recital (351).
740 See Case T-105/17, *HSBC Holdings plc a.o.* v *Commission*, , paragraph 145: "*Further, 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' in the light of the importance of such traders on the [...] market....'market makers' are generally and continuously active on the [...] market and therefore enter into a larger number of transactions than other market participants. From the point of view of competition on the market, it is particularly fundamental that prices be determined independently.*"

5.2.2.3.2. Sourcing liquidity

(698) Whilst only BAML delineates its customer base and defines a subset of counterparties as their USD SSA bond traders' real 'customers', the three contesting parties maintain that much of the traders' behaviour is entirely legitimate within the context of market makers sourcing liquidity in order to service client demand.

(699) It is indeed necessary for traders, when acting as market makers, to offset risk by hedging their client trades (either by buying or selling the relevant bonds or a close proxy (often US Treasuries of a similar maturity)). In this regard, the Commission has not taken issue with the information exchanged in the context of contractual negotiations between the traders involved[741]. However, the extent to which the participating traders discussed specific customer approaches and activities and agreed on prices for third party trades, went beyond legitimate sourcing of liquidity for the purposes of risk mitigation[742].

(700) BAML states that: "*particularly in respect of bonds that are less liquid and less frequently traded, the dealer may attempt to engage in an immediate, pre-trade liquidity sourcing, whilst the customer enquiry is live, by locating another counterparty willing to take the opposite side for some or all of the customer's trade, and then performing back-to-back trades with the customer and the other party*"[743]. BAML also maintains, with regard to the price at which the first trader will trade with the client: "*Inevitably a dealer's costs, including the costs of sourcing liquidity, must be factored into her pricing to customers*" and that this can even ensure a better price to the customer as: "*if a dealer is unable to hedge her inventory position, she may quote a wider price to a customer to account for the higher risk, or not trade at all if the risk is too high.*"[744]. Credit Suisse also argues that an agreement between [Deutsche Bank employee] and [BAML employee] to show a particular price to a customer who has approached [Deutsche Bank employee] on 22 November 2011 and to split any trade[745] is legitimate as: "*As a result of this exchange, liquidity is being offered to the client on terms that might otherwise not have been so commercial if only one trader were to take down the position risk*"[746]. Crédit Agricole contends that, where a trader contacts another to source liquidity following a request for a quote and before the actual trade: "*price and volume of the relevant bond that Trader A can obtain from Trader B will inevitably have a material impact on Trader A's response to the RFQ*"[747].

(701) None of these scenarios justify the examples of outright price fixing by the participating traders cited in Section 4. Whilst the price at which a trader could offset risk, along with other costs, would certainly be a "*factor*" that can have an "*impact*" on the price offered to a customer, this cannot justify instances of price fixing such as, for example, on 19 January 2010[748], 25 January 2011[749] and 14 March

741 See Case T-105/17, *HSBC Holdings plc a.o. v Commission,* at para 152.
742 See recital (649).
743 […]
744 […]
745 See recital (348).
746 […]
747 […]
748 See recitals (116)-(120).
749 See recitals (271)-(272).

2014[750]. In these instances, firstly, the USD SSA bonds being traded were not illiquid and could have been readily sourced from other traders or via brokers, secondly, there were no transactions between the traders ([BAML employee] does refer to a hedge on 19 January 2010 but it is clearly with a third party) and, thirdly, even if liquidity sourcing had been necessary or taken place, it would not justify the exchanges on prices shown or to be shown to third parties, as opposed to the price of a transaction between the traders. Nor do the banks offer any explanation as to why customer identities are frequently discussed, as on 28 July 2010[751], 12 August 2010[752] and 9 August 2013[753], when it is not necessary for the parties to exchange information on the identity of a customer in order to agree a trade between themselves for the purpose of hedging. BAML uses the notion of a trusted network of traders[754] to justify why they only ever seem to be sourcing liquidity from each other rather than other traders. Such a position could potentially be plausible if the traders were embarking on large trades and feared 'front-running'[755], although even in these instances, price fixing and exchanges on customer identities would not be justified. However, the traders regularly exchanged sensitive information and coordinated on pricing even when only small-medium sized volumes of bonds were involved (such as, for example, 14 May 2010[756] and 20 October 2010[757]); and any hedging could have taken place in the market via brokers screens.

(702) Finally, the concept of 'liquidity sourcing' is used by the three banks to justify numerous instances of exchanges of sensitive information and price fixing, even where there is no indication of any risk offsetting between them (see, for example, what Crédit Agricole characterises as a "*back-to-back arrangement*" on 15 February 2013[758]). Crédit Agricole has also argued that the post-2008 financial crisis reduced liquidity in the USD SSA market and increased the need for liquidity sourcing. However, firstly there is no evidence submitted of difficulties in sourcing liquidity for the USD SSA bonds in which it was trading and secondly, the post-financial crisis period cannot be said to coincide with the period of its involvement (2013-2015).

(703) In other instances the customer did have one trade under discussion, but the traders still consulted each other without the customer being aware and thus reduced the possibilities for the customer to receive autonomous, competing prices. It is possible for one trader to approach another (either directly or via a broker) and buy or sell bonds after executing a large trade with a customer, in order to reduce or cover a position. However, this should not be confused with agreements on trade splitting and amalgamation of holdings (at an agreed price) in the face of a simultaneous approach by an unwitting customer who would assume that he or she was conducting separate negotiations with two competing market players. When, for example, on 17

750 See recitals (547)-(550).
751 See recitals (198)-(202).
752 See recitals (211)-(215).
753 See recitals (515)-(518).
754 […]
755 See footnote 276.
756 See recitals (180)-(183).
757 See recitals (243)-(247); BAML maintain that [BAML employee] is 'sourcing liquidity' for a trade from [Deutsche Bank employee], but he is doing so in respect of only 7 million – he could almost certainly sell more of the bonds he is about to buy via brokers screens.
758 See recitals (468)-(472).

November 2010, […] (BAML) and […] (Credit Suisse) were asked to split a trade with other traders who had bid the same price, they each declined, whilst agreeing at the same time to split with each other[759]: "*just u and i…that makes sense*". What the infringing traders were doing were neither hedging/sourcing liquidity trades made subsequent to a customer trade nor 'back-to-back' trades[760], whereby two separate trades (one offsetting the other) took place at the same time. In both these instances the two trades (customer dealing and hedging/sourcing) would be separate negotiations. Instead, the traders were collaborating, in the (shared) knowledge of a customer approach to either one or more of them, in order to make a deal with the customer which would cover their mutual interests[761]. What the traders were doing was substituting practical cooperation for the risks of competition.

5.2.2.3.3. Price Discovery

(704) The second strand of justification advanced by BAML and Credit Suise for the exchanges of sensitive information and collusive agreements between the traders is the purported need for 'price discovery'. Both BAML and Credit Suisse have presented a concept of a bond market in which investors, as variously defined, have access to more price relevant information than traders. In this scenario the latter must seek to overcome their informational deficit by gaining intelligence from a number of sources, including each other.

(705) Credit Suisse divides the investor clients of the traders into two general groups, namely longer term investors and those with a more 'speculative' goal, whom it terms: "*smart money"*[762]. It extends a 1983 economic model[763] which presumes that market-makers must set a bid-ask spread which counteracts the risks of trading with '*smart money*', namely better informed market players who have access (or prior access) to news of an "*exogenously determined event (eg a thunderstorm over Kansas wheat crops)*"[764]. In order to compensate for the loss of revenue in dealing with such informed players, who know the 'true' price of the security better than the trader (and are therefore liable to profit at the trader's expense), traders must set a wider bid-ask spread to the detriment of less informed (longer term investor) clients: "*In this context, the exchange of 'sensitive commercial information' which helps reveal the true price of a bond and likely price movement, such as market makers 'marks', the price at which the bond has recently traded, the overall inventory positions in the market, and the likely trading strategies of 'informed customers', can help reduce mispricing risk"*[765]. At the limit, Credit Suisse's extension of the 1983 model concludes that when traders exchange enough information to enable them to price in line with the 'true' value of the security, informed counterparties are unable to make profitable speculative trades and cease trading and the traders are able to

759 See recital (253).
760 See recitals (51) and (52).
761 The amalgamation of holdings/trade splitting could then be dealt with either via direct trades or, more usually, settled via a broker.
762 […]
763 Thomas E. Copeland and Dan Galai: *Information Effects on the Bid-Ask Spread*, The Journal of Finance, Vol 38, No. 5 (Dec 1983), pp 1457-1469.
764 Thomas E. Copeland and Dan Galai: *Information Effects on the Bid-Ask Spread*, The Journal of Finance, Vol 38, No. 5 (Dec 1983), p. 1459.
765 […]

offer lower bid-ask spreads to "*uninformed traders" (eg pension funds, insurance companies and central banks)*"[766].

(706) BAML also asserts that[767]: "*the Commission has failed to understand the wider importance of price discovery for the efficient operation of the SSA bond market*". In its view[768], "*OTC markets such as the SSA bond market are more fragmented* [than exchange based markets] *and information is scattered across a range of market participants and venues*". BAML's theory of asymmetries of information across the market is somewhat different to that of Credit Suisse, in that investor clients are not divided into sub-groups of "*smart money*" and the less informed. Instead BAML argues that traders and (non-trader) clients have access to differing sources of information - for example brokers screens for traders and electronic trading platforms for investor clients - and, furthermore, any client including a mutual (investment) fund wishing to "*trade a large block of a security… might have private information regarding the security, including its future trading intentions for that security*". As a result, they argue: "*If the dealer does not know the reason for the fund's trade, the dealer may not be willing to buy the security at the current market price because of the potential to experience a loss… More generally, when dealers are faced with the threat of adverse selection, they post a larger bid-ask spread to take account of it…*". In response: "*Dealers in the market share information such as the motivation for the trade* [that is, anything they know about the customer's trading strategies] *and their opinions regarding the value of the securities for which they are making a market"*[769].

(707) Taken together, Credit Suisse and BAML use the economic analyses presented to suggest that the particular nature of OTC bond markets, such as that for USD SSA bonds, justifies the exchange of information between traders on customer approaches, customer motivations, volumes and pricing;, all (or any) of which would be considered anticompetitive in other markets. For example, on 7 March 2012[770], in respect of a discussion around client approaches in European Investment Bank bonds (for which there is a large volume of public market data), Credit Suisse maintains that sharing "*information about a customer's expected strategy would help the traders carry out market-making and may result in better estimates of price movements"*. It appears that Credit Suisse considers that "*price discovery"* legitimises the sharing of any information.

(708) Both BAML's and Credit Suisse's analyses exclude any discussion of the fact that traders' customers include market participants other than "*investor customers*" – notably other traders. Neither theory matches the reality of the USD SSA bond market structure nor, even taken at face value, can be used to justify the coordination undertaken by the relevant traders.

(709) The 1983 economic model extended by Credit Suisse relies on '*smart money*' investors having better knowledge of exogenously determined events. The example originally given by Messrs Copeland and Galai of a thunderstorm over Kansas wheat crops is obviously more relevant to commodities trading than bond trading. In

766 […]
767 […]
768 […]
769 […]
770 See recitals (386)-(391).

contrast, the external factors influencing the price of USD SSA bonds are those political and economic events affecting country, regional and sector credit risks, as well as the likelihood of a new issue by the same issuer. There is no reason why, in the current age of instant news and electronic communications, a specific group of investors would have better access to such news. Hedge funds do not have exclusive access to external news. Moreover, the vast majority of investors manage a range of assets including equities, bonds and currencies, whereas USD SSA bond traders specialise in one class of security and can be expected to be well aware of relevant external news. In addition, as the evidence shows[771], they are aware of forthcoming issues before the rest of the market if their employers are lead managers.

(710) Furthermore, the evidence demonstrates that the traders did not simply exchange information to deter '*smart money*' clients. They exchanged commercially sensitive information on all types of clients, including central banks, pension funds or small retail clients and the language used reveals that they consider some clients as poorly informed and that they can easily take advantage of them: *[...]*[772] and *[...]*[773]. The premise of the economic model, that information exchange enables traders to determine 'true prices' and thus deter speculative, profit taking customers and grant better terms to 'investing' customers, is offered without any supporting evidence in terms of the comments, activities or the resulting trading terms offered by the traders. Nor is there any explanation as to why the traders preferred to exchange information only amongst themselves. Even if one accepted the premise, for the model to work effectively and result in lower bid-ask spreads for 'investing' customers there would have had to be widespread information on 'true' prices amongst USD SSA bond traders. In reality, there is an exchange of sensitive information and price fixing agreements exclusively between, and for the intended benefit of, the participating traders.

(711) BAML's economic analysis does not presuppose the delineation of customers into two groups with a view to eliminating one group from the market. And the proposition that a customer has a better idea of his or her own motivation than the trader he/she deals with is irrefutable. Nevertheless, the use of BAML's theory of informational asymmetries as a justification for the traders' activities is unwarranted. BAML's analysis focuses on a customer wishing to sell a '*large block of a security'* for reasons best known to him/herself (the theory presupposes that this client is an investor but there is no reason why it could not be another trader). According to the analysis, in order to avoid '*adverse selection*' in this scenario, traders must exchange what information they might have on the client and the clients's motivations. The traders involved in the infringement, however, not only exchanged information on any type of client but also on any size of trade, not simply 'a *large block'*, on many occasions[774] and they exchanged it only amongst themselves[775].

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771 See, for example, recitals (283) and (415)-(416).

772 […] are rather disdainful terms suggesting that the traders thought these customers were small companies/funds or small investors (*[…]*'), speculative and even not entirely legitimate small traders hoping for a fast profit ([…] – derived from a English colloquial term, […]), and stupid or easy to manipulate ([...]).

773 […]. '*thick*' is also a colloquial term meaning "stupid".

774 See, for example, chats of 8 February 2010 referred to in recitals (129)-(130), 19 April 2010 referred to in recitals (174)-(175), 20 July 2010 referred to in recitals (195)-(197), 28 July 2010 referred to in recitals (198)-(201), 27 August 2010 referred to in recitals (222)-, 15 July 2011 referred to in recitals

(712) The concept of an OTC bond trading market[776] as an exceptional case in which client and pricing information must be exchanged in order to overcome 'adverse selection' is unjustified. In any wholesale auction for example, such as a cattle or commodities auction, traders are faced with clients trading potentially large volumes and with unknown motivations – they might seek to sell, knowing that the price is going to fall (maybe the result of a particularly good harvest or the fact that they will be selling further quantities) or vice versa. Other, more structured, wholesale markets display similar uncertainties. The exchange amongst dealers of price sensitive information is as illegitimate in these markets as in the bond markets.

(713) Indeed, as the General Court has stated[777]: "*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*". As in the Euro denominated interest rate derivatives market, USD SSA bond market makers are continuously active "*and therefore enter into a larger number of transactions than other market participants. From the point of view of competition on the market, it is particularly fundamental that prices be determined independently*". Furthermore, whilst both BAML and Credit Suisse have referred to the pro-competitive effects that exchanges of sensitive information may have (BAML: "*the dealer may be more willing to pay a better price"*[778], Credit Suisse: "*Discussions about the price of a security may lead to improved information about the true value of the security, which may be competitive and result in lower bid-ask spreads*"[779]), neither party establishes that the OTC USD SSA bond market "*could not function without such exchanges of information between the traders acting as market makers*"[780]. Nor do they provide any evidence of beneficial effects on prices to counterparties.

5.2.2.3.4. The availability of the information exchanged

(714) In contrast to Credit Suisse and BAML, who seek to justify sensitive information exchange because of, in their view, the particular nature of the market and asymmetries of knowledge, Crédit Agricole asserts that much of the information exchanged between the relevant traders was not sensitive because it was "*publicly available on the market"*[781]. Crédit Agricole argues that any trader paying attention to *inter alia* brokers screen prices, client requests for quotes either via the sales desk or electronic trading platforms, and subsequent hedging trades by other traders would gain information on transaction flows and conclude that[782]: "*With the exception of information exchanged for the purposes of agreeing a trade, the information shared*

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(309)-(312), 18 August 2011 referred to in recital (319), 22 November 2011 referred to in recitals (348)-(350), 26 June 2012 referred to in recitals (428)-(429), 19 March 2013 referred to in recitals (477)-(479).

775 BAML suggest that the traders involved in the conduct are essentially a "*strong network*" with mutual trust "*based on previous direct trading interactions*" […]. This does not explain, however, why their trust is so limited given that BAML's own economic analysis, if correct, suggests that traders should be forming wide circles of information when faced with large trades.

776 See recital (55).

777 See Case T-105/17, *HSBC Holdings plc a.o. v Commission*, T-105/17, paragraph 145.

778 […]

779 […]

780 See Case T-105/17*, HSBC Holdings plc a.o. v Commission*, paragraph 160.

781 […]

782 […]

via Bloomberg chats by [Crédit Agricole employee] while at CA-CIB is no different to the information that would have been readily available to the market at large". Crédit Agricole also argues that, in a fast moving market, much market data would become historic very fast[783].

(715) Crédit Agricole's second line of argument ignores the reality that the traders involved exchanged pricing and customer information with each other in the face of simultaneous - or near simultaneous - approaches by the same potential customer (see, for example, 24 May 2013[784], 10 July 2013[785], 12 March 2015[786]), as well as sensitive information on very recent trades with specific customers, many of which would have been made via sales desks and settled via brokers for anonymity purposes. Some of the trade flows may have been subsequently discernible via screens and platforms but certainly not the (ultimate) counterparty identities.

(716) Even the exchange of information referring to recent past trades, disclosed in the chatrooms between the involved traders, may still be useful for assessing market trends and future trading opportunities: "*knowledge of past results was highly relevant information for competitors, both for monitoring purposes and with a view to future contracts*"[787].

(717) For example, an excerpt of a conversation between [Deutsche Bank employee] and [BAML employee] on 22 March 2012 reveals that they keep in mind trades done in the past and revealed only in the chatrooms between the involved traders in order to allow them to foresee price movements and collude on pricing shown to the market: "*thats where i showed .. given u already sold a chuink!*"[788].

22 May 2012	04:47:20 – 04:48:26
BAML ([...])	*" just offered 200mm eib 06/17 ... someone sold them at +100"*
DB ([...])	*" i just saw that aswell "*
BAML ([...])	*" where u show"*
DB ([...])	*" i showed them tight"*
DB ([...])	*"+95"*
DB ([...])	*"as the US seller not selling anymore"*
DB ([...])	*"and these are not around in repo now either"*
BAML ([...])	*"thats where i showed .. given u already sold a chuink!"*
DB ([...])	*"yeah exaclty"*

(718) In conclusion, the participants coordinated pricing and trading strategies as described above, and engaged in extensive exchanges of information in relation to their individual trading activities, including on price, quantities, customer identity and other parameters of individual trades. The individual assessment by a bank of information relevant to pricing and other parameters of individual trades, even if part

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783 BAML also assert […] that: "*the Commission overestimates the length of time that information remains useful and relevant for a trader in relation to any SSA bond*" whilst maintaining […], in accordance with its economic analysis, that the exchange of "*useful and relevant*" information is "*legitimate and necessary for the operation of the market*".

784 See recitals (488)-(491).

785 See recitals (504)-(506).

786 See recitals (573)-(575).

787 Judgment of the General Court of 12 July 2019, *Sony vs Commision*, T-761/15, ECLI:EU:T:2019:515, paragraph 127.

788 […]

of such information is public and available to other traders (such as price movements observable over time on broker screens), should not be confused with the joint evaluation by two competitors of that information, in combination, as the case may be, with other information on the state of the market, and of its impact on the development of the sector, very shortly before they take decisions affecting their pricing on the market[789].

(719) The fact that the activities of the traders were not always successful does not mitigate their anticompetitive behaviour. On 20 January 2011, for example[790], […] (BAML), […] (Credit Suisse) and […] (Deutsche Bank) collude in order to attempt to lower the price at which they buy bonds from a broker. As regards this communication, BAML asserts that: "*the Commission ignores the fact that [...] and [...] remained unwilling to trade with the broker when it insisted on a higher offer price*" (lower yield spread of 16.5 – in fact [...] alone went ahead with the trade)[791]. The fact that cartel participants might agree to buy a product at a price which the customer is ultimately unwilling to accept, because the customer considers the level to be non-competitive - means that it is not always successful. This does not, however, render the parties' conduct legitimate.

5.2.2.3.5. Meaning of 'marking' of bonds

(720) As noted in recital (126), BAML[792] considers that: "*Marked prices are indicative of value and not equivalent to a firm bid/offer*", explaining that traders are required to 'mark' the prices of bonds for accounting and other internal purposes and thus a response to a query from another trader about where a particular bond is marked "*will very often materially differ from the price that trader would offer to a particular customer*", which would depend on a range of factors. In other words, when the traders exchange information on where they are 'marking' bonds, this is not current pricing information.

(721) In contrast, Crédit Agricole defines the term "*marking a bond*" as typically referring to the price at which a trader may be prepared to buy or sell a bond[793]. In respect of a particular communication, for example, Crédit Agricole explains that[794]: "*Once [Deutsche Bank employee] has confirmed that he has bonds to sell, [Crédit Agricole employee] asks "where u marking" – ie, at what price would [Deutsche Bank employee] be willing to sell the bonds".*

(722) Credit Suisse[795] refers to different communications regarding 'marking' under the headings: "*Information Exchange to understand the value of the security to avoid off-market pricing*" and "*Exchanging information for internal valuation purposes*". As these alternative Credit Suisse definitions confirm, a bond might be '*marked*' for periodic valuation purposes but queries from one trader to another regarding '*marking*', frequently referred to current pricing strategy (see also recital (126)).

789 See, to that effect, Judgment of the General Court of 14 March 2013, *Fresh Del Monte Produce v Commission,* T-587/08, ECLI:EU:T:2013:129, paragraphs 344-346.
790 See recitals (268)-(270).
791 […]
792 […]
793 […]
794 […]
795 […]

(723) The evidence in the Commission's file supports the understanding of Deutsche Bank, Crédit Agricole and Credit Suisse. In at least the extracts of chats reproduced in recitals (124), (129), (165), (195), (228), (313), (355), (361), (400), (434), (477), (485), and (492) of Section 4, the trader requesting the price information explicitly states that he has a potential trade, or has just placed or intends to place a bid or offer on a broker screen, just before or shortly after making the request for the pricing information. In these situations, there can be no reasonable doubt that the information is being requested in relation to a potential trade with a third party.

(724) The examples above must also be considered in the context of the established relationships and frequent communications between and among the traders, in which exchanges like the ones specified above were very common and in no way extraordinary. In light of these, no trader involved in the conduct could reasonably have been unaware that when he was asked where he would mark a specific bond at a specific time, the request potentially concerned an imminent bid or offer by the trader making the request, even if this were not made explicit in the chat.

5.2.2.3.6. Brokers' screen prices and competition for trade via brokers screens

(725) BAML asserts that[796]: "*the Commission has failed to recognise that prices offered on brokers screens are available only to dealers and are not made available to, and are not known by, investor customers*". In contrast, Credit Suisse[797] explains in its report on the economic context of the USD SSA bond market that there is an information flow from brokers screens to the 'buy side', that is, investor customers, via data providers such as Bloomberg or Thomson Reuters: "*Platforms such as Bloomberg and Thomson Reuters collect market information, which they then relay to all market participants*".

(726) In regard to brokers screen prices, BAML goes further and claims that, not only are these unavailable to investor customers, but that[798]: "*The Commission appears to be of the mistaken view that prices displayed on the broker screens offered by inter-dealer brokers reflect prices that will be paid by investors*". Thus, in regard to declarations by [Deutsche Bank employee] and [BAML employee] on 14 October 2010 that each will remove ("*kill*") their offer price from a broker screen, for example, BAML contends that removing prices from a broker screen: "*would not impact the prices being offered to investors*"[799].

(727) Crédit Agricole[800] argues that part of a trading strategy, and general price discovery: "*involves a market-maker putting 'tester' or 'non-market size' bids and offers in the market through broker screens in order to establish at what price they could trade and effectively hedge positions as a result of client trading… 'Tester' bids and offers are typically only for between 2 to 5 million…"* Having thus categorised trading terms offered to the market via brokers screens (in reality, an important part of a trader's role), Crédit Agricole then argues that an offer price shown by [Credit Suisse employee] via a brokers screen on 14 August 2013 was merely a "*non-competitive*

796 […]
797 […]
798 […]
799 See recitals (239)-(241).
800 […]

tester bid"[801] thereby downplaying the significance of [Credit Suisse employee's] offer to [Crédit Agricole employee] to "*kill the offer*".

(728) The Commission considers that the suggestion that the trading terms offered to the market via brokers screens are irrelevant to the prices paid by investor customers – whether because they are unavailable to such clients or involved irrelevant volumes – is misleading. As noted in recital (35), the bid and offer prices displayed on a broker's screen at any particular time are the most competitive in the market. Whether or not they are 'tester' bids, placed for whatever purpose, they are, as Crédit Agricole states: "*binding. If another dealer hits a bid or lifts an offer, the trader is bound to honour the trade*"[802]. Whether another trader is bidding on their own behalf or to source liquidity for an investor customer's trade (or part of that trade), the brokers screen price for the bond is bound to be reflected in subsequent prices for all market participants. For traders to decide independently to withdraw brokers screen prices, because, for example, they had not elicited any trades or market conditions had changed, would be a legitimate type of 'price discovery'. But discussing and agreeing with competing traders to withdraw one or both prices constitutes collusion and deprives either buyers or sellers (or both) of the most competitive price. There is no reason why two traders who are supposed to be competing with one another needed to act in tandem for the purposes of price discovery or seeing "*deeper into the broker screen*"[803]. The broker screen shows the best available prices at any point in time, in addition to the prices at which recent trades took place, thus giving clear guidance to any trader without the need for collusion.

(729) As regards the effect of the collusive agreements concerning broker screen prices on competing traders, BAML effectively denies that they existed. By dividing the traders' counterparties, namely other market players, into sub-groups and asserting that their true clients were "*investor customers*" rather than other market players, including traders[804], BAML considers that: "*other dealers active in trading via inter-dealer brokers are not perceived to be customers of MLI, and MLI is not competing to do business with other dealers*"[805]. This is illogical. Whilst traders traded with each other in the interests of sourcing liquidity and hedging, they also traded for gain, whether directly or via brokers screens, and all trading – whatever the counterparty and whatever the motive – contributed to their trading revenues, as the following communication shows:

20 Mar 2012[806]	05:54:25 – 05:55:26
DB ([...])	*"bought neds 0-9./15 yesterday 118…lifted at 111 in [...]"*
BAML ([...])	*"nice trade"*
CS ([...])	*"nice…I just sold some ned 3/15s in [...] at 98, but am trying to buy for choice"*

(730) As previously noted, broker screens display only the 'best', that is the most competitive, bid or offer price for a bond at any time. Thus in order to be successfully 'lifted' via a brokers screen, [Deutsche Bank employee] must have been

801 […]
802 […]
803 […]. See also recitals (216)-(221).
804 […]
805 […]
806 […]

showing the most competitive price of any trader at that time. Thus, contrary to BAML's assertion, traders are indeed customers, as well as competitors, of each other, and agreements between a group of traders to fix prices shown to the market via brokers screens is restricting competition.

5.2.2.3.7. Communications in the context of new issues of bonds

(731) BAML and Credit Suisse have each emphasised the role of their USD SSA bond traders in serving the bank's primary issuer customers and ensuring the success of new issues for which the bank was lead manager. Credit Suisse states that: "*Market-makers are sometimes required to trade to support the primary desk (ie in the interests of the issuer*"[807] and: "*Lead banks are mandated to collaborate on promoting interest in the primary issue, and ensuring liquidity in the secondary market (including providing comps) was a key part of that*"[808].

(732) BAML goes further and considers that[809]: "*One of the primary roles of traders is to provide support to the overall MLI relationship with issuer clients*". As part of this provision of support, it also stresses the legitimacy of providing liquidity in the secondary market and maintains that the joint compilation and sharing of comps lists which suggest switch trades is legitimate. Finally, BAML asserts that[810] "*provision of support for a bond in the secondary market by the lead managers' trading desks is therefore part of the service issuers expect from lead managers in return for the fee….In order to provide support to the newly issued bond, the lead managers typically seek to maintain or 'stabilise' the bid price in the secondary market at or close to the offering price…In order to be effective, it is often necessary for stabilisation activity to be coordinated between the lead managers…*".

(733) In this regard, during the period of the infringement, the regulatory framework within which lead managers were allowed to support a new issue in the secondary market, was based on Commission Regulation (EC) No 2273/2003 of 22 December 2003[811], as set out in the FSA Handbook, Conduct of Business Sourcebook section on Market Conduct[812], which stipulated strict time limits, disclosure (including identification amongst the lead managers of a stabilisation manager before any price stabilisation occurred) and periodic public reporting requirements. There is no evidence that the activities of, for example, 11 March 2010[813] and 6-7 June 2012[814] above took place within the context of such legitimate support.

(734) Furthermore the evidence demonstrates that, not only did the traders for the addressees not act in coordination with other joint lead managers outside their close circle, but that they involved each other in discussions of comps lists and switch pricing and trading strategies even when they were not all involved in a new issue.

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807 […]
808 […]
809 […]
810 […]
811 Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments, OJ L336, 23.12.2001.
812 https://www.handbook fca.org.uk/handbook/MAR/2/3 hmtl?date=2009-01-01.
813 See recitals (150)-(152).
814 See recitals (423)-(424).

For example, on 9-10 March 2011[815], there are traders from only a subgroup of the lead managers who coordinated on comps lists for a new issue, despite BAML's assertion that, without all lead managers presenting a consistent view, the syndicate would look "*disorganised and unprofessional*". Another example is the chat of 6 February 2012[816], when […] (BAML), […] (Deutsche Bank) and […] (Credit Suisse) discuss the pricing of a new issue and the preparation of comps lists. Both [BAML employee's] and [Deutsche Bank employee's] employers are lead managing banks for the issue, but so are two other banks of which there is no mention by the two traders in the context of any preparation for the new issue. Furthermore, [Credit Suisse employee's] employer, Credit Suisse is not a lead manager and yet despite this he is involved in the discussion.

5.2.2.3.8. The qualification of a restriction of competition by object

(735) Taking their arguments regarding market context as a whole, BAML, Crédit Agricole and Credit Suisse in effect maintain that the USD SSA bond industry is so particular that collaborative behaviour is necessary and even beneficial to customers (as defined by the banks themselves – in practice referring to a subset of all trading counterparties deemed to be 'investor clients', as well as, according to BAML and Credit Suisse, 'primary issuer clients'). BAML, Crédit Agricole and Credit Suisse contend that, when seen within the market context, the activities of the traders cannot be qualified as a straightforward restriction of competition by object without a more in-depth analysis of the market. Consequently, BAML, Crédit Agricole and Credit Suisse effectively suggest that the coordination highlighted in Section 4 was objectively necessary for the functioning of the market.

(736) The parties further expanded upon this concept by letters of 1 May 2020[817], sent by BAML, of 4 May 2020[818], sent by Crédit Agricole, and of 4 June 2020[819], sent by Credit Suisse. They quote selectively the *Budapest Bank*[820] and *Generics (UK)*[821] preliminary rulings to challenge the finding of a restriction of competition by object in this case, based mainly on the following arguments: (i) the need to take into account the legal and economic context of the USD SSA bonds market, where the involved traders were acting as market makers and needed to exchange information, and (ii) the absence of "sufficiently robust and reliable prior experience" regarding the clearly anticompetitive nature of such behaviour. Crédit Agricole sent a further letter on 17 March 2021 alleging that the role of the traders as 'market makers' should be addressed[822].

(737) In this regard, the Commission has analysed the legal and economic context of the USD SSA bonds market and market making arguments of the parties, also in light of prior experience upheld by the Court of Justice with regard to traders on financial markets[823]. Prior experience does not exclusively relate to the specific category of an

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815 See recitals (283)-(286).
816 See recitals (364)-(366).
817 […]
818 […]
819 […]
820 Judgment of the Court of 2 April 2020, *Gazdasagi Versenyhivatal v Budapest Bank Nyrt. a.o.,* C-228/18, ECLI:EU:C:2020:265.
821 Case C-307/18, *Generics (UK) Ltd a.o. v Competition and Markets Authority.*
822 […]
823 See, inter alia, recitals (634) and (713).

agreement in a particular sector, but rather to the fact it is established that certain forms of collusion are, in general, and in view of the experience gained, so likely to have negative effects that it is not necessary to demonstrate that they had such effects in the particular case at hand[824]. While not taking issue with the information exchanged bilaterally in the context of prospective trades between the respective traders (as would be any seller-purchaser relationship)[825], the Commission has explained in Section 4.2 that exchanges between traders or "market makers" regarding prices in general or prices quoted to specific clients increased transparency only between themselves and did not benefit all market participants. As the General Court stated regarding the Euro Interest Rate Derivatives (EIRD) financial case, any allegation regarding pro-competitive effects of such exchanges between traders was self-serving, as the exchanges reduced the uncertainty inherent in hedging their positions, without showing that the market overall could not have functioned absent this behaviour[826]. The OTC structure of the market, in which the prices and volumes of trades were not officially listed on any exchange, meant that the sensitive information shared between the traders was not visible to the rest of the market and was not usually shared between competitors outside of discussions on potential transactions between them. Any pro-competitive effects alleged by the parties have to not only be demonstrated, relevant and specifically related to the agreement concerned, but also sufficiently significant, as "*the mere existence of such pro-competitive effects cannot as such preclude characterisation as a 'restriction by object'*"[827]. The parties have not put forward however any measurable effects, but rather referred to an asymmetry of information due to the functioning of the market. On this point specifically, it is "*not for such undertakings to redress alleged legislative inadequacies by means of anticompetitive agreements and thus take the law into their own hands*"[828].

(738) Contrary to the parties' assertions regarding the two-sided markets which are the object of the *Budapest Bank* ruling[829], there is past Commission decisional practice and case-law of the General Court which qualifies similar conduct on financial markets as an infringement by object, referring to the fact that: "*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', in the light of the importance of such traders*" on the market. The General Court has highlighted that 'market makers' are generally and continuously active on the market and therefore enter into a larger number of transactions than other market participants. Speaking of market makers

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824 Case C-67/13 P, *Groupement des cartes bancaires v Commission*, paragraph 51

825 See recital (661).

826 See Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 160: "*In this regard, it need only be noted that it is true that the applicants refer, in their written pleadings, to the pro-competitive effects that such exchanges between traders may have, in so far as they have 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. However, the applicants do not establish that the OTC derivatives market could not function without such exchanges of information between traders acting as market makers*."

827 Case C-307/18, *Generics (UK) Ltd a.o.v Competition and Markets Authority*, paragraphs 105-107.

828 Opinion of Advocate General Kokott of 4 June 2020 in *Lundbeck v Commission,* C-591/16 P, ECLI:EU:C:2020:428, paragraph 135. See also Judgment of the General Court of 27 July 2005 in Cases T-49/02 to T-51/02, *Brasserie nationale a.o.* v *Commission,* ECLI:EU:T:2005:298, paragraph 81.

829 Case C-228/18, *Gazdasagi Versenyhivatal v Budapest Bank Nyrt. a.o.*.

"*from the point of view of competition on the market, it is particularly fundamental that prices be determined independently*"[830]. As the Court of Justice has previously recognised, the "*role of experience and, therefore, foreseeability*" of the qualification of a restriction of competition by object do not "*concern the specific category of an agreement in a particular sector*", but the established practice that certain forms of collusion are "*so likely to have negative effects on competition that it is not necessary to demonstrate that they had such effects in the particular case at hand*"[831]. In this regard, it is apparent from the case law of the Court of Justice of the European Union case-law that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects[832]. The Court of Justice has applied that principle in different financial cases and contexts, reiterating in the *Budapest Bank* ruling that behaviour leading to horizontal price-fixing cartels – which is the conduct at hand in the present case – reveals such a sufficient degree of harm[833].

5.2.2.4. Overall conclusion on restriction of competition

(739) By way of overall conclusion on this section, the Commission reiterates that agreements and concerted practices, which directly or indirectly fix or coordinate prices, allocate customers and/or share markets represent particularly serious restrictions of competition[834]. By offering agreed prices (including showing less competitive prices to help another trader win the trade) to the market and coordinating trading, the banks restricted competition amongst themselves in the market for USD SSA bonds.

(740) It is settled case law that pre-pricing communications, akin to those communications described in Section 4 in which the traders discussed where they might "mark" a particular bond, that reduce transparency for each of the participants may be regarded as anticompetitive by object as they create conditions which do not correspond to normal conditions of competition on the market[835].

(741) The Commission further considers that the exchanges of competitively sensitive information in this case were capable of restricting and/or distorting competition on the market for USD SSA bonds. Whereas dealers ought to determine their trading strategies independently, an exchange of information between competitors on their respective trading strategies, positions or prices reduces uncertainty and is liable to influence each other's conduct on the market. As such, it creates conditions of

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830 See Case T-105/17, *HSBC Holdings plc a.o. v Commission*, T-105/17, paragraph. 145. In the same vein, Case C-591/16 P, *Lundbeck v Commission,* paragraphs. 122-123.

831 Case C-591/16 P, *Lundbeck v Commission,* paragraph 156.

832 See Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 53.

833 See Case C-228/18, *Gazdasagi Versenyhivatal v Budapest Bank Nyrt. a.o.*, paragraph 36: "*Thus, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) TFEU, to prove that it has actual effects on the market. Experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers (judgments of 11 September 2014, CB v Commission, C 67/13 P, EU:C:2014:2204, paragraph 51, and of 26 November 2015, Maxima Latvija, C 345/14, EU:C:2015:784, paragraph 19).*"

834 Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, paragraphs 115, 123-124.

835 Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, paragraphs 119-122, 134.

competition that are different from the norm[836]. The coordination between them which, directly or indirectly, fixed prices offered to specific customers or the market in general may be so likely to have negative effects that it is unnecessary to demonstrate the actual effects on the market[837].

(742) The agreements and/or concerted practices engaged in by the colluding traders therefore also distorted competition by resulting in an informational asymmetry between market participants, which was created as a result of the fact that each of the cartel members had knowledge of the prices the others would show, as well as trade flows and specific customer preferences of which their non-colluding competitors were completely unaware. This informational asymmetry gave the colluding parties an advantage when offering terms for USD SSA bonds compared to their competitors, which was particularly significant in an OTC market, which is characterised by significant market uncertainty.

(743) As BAML notes[838]: "*Customers who seek to buy or sell a bond contact one or more dealers by phone or through electronic platforms".* Credit Suisse explains that[839]: "*Typically, buy-side clients approach three or more dealers in order to obtain the best quote for the trade they are considering*". If two or three of those dealers are colluding, the unwitting client faces restricted competition.

(744) The objective of the conduct was to benefit the parties' revenues over time. This was achieved by fixing prices, sharing competitively sensitive information which allowed them to anticipate market developments and each other's actions, aligning trading and pricing strategies and coordinating trading activities. This allowed the participants to reduce some of the normal market uncertainties and competitive pressures which would otherwise have existed between the parties in the absence of such collaboration.

(745) By means of the pricing information exchanged (and even apart from the numerous instances of explicit agreements to fix prices described in Section 4), the participants' frequent exchanges of pricing information enabled them to reference their prices against each other and align them should they wish. They were also able to adjust or align their strategy in light of the volumes and/or price levels they were communicating to each other, as well as the details of customer inquiries they were each receiving and thus secure mutually advantageous trading conditions[840].

(746) The information exchange also enabled the traders to coordinate their behaviour opportunistically in specific instances. This resulted in agreements to show fixed

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836 Case T-180/15, *Icap a.o. v Commission*, 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".*

837 See Case C-67/13 P, *Groupement des cartes bancaires v Commission*, paragraph 51.

838 […]

839 […]

840 See for example chats of 1 February 2010 referred to in recitals (127)-(128), 6 April 2010 referred to in recitals (169)-(173), 19 April 2010 referred to in recitals (174)-(175), 2 June 2010 referred to in recitals (190)-(191), 31 August 2010 referred to in recitals (228)-(229), 13 October 2010 referred to in recitals (236)-(238), 25 January 2011 referred to in recitals (271)-(272), 9 March 2011 referred to in recitals (283)-(284), 27 April 2011 referred to in recitals (291)-(292), 6 October 2011 referred to in recitals (337)-(338), 22 November 2011 referred to in recitals (348)-(350), 30 May 2012 referred to in recitals (410)-(411), 5 February 2014 referred to in recitals (539)-(540).

prices to specific third parties or to the market generally for a particular time period, or in one or more traders offering or agreeing to refrain from trading as he otherwise would, in order not to interfere with another trader's announced plans. Even if assisting each other to obtain better trading terms meant that one trader might hold back on a specific trade or share a profitable trade, the overall understanding was that they helped each other out in the interests of mutual benefit (in the form of increased revenues) over time[841].

(747) By means of all of the above practices, the participating traders knowingly substituted collusion for normal competition, to the extent that at times they acted as if they were trading the same positions or 'book'. Regardless of the form the collusion might take in a specific instance, however, the overriding objective was to benefit their own revenues. The traders sought to achieve this by coordinating on prices, exchanging sensitive information on trading activities, aligning trading and pricing strategies and coordinating trading activity. In doing so they reduced uncertainty and risk, made trades on advantageous terms to themselves, shared markets and clients and maintained a competitive advantage vis-a-vis customers and other market participants.

(748) The participating traders did so in a market (the market for USD SSA bonds) that should, as other sophisticated debt markets, normally be characterised by competitive pricing and other trading conditions. The participating banks were established market players in an industry designed to facilitate the efficient and competitive issuance and trading of debt capital.

(749) Accordingly, it is concluded that the agreements and/or concerted practices set out in Section 4.2 have as their object the restriction and/or distortion of competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

5.2.3. Single and continuous infringement

5.2.3.1. Principles

(750) An infringement of Article 101 of the Treaty may result not only from an isolated act but also from a series of acts or from continuous conduct. 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[842].

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841 See for example chats of 24 February 2010 referred to in recitals (131)-(132), 10 March 2010 referred to in recitals (143)-(144), 30 July 2010 referred to in recitals (208)-(209), 12 August 2010 referred to in recital (215), 28 September 2010 referred to in recitals (232)-(233), 9 November 2010 referred to in recitals (248)-(249), 30 November 2010 referred to in recitals (260)-(261), 15 February 2011 referred to in recitals (279)-(282), 18 October 2011 referred to in recitals (337)-(340), 12 March 2012 referred to in recitals (390)-(391), 31 May 2012 referred to in recitals (418)-(421), 6 June 2012 referred to in recitals (426)-(427), 28 August 2012 referred to in recitals (434)-(436), 19 September 2012 referred to in recitals (437)-(439), 15 October 2012 referred to in recitals (440)-(441), 18 January 2013 referred to in recitals (456)-(459), 23 January 2013 referred to in recitals (461)-(462), 15 February 2013 referred to in recitals (468)-(470), 27 August 2013 referred to in recitals (523)-(524), 25 September 2013 referred to in recitals (528)-(529), 10 December 2013 referred to in recitals (531)-(532), 7 March 2014 referred to in recital (545), 12 March 2015 referred to in recitals (573)-(574).

842 See, for instance, Judgment of the Court of 24 June 2015, *Commission v. Fresh Del Monte Produce,* Joined cases C-293/13 P and C-294/13 P, ECLI:EU:C:2015:416, paragraph 156; Judgment of the Court of 6 December 2012, *Commission v Verhuizingen Coppens,* C-441/11 P, ECLI:EU:C:2012:778,

(751) 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[843].

(752) 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 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[844].

(753) An undertaking that has participated in a single and complex infringement of that kind by its own conduct, which fell within the definition of an agreement or concerted practice having an anticompetitive object within the meaning of Article 101(1) of the Treaty and was intended to help bring about the infringement as a whole, may thus be responsible also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk[845].

(754) An undertaking may thus have participated directly in all the aspects of anticompetitive conduct comprising a single infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the anticompetitive conduct comprising a single 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[846]. In such a case, the Commission is also entitled to

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paragraph 41 and the case-law cited, Judgment of the Court of 26 January 2017, *Villeroy and Boch v Commission*, C-644/13 P, ECLI:EU:C:2017:59, paragraph 47; Joined cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, *Cimenteries CBR a.o. v Commission*, paragraph 3699; Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 197.

843 Case C-49/92 P, *Commission v Anic Partecipazioni SpA,* , paragraph 81.

844 Joined Cases C-204/00, C-205/00, C-211/00, C-213/00, C-217/00 and C-219/00 P, *Aalborg Portland et al. v Commission*, , paragraph 258. See also Case C-49/92 P, *Commission v Anic Partecipazioni SpA,* , paragraphs 78-81, 83-85 and 203; Judgment of the General Court of 15 December 2016, *Infineon v. Commission*, T-758/14, ECLI:EU:T:2016:737, paragraph 215.

845 Case T-180/15, *Icap a.o. v Commission*, paragraph 206 and the case-law cited; Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 198.

846 As noted by the Court of Justice in Judgment of the Court of 11 July 2013, *Team Relocations a.o.* v *Commission,* C-444/11 P, ECLI:EU:C:2013:464, paragraph 54 and the case law referred to in that paragraph: '*that case-law* [in *Commission v Anic Partecipazioni* and *Aalborg Portland*] *does not require, in order for the condition of awareness by an undertaking of the offending conduct of the other*

attribute liability to that undertaking in relation to all the anticompetitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole[847].

(755) The fact that the undertaking concerned did not participate directly in all the constituent elements of the overall cartel thus cannot relieve it of responsibility for the infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. Although a cartel is a joint enterprise, each participant in the arrangement may play its own particular role appropriate to its own circumstances. Some participants may be more involved than others. The arrangements may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Internal conflicts, rivalries or even cheating may occur, but will not, however, prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 101 of the Treaty where there is a single common and continuing objective. Such a circumstance may nevertheless be taken into account when assessing the seriousness of the infringement which the undertaking is found to have committed.

(756) Such a conclusion is not at odds with the principle that responsibility for such infringements is personal in nature, nor does it neglect an individual analysis of the evidence adduced, in disregard of the applicable rules of evidence, or infringe the rights of defence of the undertakings involved[848].

5.2.3.2. Application to this case

5.2.3.2.1. Existence of an overall plan pursuing a common objective

(757) On the basis of the evidence, taken as a whole, the series of agreements and/or concerted practices identified in Section 4.2 formed part of an overall plan pursuing a single anticompetitive aim and thereby constituted one single and continuous infringement of Article 101(1) of the Treaty. The parties' conduct shared the same common objective to maximise their revenues, while mitigating losses which might occur due to uncertainty over how the other traders would act, through coordination on pricing and trading activities and the exchange of commercially sensitive information in relation to USD SSA bonds traded on the secondary market.

(758) In this respect, the participating undertakings sought – via the actions of their traders – to restrict and/or distort competition in relation to USD SSA bonds traded on the secondary market by replacing competition between them with mutual help to benefit

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participants in the single and continuous infringement to be satisfied, that it be established that that undertaking was or should have been aware of the offending conduct of the initial participants in the infringement or that it adhered to that infringement from the outset. It also does not lay down that that condition of awareness can be established only if that undertaking contributed to the single and continuous infringement in a way identical to that initially put in place'; Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 190.

847 See Case C-441/11 P, *Commission v Verhuizingen Coppens,* paragraph 43; and Judgment of the General Court of 16 September 2013, *Masco a.o. v Commission*, T-378/10, ECLI:EU:T:2013:469, paragraph 25.

848 See Judgment of the Court of First Instance of 12 December 2007, *BASF and UCB v Commission*, Joined Cases T-101/05 and T-111/05, ECLI:EU:T:2007:380, paragraph 160; see also Judgment of the General Court of 15 July 2015, *Siderurgica Latina Martin a.o. v Commission*, T-389/10 and T-419/10, ECLI:EU:T:2015:513, paragraph 299; and Judgment of the General Court of 2 February 2012, *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals v Commission*, T-83/08, ECLI:EU:T:2012:48, paragraphs 247-248.

their revenues, at times as if the participants were all trading on behalf of the same undertaking, rather than as competitors. The individual traders used various collusive practices, including coordination on prices quoted to specific counterparties; coordination on prices shown to the market generally; exchanges of current or forward looking commercially sensitive information on their trading activities and trade flows in the secondary market; exchanges, confirmation and/or alignment of trading and pricing strategies and coordination of trading activity.

(759) In support of this common plan, there was also a range of other objective elements that confirm that the collusive contacts were linked and complementary in nature and that, by interacting, they contributed to a global plan having a single objective.

(760) The *products* that formed the subject of the collusive practices (US dollar-denominated SSA bonds) are homogeneous and traded in the same way. Despite the wide variety of issuers of these bonds, and the distinction in terms of nomenclature between supra-sovereign, sovereign and agency bonds, these types of bonds are commonly grouped together on trading desks at most major financial institutions. They are all denominated based on the same currency (the US Dollar), and priced by comparison to the yield on the reference bond for the currency (the US Treasury bond), taking account of issue features (quality, risk, liquidity and so forth).

(761) The *mechanism* for the conduct was the same. The evidence shows that the traders relied on constant communications in chatrooms open only to them as a core group[849]. These were most of the time multilateral persistent chatrooms supplemented (and then replaced) by frequent bilateral contacts, in which they remained in regular contact throughout the trading day and over a period covering several years. The value of these multilateral chatrooms to the group is exemplified by the reaction of [Deutsche Bank employee] upon hearing of a possible restriction on the use of such chatrooms ("*that's gonna really hinder us*", "*we not gonna know what flows are going on with [Crédit Agricole employee] and [Credit Suisse employee]*")[850]. This also led the parties to switch to bilateral chatrooms to ensure that the communication still flowed between them, even if Deutsche Bank restricted the multilateral chatrooms[851].

(762) The *undertakings involved* in the agreements and/or concerted practices – BAML, Crédit Agricole, Credit Suisse and Deutsche Bank – remained stable throughout the duration of the cartel, changing only when one of the participating traders (which consisted of a tightly knit group of the same individuals over time) moved from one undertaking to another. After changing employers, it is notable that [BAML employee then Crédit Agricole employee] and [Deutsche Bank employee then BAML employee] resumed the arrangement within days.[852]

(763) The contacts usually followed the same *pattern*. During certain periods, [Deutsche Bank employee then BAML employee], [BAML employee then Crédit Agricole employee] and [Credit Suisse employee] were in virtually daily contact with each other, keeping the lines of communication open for long durations throughout the course of the day. They freely exchanged information on their current trading

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849 See recitals (95)-(98).
850 See recital (473).
851 See recital (474).
852 See recitals (451), (557) and (558).

activities in the form of a running commentary, which allowed them to identify and exploit opportunities to coordinate, for example in instances when they discovered by means of the information they exchanged in the chatroom that the same customer had approached more than one of them (normally via their respective sales desks) expressing an interest in trading the same bond[853].

(764) On a sometimes daily basis the traders would pool information[854], openly discuss current and future strategic behaviour[855], allowing them to coordinate their commercial conduct[856] with the aim of pursuing an identical anticompetitive object and a single economic aim, namely to restrict and/or distort competition by coordinating on prices, sharing commercially sensitive information, confirming and aligning pricing and trading strategies and coordinating trading activities, thereby gaining an advantage vis-à-vis customers and competing traders, with the aim of benefiting their revenues from trading USD SSA bonds on the secondary market[857].

(765) In light of the above, it is concluded that the conduct described in Section 4.2 formed part of an overall plan of the parties pursuing a common objective to maximise their revenues, while mitigating losses which might occur due to uncertainty over how the other traders would act, for the entire duration of the infringement.

5.2.3.2.1.1. Assessment of the parties'arguments concerning the existence of an overall plan pursuing a common objective

(766) Credit Suisse has focussed on the mechanism for the conduct and argued that the cessation of multilateral persistent chatrooms after February 2013, and the inevitable change in "*intensity of the traders' contacts*" as they were forced to rely on bilateral chats meant that "*the Commission's characterisation of the contact following the same pattern throughout the period of the infringement is not correct*". Credit Suisse also argues that: "*The fact that the post-February chats were mostly bilateral and sporadic means that the mechanism and pattern completely changed and that the implementation and objective necessarily changed for that period*"'[858]. BAML[859] and Crédit Agricole[860] have also noted the differing intensity of the communications in the period after early 2013.

(767) As regards the replacement of multilateral persistent chatrooms by bilateral contacts, the Commission, first, notes that it is not required to prove that the mechanism was identical throughout the infringement period, as the decisive factor is that the anticompetitive aim was sufficiently established. The replacement of multilateral persistent chatrooms by bilateral contacts did not change the mechanism of real-time chats between the traders, but rather the means of achieving it[861]. Second, as already

853 See, for example, recital (222).
854 See, for example, recitals (611), (615) and (674).
855 See, for example, recitals (681) and (686).
856 See, for example, recitals (682)-(684).
857 See recitals (744)-(747).
858 […].
859 […]
860 […]
861 See Judgment of the General Court of 12 December 2014, *Eni SpA v* Commission, T-558/08, ECLI:EU:T:2014:1080, paragraph 36 and Judgment of the General Court of 12 July 2018, *Sumitomo Eletric Industries Ltd and J-Power Systems Corp. v Commission,* T-450/14, ECLI:EU:T:2018:455, paragraph 51.

explained[862], the reason for the replacement of multilateral persistent chatrooms by bilateral contacts was the prohibition on the use of multilateral persistent chatrooms by Deutsche Bank and not any decision on the part of the traders. Indeed, the fact that the traders involved in the infringement immediately sought alternative means of continuing their communications once the most convenient means was no longer available supports the Commission's conclusion that the switch from multilateral to bilateral chatrooms did not change the objective of the parties' conduct for the period after February 2013[863]. In this respect, the Commission recalls that bilateral chats and chats in non-persistent chatrooms already took place in parallel to chats in multilateral persistant chatrooms and the parties had the same pattern of communication irrespective of the type of chatroom[864].

(768) BAML has argued[865] that: "*the Commission has failed…to demonstrate the existence of a common plan with an anti-competitive conduct*" by failing to take into account the market context in which the traders operated and thus erroneously categorising their conduct as anticompetitive. In addition, BAML states that the Commission has not provided any evidence of a "*framework agreement between the traders, under which each instance of alleged conduct would fall*". Finally BAML claims that the objectives, products and companies varied over time and that there were no rules for implementation of the conduct.

(769) BAML's arguments concerning the economic and market context of the communications between the traders have been discussed in Sections 5.2.1 and 5.2.2. For the reasons set out therein, the Commission does not consider that the structure and operations of the USD SSA bond market justified the coordination between the traders set out in Section 4. Nor does the Commission accept that the BAML traders' sole objectives "*were at all times to provide a high quality service to their investor customers and issuer clients*"[866]. The evidence cited in Section 4.2 demonstrates that the parties colluded for the purposes of gaining a competitive advantage to the detriment of other market actors by reducing the uncertainty inherent to a market in which risk and uncertainty management is one of the key parameters of competition and enabled pricing coordination.

(770) BAML's asserts that it is necessary for the Commisison to provide evidence of a "*framework agreement*"[867] between the traders "*under which each instance of alleged conduct would fall*"[868]. The Commission rejects this argument for several reasons. Firstly, as detailed in Section 5.2.1, in order to find a competition infringement there is no requirement to prove the existence of a "framework agreement" or even an agreement in the sense of contracts law, as the assessment of competition infringements relies on the autonomous concepts of agreements and/or

862 See recital (473).
863 See recitals (776)-(777).
864 Please see recitals (150), (153), (161), (163), (176), (285), (294), (297)
865 […]
866 […]
867 See Case T-180/15, *Icap a.o.* v *Commission*, paragraphs 236 and 237, in which the Court found that a lack of evidence for seven weeks (5 March to 27 April 2010) combined with the inability to infer a 'framework agreement': "*should have led the Commission to conclude that there was an interruption in its participation*" in an infringement for which the Commission had determined a duration 3 March to 22 June 2010, *i.e.* a total period of 16 weeks.
868 […]

concerted practices[869]. Secondly, as the case law sets forth, "*it would be contrary to the logic of the concept of a single infringement to require the Commission, when defining that single aim, to be so precise that it de facto prevents it from including in that same infringement different forms of conduct*."[870] Thirdly, the regular pattern of contacts between the traders, whether via persistent multilateral chatrooms or bilateral contacts, and the consistency with which they exchanged sensitive information and coordinated on pricing and trading strategies, encompassing suggestions of "*lets both bid the same level*"[871], "*i'll stay out of it*"[872], and "*let me kill offer*"[873], clearly demonstrates a common plan between them with consistent, mutually understood methods of implementation.

(771) As far as the product is concerned, BAML argues that USD SSA bonds can vary considerably in nature depending on issuer, issue amount, coupon, maturity and other bond characteristics and that: "*Certain bonds may not be interchangeable from the perspective of investors*" (it gives as examples sub-investment grade and low liquidity bonds)[874]. In reality the USD SSA bond market is a relatively small (in global terms, although the total amounts issued are large) sector of the overall international bond markets which is characterised by low risk issuers whilst, as noted in recital (60), offering higher yields than US Treasury bonds. The parties, and other banks trading in the sector, dealt overwhelmingly in highly tradeable securities. As the 'comps lists' exchanged by the traders demonstrated, it is relatively easy to switch from one similarly dated USD SSA bond to another as their characteristics are far more similar than, for example, corporate bonds, which vary markedly in risk and therefore yield.

(772) BAML also maintains that the "*companies involved in the alleged agreements/concerted practices did not 'remain stable' throughout the duration of the alleged infringement period*"[875], pointing to the period in which BAML was not involved as […] had left the bank and [...] had not yet joined. This interval, which the Commission has taken into account, underlines the fact that, as noted in recital (762), the participating companies had different periods of involvement as the traders moved between them (with the exception of [Credit Suisse employee] who was recruited by Credit Suisse […] and remained at the bank throughout the whole period). Even when changing their employer, the traders principally moved between the same undertakings involved, and the specific core individuals remained constant throughout the period, demonstrating the stability and continuity of the conduct despite changes in employment.

(773) BAML also notes the generally lower intensity of contacts in the period after [...] joined, as a result of the end of use of persistent chat rooms and argues that, in relation to the infringement, the contacts were less frequent[876].

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869 Judgment of the Court of First Instance of 8 July 2008, *BPB plc* v *Commission*, T-53/03, ECLI:EU:T:2008:254, paragraph 81.
870 See Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 224.
871 See, for example, recital (143).
872 See, for example, recital (260).
873 See, for example, recital (541).
874 […]. See also recital (800)
875 […]
876 […]

(774) Crédit Agricole, like BAML and Credit Suisse, argues that the Commission has failed to take into account the change in the intensity of communications between the traders after February 2013 (a month after [Crédit Agricole employee] joined the bank): "*Put simply, the alleged conduct, as it may have been originally intended by Deutsche Bank, BAML and Credit Suisse, is of a different scale to the alleged conduct during [Crédit Agricole employee's] period of employment at CA-CIB. As a result, the EC cannot assume that CA-CIB, intentionally or otherwise, contributed to any original aim of Deutsche Bank, BAML and Credit Suisse.*"[877]

(775) Crédit Agricole also accuses the Commission of failing "*to consider CA-CIB's position on the market*"[878], which they define as […]. As such, it argues, their trader's objective would have been to […], and [Crédit Agricole employee's] behaviour was of a different nature and scale at CA-CIB than it had been during his time at BAML.

(776) As regards the decline in communications and the use of bilateral chatrooms during most of [Crédit Agricole employee's] employment at Crédit Agricole, the fact that he and the other traders were no longer in persistent multilateral chatrooms was not of their own volition and did not change the overall nature and intent of their collaboration[879]. Neither did the fact that Crédit Agricole was a smaller market player than the other parties. [Crédit Agricole employee's] objectives might well have included […] but the fact that he rejoins a persistent chatroom with [Deutsche Bank employee] and [Credit Suisse employee] on his very first day of trading at Crédit Agricole[880] and resumes his former activities, demonstrates his intent to continue being involved in the collusion of which he had been a part when employed at BAML.

(777) Moreover, after the banning of multilateral chatrooms by Deutsche Bank, the traders continue keeping each other informed through a network of bilateral chatrooms. In this way, they continue to disclose bilaterally the information gathered from the third trader regarding the same aspects that used to be covered in the multilateral chatrooms. For example, in a chat of 25 July 2013 between […] (Credit Suisse) and […] (Deutsche Bank), the Credit Suisse trader refers to the position of the Credit Agricole's trader ([…]): "*i shorted those kfw 15s this am to my syndicate actually. probably a bit stupid for a short date, but should be ok. [Crédit Agricole employee] got lifted this am too*"[881]. Later, in a bilateral chatroom[882] between Credit Agricole ([…]) and Deutsche Bank ([…]), there is a reference to the position of Credit Suisse's trader ([…]), as [Deutsche Bank employee] says "*sold last piece to [Credit Suisse employee]*" and "*he migght still have them*". This comes as a suggestion to help Crédit Agricole's trader who was looking for a specific type of bond and thus takes it further with his friend at Credit Suisse: "*ok will ask him*". It is only normal that evidence of those contacts is more scattered once they became aware that they have to give up multilateral chatrooms, since they needed to conceal their contacts from internal compliance. As long as there was a multilateral chatroom, the extracts

877 […]
878 […]
879 See recital (763).
880 See recital (451).
881 […]
882 […]

provided by the immunity applicant constitute evidence against all the participants, while in the final period, the immunity applicant could only provide the bilateral chats in which its traders were involved. This is another factor explaining why evidence in that period is more scattered and why there is relatively more evidence in the file concerning bilateral contacts in which the immunity applicant was implicated, than concerning bilateral chats only between the relevant traders of other parties. The completeness of the evidence of bilateral chats between traders of non-leniency parties depends on the searches during the inspections at their premises and on the completeness of their replies to RFIs.

(778) Furthermore, as noted in recital (82), during the investigation BAML notified the Commission that the audio recordings of [BAML employee's] telephone conversations in the period between 29 November 2014 and 3 September 2015, that is, for much of the period during which he was employed by BAML, had been deleted. From call log records of outgoing calls supplied to the Commission by BAML[883], it is apparent that fourteen of these deleted calls were between […] (BAML) and […] (Crédit Agricole) in the period between November 2014 and March 2015. Of these, only one call, that of 10 December 2014, was logged by Crédit Agricole's systems[884]. Given the loss of audio recordings, the content of these conversations is unknown. It is clear, however, that there were further telephone contacts between the BAML's trader and the Crédit Agricole's trader in the later period of the infringement that the Commission could not review.[885].

(779) None of the parties' arguments therefore calls into question the Commission's conclusion that the conduct described in Section 4.2 formed part of an overall plan pursuing a common objective.

5.2.3.2.2. Intention to contribute to an overall plan

(780) The traders' active participation in bilateral and multilateral chatrooms in which coordination of pricing and trading conditions was discussed shows that each participant contributed to the overall plan to restrict and/or distort competition on the secondary market for trading USD SSA bonds with the aim of benefitting their revenues from this collusion.

(781) The fact that one trader might have held back on a specific trade or shared a profitable trade in the interests of a another trader involved in the conduct only reinforced the overall understanding that they helped each other out in the interests of mutual benefit (in the form of increased revenues) over time.

(782) The very nature of the sensitive information exchanged between the traders, including, for example, customer intentions and identities and the trading terms which they intended to show to the market, reveals an intention to facilitate the coordination of pricing and trading activities and strategies. Such details were not part of normal commercial transactional discussions between competing traders and the disclosure of planned prices and potential customers to a competitor would normally weaken a trader's position (by enabling price undercutting for example). Amongst *"close friends"*[886], however, these information exchanges enabled the

[883] […]. BAML has explained that the calls logged are outgoing calls only, not incoming calls.
[884] […]. Crédit Agricole explained in its response that an incoming call was not always recorded.
[885] The contacts logged by the banks are those in which at least one caller is using a company telephone.
[886] See recital (153).

involved traders to gain an advantage by knowing what was going on in the market and coordinating their activities.

(783) It is clear from the evidence presented in Section 4.2 that BAML contributed intentionally to the achievement of the overall aim by the actions of its employees [...] and [...] in the period from 19 January 2010[887] until 23 October 2012[888] and by the actions of its employee [...] from 22 July 2014[889] until 27 January 2015[890]. It participated directly in all the elements of the infringement set out in recital (613), including coordination on prices quoted to specific counterparties (see, for example, recitals (127)-(128) and (129)-(130)), coordination on prices shown to the market in general (see, for example, recitals (157)-(158) and (287)), exchanges of current or forward looking commercial sensitive information (see, for example, recitals (116)-(118), (121)-(122) and (563)-(564)), exchanges and confirmation of pricing and trading strategies (see, for example, recitals (216)-(218), (565) and (567)) and coordination of trading activity (see, for example, recitals (116), (268)-(269) and (558)-(559)).

(784) It is clear from the evidence presented in Section 4.2 that Crédit Agricole contributed intentionally to the achievement of the overall aim by the actions of its employee [...] in the period from […][891] until […][892]. It participated directly in all the elements of the infringement set out in recital (613), including coordination on prices quoted to specific counterparties (see recitals (573)-(574)), coordination on prices shown to the market in general (see, for example, recitals (468)-(470) and (501)-(502)), exchange of current or forward looking commercial sensitive information (see, for example, recitals (488)-(490) and (510)-(512)), exchange and confirmation of pricing and trading strategies (see, for example, recitals (477)-(478), (495)-(496) and (565)-(566)) and coordination of trading activity (see, for example, recitals (519)-(521) and (541)-(543)).

(785) It is clear from the evidence presented in Section 4.2 that Credit Suisse contributed intentionally to the achievement of the overall aim by the actions of its employee [...] in the period from 21 June 2010[893] until 24 March 2015[894]. It participated directly in all the elements of the infringement set out in recital (613), including coordination on prices quoted to specific counterparties (see, for example, recitals (253)-(255) and (294)-(295)), coordination on prices shown to the market in general (see, for example, recitals (283)-(284) and (298)-(299)), exchange of current or forward looking commercial sensitive information (see, for example, recitals (234)-(235) and (329)-(330)), exchange and confirmation of pricing and trading strategies (see, for

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887 See recital (116).

888 This corresponds to the date of [BAML employee's] withdrawal from persistent chatrooms involving the other participants. There are no further anticompetitive contacts in the Commission's file from any non-persistent chats [BAML employee] engaged in with [Deutsche Bank employee] or [Credit Suisse employee].

889 See recital (558).

890 See recital (572).

891 [Crédit Agricole employee] rejoined the persistent chatroom "DB/CA/CS $ CHAT" […] at Crédit Agricole, and did so with intent to continue the collusive arrangement, as is evidenced by his involvement in anticompetitive conduct from the immediately following date. See recitals (451)-(452).

892 See recital (576).

893 See recital (193).

894 See recital (576).

example, recitals (248)-(249) and (307)) and coordination of trading activity (see, for example, recitals (211)-(212) and (260)-(261)).

(786) It is clear from the evidence presented in Section 4.2 that Deutsche Bank contributed intentionally to the achievement of the overall aim by the actions of its employees [...], [...] and […] in the period from 19 January 2010[895] until 28 March 2014[896]. It participated directly in all the elements of the infringement set out in recital (613), including coordination on prices quoted to specific counterparties (see, for example, recitals (116)-(118) and (174)-(175)), coordination on prices shown to the market in general (see, for example, recitals (150)-(151), (161)-(162) and (287)), exchange of current or forward looking commercial sensitive information (see, for example, recitals (222)-(225) and (230)-(231)), exchange and confirmation of pricing and trading strategies (see, for example, recitals (121)-(122) and (228)-(229)) and coordination of trading activity (see, for example, recitals (131)-(132) and (236)-(238)).

(787) The Commission therefore concludes that the conduct described in Section 4.2 demonstrates that the parties contributed intentionally to a common plan to restrict and/or distort competition on the secondary market for trading USD SSA bonds with the aim of benefitting their revenues from this collusion.

5.2.3.2.2.1. Assessment of the parties' arguments concerning intentional contribution to a common plan

(788) BAML asserts that its traders had no intention to contribute to an "*overall plan to distort or restrict competition*"[897] as their objectives were at all times to provide a high quality service to their investor customers and issuer clients and that the communications between them and the other traders was "*an entirely legitimate part of their roles*". This argument has already been addressed in Section 5.2.2[898], and the evidence does not support BAML's claim.

5.2.3.2.3. Continuous nature of the infringement

(789) The practices as set out in Section 4 were part of an ongoing process according to a common plan and were not isolated or sporadic occurrences. The different elements of the infringement, which were in pursuit of the same anticompetitive objective, were formulated within the context of multiple and frequent contacts between the relevant traders of the parties.

(790) The parties should therefore be held liable for the entire single and continuous infringement for their respective periods of involvement as set out in recital (842). As the traders of BAML mentioned in this Decision were not involved in the infringement in the period between 24 October 2012 and 21 July 2014, and were not employed by BAML during most of that period, BAML is considered to have taken part in a single and repeated infringement. BAML is therefore liable for the entire single and repeated infringement for the whole of the period of the infringement, except for the period during which its involvement in the infringement was

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[895] See recital (116).
[896] See recital (551).
[897] […]
[898] See also recital (769).

interrupted[899]. In this regard, although a fine may be imposed in respect of the whole of the period of the infringement, it may not be imposed for the period during which BAML's involvement in the infringement was interrupted.

5.2.3.2.3.1. Assessment of the parties' arguments concerning the continuous nature of the infringement

(791) Crédit Agricole argues[900] that the Commission: "*has failed to demonstrate that the alleged infringement was 'continuous'*", and points to a ten month interval between 22 October 2013 and 6 August 2014 during which, it states: "*there is no direct contact between [Crédit Agricole employee] and [Deutsche Bank then BAML employee] upon which the EC relies as evidence*". (As set out in Section 2.4, [Deutsche Bank then BAML employee] was on gardening leave from Deutsche Bank from 1 April 2014 and did not start work at BAML until […]).

(792) The argument of Crédit Agricole has to be rejected, for a number of reasons. Firstly, […] (Crédit Agricole) had various infringing contacts with […] (Credit Suisse) during this period: three in March 2014 and one in May 2014. Secondly, as explained in recitals (808)-(809) [Crédit Agricole employee] was well aware that [Credit Suisse employee] had contacts of this nature with [Deutsche Bank then BAML employee] (as he did in December 2013, February 2014 and July 2014). Once the use of multilateral chatrooms was prohibited and the parties switched to bilateral chatrooms, they remained aware of the continuation of their conduct through the network of bilateral contacts. Thirdly, as noted in recital (534), the overall market context of more reduced trading in USD SSA bonds in that period meant that there were fewer occasions to discuss. However, they continued their conduct when they had the occasion. Finally, Crédit Agricole has never distanced itself publicly from the infringing conduct.

(793) BAML argues that the Commission has not demonstrated the existence of a single and continuous infringement, nor of a repeated infringement by it in the period between 22 July 2014 and 27 January 2015. BAML states that[901]: "*the Commission must treat MLI's participation in the alleged infringement as having been interrupted very regularly*". This position is based on the premise that "*the anti-competitive actions alleged by the Commission pertain to either (a) individual trading opportunities or transactions in specific bonds, or (b) information (eg price or value) relating to specific bonds at a specific point in time*" And that: *"…any communications…(a) could affect only the trades and/or specific bonds in question; (b) could not impact other trades or other SSA bonds; and (c) will have had no enduring effects (because the impact of any individual instances of conduct will very quickly (normally within minutes) be overtaken by changes in market conditions)*". In other words, the effects of any infringing behaviour, and hence the behaviour itself, should be narrowed down to very short time periods "*sometimes no more than seconds or, at most, minutes*", in between which there were "*multiple, lengthy gaps of over three weeks*" (and one of four months). In its Judgment of 10 November 2017 in the case *Icap and Others v Commission*, the General Court held that *"although the period separating two manifestations of infringing conduct is a relevant criterion in*

[899] 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 273.

[900] […]

[901] […]

order to establish the continuous nature of an infringement, the fact remains that the question whether or not that period is long enough to constitute an interruption of the infringement cannot be examined in the abstract. On the contrary, it needs to be assessed in the context of the functioning of the cartel in question"[902]. Consequently, the Commission in the *Icap* judgment had to take into account that JPY LIBOR rates are set on a daily basis and therefore *"the effects of manipulating those rates are limited in time and that the manipulation needs to be repeated in order for those effects to continue"*.

(794) The length of time separating two infringements therefore depends on the context of the functioning of the cartel. In thist case, BAML's proposition that the anticompetitive behaviour of the traders alleged by the Commission, including the exchange of price sensitive information and coordination of pricing and trading strategies, could only affect specific trades and bonds and had only a very short effect, ignores the multiple interactions between traders and counterparties and also disregards their own explanations of the USD SSA bond market structure and operations.

(795) First, given that a trader entering into a transaction with a customer will, as BAML's Response to the SO notes: "*provide liquidity by taking inventory risk and/or matching counterparties"*[903], the anticompetitive behaviour of the traders with regard to specific bonds and/or trades had continuing potential effects in the market. For the trader or counterparty to take a position in the bond implies inventory costs, whilst liquidity sourcing from counterparties in order to off-load risk results in a further trade that is consequential upon the initial transaction and is inevitably affected by its terms. The actions of the traders in collaborating to withdraw prices shown to the market via interdealer brokers' screens removed the most competitive terms of trade available via such screens at that point in time and thus had potential ongoing effects on any transactions which might have been made, whether for hedging or other purposes.

(796) This ongoing knowledge of previous customer enquiries and trades is illustrated in recital (717), in which [BAML employee] and [Deutsche Bank employee] recollect trades done in the past and revealed to each other via chatrooms.

(797) Second, the activities of the traders around the time of new issues, in exchanging comps lists of comparable bonds and agreeing to, for example: "*switch prices etc at the same level*"[904] , implies a rather larger area of operations than any initial trades in the new issue itself. BAML's concept of time-limited individual infringements with gaps in between, during which it: "*cannot be held liable for conduct of other participants during those gaps, even if it was, or should have been aware of that conduct*"[905] is at odds with the reality of the cartel in which a group of traders with frequent communications exchanged sensitive information and took advantage of opportunities to coordinate on pricing and trading strategies in full awareness of each others' behaviour.

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902 Case T-180/15, *Icap a.o. v Commission,* paragraph 220 and case law cited.

903 […].

904 See recital (283).

905 […]

(798) The situation is therefore different than the one in *Icap* which BAML takes as an example to argue that the Commission has not produced evidence of its continued participation. In the present case, the influence of the anticompetitive conduct is not limited in time and is not necessary to manifest in all trades on a daily basis for the effects of the information echange to continue. The fact that there might be intervals of weeks between the communications quoted in this Decision did not imply 'interruptions' in the infringement as the nature, objectives, mechanisms and awareness persisted throughout the periods in which the parties were involved, and the parties were in close social contacts, also outside chatroom communication. Moreover, *Icap* concerned a very different setting, as Icap was acting as a facilitator rather than a direct participant, and was not involved in the majority of the communications between the banks. In this case each of the addressees was a direct participant and fully aware of the overall aims and mechanisms of the cartel, as well as having access to the majority of exchanges through the chatrooms.

(799) As the Court has found, "*in the context of an overall agreement extending over several years, a gap of several 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*"[906]. In the present case, the parties followed the same pattern of communication and the fact that they use the same expressions, abbreviations or nicknames to identify some of their clients, even after periods of less activity, shows that they continue to refer to the information exchanged previously and to use it for the same common objective in the overall plan to coordinate their prices and trading strategies[907]. For example, statements such as *"lets both bid same level"*, *"will show a worse price"*, and *"i can kill it if you want"* show that the trader of BAML is subscribing to a common plan together with other traders defining their action in the market[908].

(800) BAML also argues[909] that it was not involved in a repeated infringement in the period between 22 July 2014 and 27 January 2015 in which [BAML employee] was employed by BAML – pointing to the lower frequency and bilateral nature of the recorded contacts between [BAML employee] and the other participating traders, and claiming that the objectives of these communications differed, that there were no "*rules of implementation*"[910] and again contending that the products involved each time were distinct USD SSA bonds, "*which is not homogenous with other SSA bonds*" and again that any communication "*in relation to a particular bond cannot impact or affect any other SSA bond*"[911].

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906 Case T-53/03, *BPB plc* v *Commission*, paragraph 256.

907 See recital (638). See also Case T-53/03, *BPB plc* v *Commission*, paragraph 240: "*When the Commission is legally entitled to conclude that the various manifestations were part of a single infringement in that they were elements of an overall plan designed to distort competition, the fact that the number and intensity of the collusive practices varied according to the market concerned does not mean that the infringement did not concern the markets on which the practices were less intense and less numerous. It would be artificial to split up continuous conduct, characterised by a single purpose, into a number of separate infringements on the ground that the collusive practices varied according to the market concerned.*"

908 See recital (619).

909 […]. See also recital (772).

910 See recitals (768)-(770).

911 See recital (771) for a discussion of this point.

(801) According to settled case law, "if the participation of an undertaking in the infringement may be regarded as having been interrupted that infringement may be categorised as repeated if — as in the case of a continuing infringement — there is a single objective which it pursued both before and after the interruption, a circumstance which may be deduced from the identical nature of the objectives of the practices at issue, of the goods concerned, of the undertakings which participated in the collusion, of the main rules for its implementation, of the natural persons involved on behalf of the undertakings and, lastly, of the geographical scope of those practices"[912]. The contacts between […] (BAML) and other participating traders pursued the single anticompetitive objective[913] which both before and after the interruption, covered the same products (that is, USD SSA bonds)[914], largely used the same mechanism (namely chats)[915] and pattern of exchange of information, and involved the same undertakings and traders (the "*[...]*")[916].

(802) With regard to the mechanism, for the period in which there were multilateral persistent chatrooms, evidence of anticompetitive practices is consistent and concerns all relevant parties. For the subsequent period, first, the evidence of the immunity applicant and second, the evidence gathered during the targeted inspections carried out by the Commission services, demonstrate the continuation of communications in multilateral chatrooms into communications in bilateral chatrooms, as well as a number of unlawful exchanges as detailed through selected examples in Section 4.2. In this case, the evidence is documented in contemporaneous recordings which identify clear contacts between established participants. As mentioned in recital (767), the prohibition on the use of persistent multilateral chatrooms after early 2013 inevitably meant that the traders had to resort to bilateral contacts (which they had already used in parallel with the multilateral chats) - including non-persistent chats - evidence of which is more scattered than when persistent chatrooms were the common means of communication. On the one hand, the traders of the immunity applicant were not involved in all bilateral contacts; on the other hand, they were no longer involved in the infringement after Friday 28 March 2014 ([...] having effectively left Deutsche Bank on 1 April 2014 and having gone on gardening leave before joining BAML)[917], so there is less evidence available from the immunity applicant from the bilateral chatrooms. Nevertheless, the contemporaneous evidence obtained by the Commission during the inspections demonstrates the continuing nature of the infringement.

(803) Furthermore, the Commission recalls that whether conduct constitutes a single infringement is based on the identical nature of the objective pursued by each participant in the cartel, not by an identical method of implementation throughout the entire infringement period[918].

(804) The different manners of communication between the involved parties in the post-February 2013 period did nothing to alter the nature and objectives of the cartel, nor

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912 Case T-180/15, *Icap a.o. v Commission*, paragraph 221 and case law cited. See also Case T-240/17, *Campine NV and Campine Recycling NV v* Commission, paragraph 273.

913 See recitals (757)-(759)

914 See recital (760).

915 See recital (761).

916 See recital (762).

917 See recital (99).

918 Case T-53/03, *BPB plc* v *Commission*, paragraph 255.

the awareness of a close-knit group of each other's activities. In the last months of the cartel the market for USD SSA bonds may have been more difficult[919] since the multilateral setting was more efficient for their purposes. Nevertheless, the traders continued to take advantage of those contacts which arose, as explained in Section 4.2, and the potential for restriction and distortion of competition rippled out beyond any individual bonds.

(805) The Court has acknowledged that in cartel cases, the evidence is normally fragmentary and incomplete, so that it is frequently necessary to reconstitute certain details by inference[920]. Accordingly, it is not necessary to prove each and every single contact or every aspect of the infringement, nor is it necessary to rely on a single piece of evidence or a specific mechanism, and the continuous conduct corresponding to the same aim may be inferred from a body of evidence taken together[921], even if there may be intervals between the contacts analysed[922]. The parties have not been able to provide any plausible alternative explanation to the whole body of evidence taken together to explain the unlawful conduct. In any event,

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919 See recital (534).

920 See Judgment of the General Court of 13 September 2013, *Total v Commission*, T-566/08, ECLI:EU:T:2013:423, paragraph 47: "*Since the prohibition on participating in anti-competitive practices and agreements and the penalties which offenders may incur are well known, it is normal for the activities which those practices and those agreements entail to take place in a clandestine fashion, for meetings to be held in secret and for the associated documentation to be reduced to a minimum. The Commission cannot therefore be required to produce documents explicitly showing contacts between the operators concerned. Even if it discovers such documents, they will normally be only fragmentary and incomplete, so that it is frequently necessary to reconstitute certain details by inference. The existence of an anti-competitive practice or agreement may therefore be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules*".

921 See Judgment of the General Court of 29 February 2016, *UTi v Commission*, T-264/12, ECLI:EU:T:2016:112, paragraph 40: "*In addition, it should be remembered that, in practice, the Commission is often obliged to prove the existence of an infringement under conditions which are hardly conducive to that task, in that several years might have elapsed since the time of the material facts of the infringement and a number of the undertakings covered by the investigation have not actively cooperated with it. Whilst it is necessarily incumbent upon the Commission to establish that an unlawful agreement was concluded, it would be excessive also to require it to produce evidence of the specific mechanism by which that objective was to be attained. Indeed, it would be too easy for an undertaking guilty of an infringement to escape any penalty if it were entitled to base its argument on the vagueness of the information produced regarding the operation of an unlawful agreement in circumstances in which the existence and anticompetitive purpose of the agreement had nevertheless been sufficiently established. Undertakings are able properly to defend themselves in such circumstances provided that they have an opportunity to comment on all the evidence relied on against them by the Commission (judgment in JFE Engineering and Others v Commission, cited in paragraph 37 above, EU:T:2004:221, paragraph 203).*"

922 See Case T-762/15, *Sony v Commision*, paragraph 206: "*First, as regards the applicants' argument that the Commission did not assess whether the periods separating the contacts were sufficiently short to establish a continuous infringement, it should be borne in mind that the fact that the evidence of the existence of a continuous infringement was not adduced for certain specific periods does not preclude the infringement from being regarded as having been established during a more extensive overall period than those periods, provided that such a finding is based on objective and consistent indicia. In the context of an infringement extending over a number of years, the fact that a cartel reveals itself at different periods, which may be separated by more or less lengthy intervals, has no impact on the existence of that cartel, provided that the various actions which form part of the infringement pursue a single aim and come within the framework of a single and continuous infringement (judgment of 21 September 2006, Technische Unie v Commission, C-113/04 P, EU:C:2006:593, paragraph 169).*"

even if evidence of the (by then bilateral) contacts was less frequent, it still attests to the continuation of the behaviour.

(806) In conclusion, therefore, the Commission's finding of a single and continuous infringement, including BAML's single and repeated infringement in this case, is in line with the case law.

5.2.3.2.4. Awareness

(807) BAML, Crédit Agricole, Credit Suisse and Deutsche Bank participated in all constituent parts of the cartel through the involvement mainly of their traders [...], (initially at Deutsche Bank and subsequently at BAML), [...] ([…]) and […] (at Credit Suisse)[923]. These three individuals participated in a multilateral persistent chatroom[924] from May 2010 until February 2013, from which much of the evidence described in this Decision originates. Therefore, they were or must have been aware of all of the constituent elements and the full scope of the cartel[925]. The fact that many of the instances of coordination described in Section 4 involved bilateral action, or that some took place in bilateral persistent or non-persistent chatrooms between any two of the traders, rather than all three of them simultaneously, cannot detract from the fact that they were aware of the scope of the cartel as a whole involving all parties and that, even if not directly participating in a bilateral chatroom, they had been aware of 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[926]. The fact is that largely the same traders were involved and had engaged in all the constituent elements, in various instances, during their employment with any of the parties. The fact that the behaviour continued almost instantaneously upon some traders taking up their new employment with a different party indicates that when they started participating (again) at their new employer they must still have known about the full scope of the cartel[927].

(808) Moreover, in the context of the banning of persistent multilateral chatrooms, the traders continue keeping each other informed through a network of bilateral chatrooms. They continue disclosing bilaterally the information gathered from the third trader regarding the same aspects that used to be covered in the multilateral chatrooms. For example, in a chat of 25 July 2013 between […] (Credit Suisse) and […] (Deutsche Bank), the Credit Suisse trader refers to the position of the Crédit Agricole's trader […] : "*i shorted those kfw 15s this am to my syndicate actually. probably a bit stupid for a short date, but should be ok. [Credit Agricole employee] got lifted this am too*"[928]. Later, in a bilateral chatroom[929] between Crédit Agricole ([…]) and Deutsche Bank ([…]), there is a reference to the position of Credit Suisse's trader ([…]), as [Deutsche Bank employee] says "*sold last piece to [Credit Suisse employee]*" and "*he migght still have them*". This comes as a suggestion to help Crédit Agricole's trader who was looking for a specific type of bond and thus

923 See recitals (92)-(96).
924 See recital (94), footnotes 84 and 85 and 87.
925 See recital (613).
926 Joined cases C-293/13 P and C-294/13 P, *Commission v. Fresh Del Monte Produce,* paragraph 158.
927 See, for example, recital (451).
928 […]
929 […]

takes it further with his friend at Credit Suisse: "*ok will ask him*". Therefore, the evidence cited in Section 4 indicates that the undertakings were, or at the very least ought to have been, aware that bilateral communications concerning the same matters were taking place[930].

(809) The core colluding traders, who knew each other both professionally and socially, acknowledged that they were frequently referred to as the '[…]'. A chat between […] (Credit Suisse) and […] (Deutsche Bank) of 23 May 2013[931] clearly demonstrates their status as a known 'gang': *"was just telling [Crédit Agricole employee]: met that* […] *girl last night …told her we should chat/help each other out etc. She turned around and said "but your part of the "gang", can I trust you?" she says, everyone talks about the […]…lol…I told her, I don't tell [Deutsche Bank employee] or [Crédit Agricole employee] anything…trust me!!"*

(810) Further, each of [Deutsche Bank then BAML employee], [BAML employee then Crédit Agricole] and [Credit Suisse employee] recognised themselves as a discrete 'club', and clearly understood and approved of the collusive purposes of their chatroom communications[932]. The goal was to benefit their revenues and, even if this meant one of them might hold back on a specific trade, the overall understanding was that they helped each other out in the interests of mutual benefit over time. Thus on 2 June 2010[933], [BAML employee] informs [Deutsche Bank employee] that he just made a sale of a specific bond after he *"showd 30mm @71"*. [Deutsche Bank employee] shows the same level and sells to the same customer, after which he notes that their coordination *"worked out a dream"*. It is possible that [BAML employee] could have sold more of his own holding in the bond and increased his immediate profit but he knows that [Deutsche Bank employee] will reciprocate at some stage.

(811) Certain additional traders ([…] of Deutsche Bank, […] of BAML and Crédit Agricole and […] of Deutsche Bank) were also involved in the conduct on a more occasional basis, for example when filling in for one of the core colluding traders during his holidays or when he was not present on the trading floor[934].

(812) These traders were identifying themselves as acting on the market in the name of their employers and were aware that their colleague was in close contact with specific traders at other banks for coordinating the trading business and exchanging commercially sensitive information and they knew or could have foreseen that their own contacts with these traders aimed to support and contribute to this coordination. Likewise, the core colluding traders knew that some of their colleagues occasionally stepped in, and they were aware that these additional contacts supported and contributed to the common objective of taking advantage of the opportunities to increase their revenuse by coordinating on, pricing and trading acivities and the exchange of commercially information.

(813) […] was already in contact with [Deutsche Bank employee] and […] before the latter joined him at BAML on […][935]. […] knew that when [BAML employee] joined him

930 See recitals (473)-(474).
931 […]
932 […]
933 See recital (190).
934 […]
935 […]

at BAML on […], the latter became the main contact for [Deutsche Bank employee] and [Credit Suisse employee] at BAML for coordinating purposes and for exchanging commercially sensitive information[936]. But he continued to be in contact himself occasionally with [Deutsche Bank employee][937].

(814) […] went to Crédit Agricole on […], where he was later again joined by [former BAML colleague] on […]. In view of his knowledge of [former BAML colleague's] conduct while at BAML in which […] had also been involved occasionally, Crédit Agricole (through […]) ought at the very least to have been aware, that […] continued his contacts with [Deutsche Bank employee] and [Credit Suisse employee] while under […'s] direct supervision at Credit Agricole[938].

(815) […] (Deutsche Bank) knew that he was helping out his colleague [Deutsche Bank employee]. In his initial contact of 22 March 2010[939] with […] (BAML), he notes that: "*[Deutsche Bank employee] told me to ask you for advice*" and proceeds to inform [BAML employee], a competing trader, of a price he is being asked to trade at and ask whether this is a "*right level*". When [BAML employee] explains that he and [Deutsche Bank employee] "*are very close friends*", [Deutsche Bank employee] replies: "*yeah he told me the same*". On 16 December 2010[940] […] (Deutsche Bank) instructed [Deutsche Bank employee] to set up a persistent chatroom including himself, [Deutsche Bank employee] and also […] (BAML) and […] (Credit Suisse) and explaining that he could "*ask them anything in total trust*". From the content of this and other communications which [Deutsche Bank employee] has with both [BAML employee] and [Credit Suisse employee][941], he is clearly aware that the amity between the traders involves the coordination of pricing and trading and disclosure of information such as client identities. Furthermore when [Deutsche Bank employee] tells him that a Deutsche Bank ban on chatrooms with traders at other banks[942] will "*hinder*" them because "*we are not gonna know what flows are going on with [Crédit Agricole employee] and [Credit Suisse employee]*", it is [Deutsche Bank employee] who suggests a way to get round the ban by opening a new chatroom every day.

(816) […] (Deutsche Bank) also knew that his contacts with […] (Credit Suisse) aimed to help his colleague [Deutsche Bank employee][943].

(817) Furthermore, even though some traders changed from one bank to another (such as [...] and [...] moving from BAML to Crédit Agricole and [...] moving from Deutsche

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936 See recitals (283)-(287) in relation to an agreement by […] (Deutsche Bank), […] and […] (BAML) and […] (Credit Suisse) to send the same comps to their sales desks in the context of a new issue of FINL bonds. On 9 March 2011, [BAML employee] requests that [Deutsche Bank employee] and [Credit Suisse employee] "*keep [BAML employee] in the loop tom[orrow]*" (when [BAML employee] would be in […]), with "[…]" apparently being a typo referring to [BAML employee], and on the following day [BAML employee] takes [BAML employee's] place in the chat and continues to execute the agreement to coordinate prices.

937 See recitals (143) and (150).

938 [Crédit Agricole employee] was [Crédit Agricole employee's] […] from the start of [Crédit Agricole employee's] tenure at Crédit Agricole […]. […].

939 See recitals (153)-(156).

940 See recital (264).

941 See, for example, recitals (161) and (430).

942 See recital (473).

943 […]

Bank to BAML), they performed identical or similar roles and engaged in the same practices at each of their functions, and were thus aware that the collaboration between them was essentially unchanged.

(818) It is not necessary for the hierarchy within the undertaking to be aware that an employee is engaging in anticompetitive behaviour, as even if employees are acting without authorisation the undertaking can be held liable for an infringement of Article 101(1) of the Treaty[944].

(819) In light of the above, the Commission concludes that BAML, Deutsche Bank, Crédit Agricole and Credit Suisse were aware of the conduct which the other cartel participants planned or put into effect in pursuit of the same anticompetitive objective, or could at the very least reasonably have foreseen it, and were prepared to take the risk[945].

5.2.3.2.4.1. Assessment of the parties' arguments concerning awareness

(820) Crédit Agricole claims that[946]: "*the EC relies upon inferences as to the relationship between [Crédit Agricole employee] and the other traders suggesting they had a 'close relationship' and that they knew each other 'professionally and socially' to impute knowledge to CA-CIB".*

(821) The evidence confirms that the three core traders had a close relationship. For example[947], [Crédit Agricole employee] requested: "*[...]*", namely to rejoin a persistent chatroom with [Deutsche Bank employee] and [Credit Suisse employee], […]. [Credit Suisse employee] (the chat administrator greets him with: "*[...]*" and [Crédit Agricole employee] responds: "*[...]*". Further evidence of […'s] friendship with [Deutsche Bank employee] is seen in his communication with [Deutsche Bank employee] on 22 March 2010[948]. The evidence on file also demonstrates that the three traders continued to meet socially in the period whilst [Crédit Agricole employee] was employed by Crédit Agricole. In October 2013[949], for example, in a bilateral chat between […] (Credit Suisse) and […] (Deutsche Bank), into which [Deutsche Bank employee] invites [Crédit Agricole employee], […]. They also met socially during [Deutsche Bank then BAML employee's] period of gardening leave after resigning from Deutsche Bank and before he joined BAML[950].

(822) Regarding the period after 2013, when Deutsche Bank banned the use of persistent multilateral chatrooms by its trader, Credit Suisse declares that[951]: "*The Commission has not shown that CS was aware of or could have forseen the bilateral chats which happened between the other traders for the period following February 2013. The Commission cannot presume CS' awareness of bilateral communications between*

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944 Judgment of the Court of 7 February 2013, *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.,* C-68/12, ECLI:EU:C:2013:71, paragraphs 25-26; Judgment of the Court of 7 June 1983, *Musique Diffusion française a.o.* v *Commission,* Joined Cases 100/80 to 103/80, ECLI:EU:C:1983:158, paragraph 97.

945 Joined cases C-293/13 P and C-294/13 P, *Commission v. Fresh Del Monte Produce,* paragraph 158.

946 […]

947 See recital (451).

948 See recital (153).

949 […]

950 […].

951 […]

the other two traders…". Crédit Agricole[952] argues that: "*there was no clear continuity in the involvement of […] from working at BAML to working at CA-CIB*". BAML also asserts that[953]: *"when [Deutsche Bank then BAML employee] joined MLI in July 2014, he did not know, and could not have reasonably foreseen, that CS and CA were engaged in the separate bilateral discussions which are alleged to have constituted anti-competitive agreements/concerted practices, and further he could not have been aware of the substance of those discussions"*.

(823) Whilst, outside a persistent multilateral chatroom, one trader might not have been able to check the finer detail of what the other two said to each other in a bilateral contact, all were aware of the continuing links between each other and the nature and general substance of the communications. When, on 25 February 2013[954], [Deutsche Bank employee] and [Deutsche Bank employee] discuss the new Deutsche Bank ban on the use of persistent multilateral chatrooms, they were already thinking of ways to circumvent it, such as using daily bilateral chatrooms, in order to "*know what flows are going on with [Crédit Agricole employee] and [Credit Suisse employee]*". On 25 July 2013[955], for example, […] (Credit Suisse) tells […] (Deutsche Bank) that: "*I shorted those kfw 15s this am to my syndicate*" and adds: "[Crédit Agricole employee] *got lifted this am too*", thus disclosing that he and [Crédit Agricole employee] were also in contact and exchanging information on their trading with third parties. On 22 October 2013[956], […] (Deutsche Bank) tells […] (Crédit Agricole), that he has not got any "*ifc 18*" left as he "*sold last piece to [Credit Suisse employee]…he might still have them*", and [Crédit Agricole employee] responds: "*ok will ask him*". On 9 January 2014, […] (Credit Suisse) informs […] (Crédit Agricole) that he was: "*just chatting to [Deutsche Bank employee]"*[957].

(824) As regards the traders outside the core '[…]' group of traders, notably [Deutsche Bank employees] and […][958], BAML maintains that[959]: "*the traders had legitimate reasons to be in close contact for coordinating legitimate trading activity such as liquidity sourcing, and in respect of which it was legitimate and necessary for price information to be discussed. This is not a sufficient basis on which to impute knowledge of alleged anti-competitive arrangements to a trader who was not present in the chatroom at the relevant time*".

(825) As demonstrated in recitals (813)-(816), not only were [Deutsche Bank employees] and […] aware of the contacts between the three core traders but they were all involved in infringing communications with the '[…]' themselves. [Deutsche Bank employee] was initially encouraged by his colleague Deutsche Bank employee] to approach both [BAML employee] and [Credit Suisse employee] for help and became well aware that they acted in concert. […] already had contacts with [Deutsche Bank employee] and [...] before January 2010 and in March 2011 was coordinating on the secondary market price for a new bond issue with [Deutsche Bank employee] and

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952 […]
953 […]
954 See recitals (473)-(474).
955 […]
956 […]
957 […]
958 As noted in recitals (68) and (71), […]. He was directly involved in the infringement during his employment at BAML […].
959 […]

[Credit Suisse employee][960]. Whilst no longer directly involved in the anticompetitive behaviour himself whilst he was […'s] supervisor […], it is not credible to conclude that he had lost all awareness of either the activities or participants […] since he left […]. In any case, the awareness of the common objectives of the cartel lies with the parties through any of the traders participating in the market in their name. Therefore, whether or not each of the other traders knew of the full extent of the discussions / scope of the cartel is irrelevant for the purposes of establishing BAML's liability, which is also based on [Deutsche Bank then BAML employee's] involvement as a core member in most communications covering all the constitutive elements of the cartel.

(826) In conclusion, none of the parties's arguments call into question the Commission's conclusion that BAML, Deutsche Bank, Crédit Agricole and Credit Suisse were aware of the conduct which the other cartel participants planned or put into effect in pursuit of the same anticompetitive objective, or could at the very least reasonably have foreseen it, and were prepared to take the risk.

5.2.3.3. Conclusion on single and continuous infringement

(827) On this basis of the foregoing, it is concluded that the complex of collusive contacts between the parties constitutes one single and continuous infringement of Article 101(1) of the Treaty for which each of the parties is held liable.

(828) All parties should be held liable for the entire single and continuous infringement for the whole of their respective periods of involvement, with the exception of BAML, which is considered to be liable for its repeated participation in that single and continuous infringement from 19 January 2010 until 23 October 2012; and from 22 July 2014 until 27 January 2015 (see Section 6).

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

5.2.4.1. Principles

(829) Article 101(1) of the Treaty is aimed at agreements which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.

(830) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement is not, however, limited to that part of the participants' sales that actually involves the transfer of goods from one Member State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the infringement as a whole, affected trade between the Member States[961] and between the Contracting Parties to the EEA Agreement.

(831) The Union Courts have consistently held that: "*in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law*

[960] See recital (287).

[961] Judgment of the Court of First Instance of 10 March 1992, *Imperial Chemical Industries v Commission,* T-13/89, ECLI:EU:T:1992:35, paragraph 304.

or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. Article 101 TFEU does not require that agreements have actually affected trade between Member States, but it does require that it be established that the agreements are capable of having that effect"[962].

5.2.4.2. Application to this case

(832) The USD SSA bond market is characterised by a significant volume of trade between Member States and between the Union and the European Free Trade Association (EFTA) countries belonging to the EEA. The parties subject to the proceedings are based in London, United Kingdom but trade USD SSA bonds issued by authorities and institutions throughout the EEA. The international nature of the bond markets and instant communication and trading facilities means that, irrespective of the location of their trading desks, the participating traders carried out transactions on a global basis throughout the day.

(833) The parties were trading USD SSA bonds issued by authorities and institutions within the EEA (see, for example, recital (165), noting a discussion between [Deutsche Bank employee] and [BAML employee] on the pricing of European Investment Bank and State of Netherlands sovereign bonds, or recital (307), referring to a discussion between [Deutsche Bank employee] and [Credit Suisse employee] on pricing and volumes of Kommunalbanken Norway bonds) and beyond. These issuers relied on efficiently functioning debt markets in order to raise capital. The parties' customers and competitors were also based within the EEA (see, for example, recital (444); *"European a/c"*) and beyond[963].

(834) The parties to the infringement were all major global financial institutions. Whilst their traders were operating primarily in the secondary market for USD SSA bonds, issuers of USD SSA bonds rely not only on the primary market in order to place debt and raise funding, but also on the efficiency of the secondary market. In the absence of a competitive international secondary market in which to trade their bond holdings, investors would not be willing to purchase new issues and provide finance. Anticompetitive behaviour which had as its object the restriction and/or distortion of competition on the secondary USD SSA bond market was therefore capable of affecting the conditions in which all market players, within the EEA and beyond, operated.

(835) Although the USD SSA bond sector is only a small proportion of the bond markets, total international turnover in that sector amounts to EUR 795 billion[964]. Given the amounts traded at any one time[965], very slight manipulations of prices could amount to appreciable sums.

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962 See Case 56/65, *Société Technique Minière v Maschinenbau Ulm GmbH,* paragraph 7; Judgment of the Court of 11 July 1985, *Remia a.o. v Commission*, Case 42/84, ECLI:EU:C:1985:327, paragraph 22 and Case Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, *Cimenteries CBR a.o. v Commission,*; Judgment of the Court of 28 April 1998, *Javico International and Javico AG v Yves Saint Laurent Parfums SA*, C-306/96, ECLI:EU:C:1998:173, paragraph 16.

963 According to Deutsche Bank […] the main Europe based investors are central banks, with bank treasuries also amongst the buyers.

964 See recital (65)

965 See, for example recital (169): *"I will take 50mm if you can get them",* and recital (260); *"will bid this gy for 200mm"*.

(836) The infringement was therefore capable of affecting trade between Member States and between the Contracting Parties to the EEA Agreement.

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

(837) The provisions of Article 101 of the Treaty and Article 53 of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

(838) The parties bear the burden of proof of any pro-competitive effects meeting the conditions of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement. It is clear from settled case-law that the existence of a 'rule of reason', that is to say 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, cannot be upheld under EU competition law[966].

(839) None of the parties has invoked these provisions to argue their case and there is no indication that the behaviour by the undertakings that participated in the infringement entailed any efficiency benefits or otherwise promoted technical or economic progress. Complex infringements such as that which is the subject of this Decision are, by definition, among the most detrimental restrictions of competition.

(840) On the basis of the facts before the Commission, it is concluded that the conditions of Article 101(3) of the Treaty or Article 53(3) of the EEA Agreement are not fulfilled in this case. As noted in recital (735), the parties have not argued that the provisions of Article 101 of the Treaty and Article 53 of the EEA Agreement should be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement. Rather, they have claimed that, when seen in the market context, the parties' behaviour was not an infringement.

6. DURATION OF THE INFRINGEMENT

(841) The first anticompetitive contact for which the Commission holds any participant liable occurred on 19 January 2010[967]. The last occurred on 24 March 2015[968], thus the overall duration of the infringement identified in this Decision was a period of five years and two months.

(842) During this overall duration of the infringement, each party participated in the infringement during the following periods:

- BAML (Merrill Lynch International and Bank of America Corporation) first participated from 19 January 2010[969] until 23 October 2012[970], namely a period

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966 See Case T-105/17, *HSBC Holdings plc a.o. v. Commission,* paragraph 154 and cited case law.

967 See recital (116).

968 See recital (576).

969 See recital (116).

of 1009 days or 2.76 years; and again from 22 July 2014[971] until 27 January 2015[972], namely a period of 190 days or 0.52 year (thus a total duration of 1199 days or 3.28 years);

– Crédit Agricole (Crédit Agricole Corporate and Investment Bank and Credit Agricole S.A.) participated from 10 January 2013[973] until 24 March 2015[974], namely a period of 804 days or 2.20 years;

– Credit Suisse (Credit Suisse Securities (Europe) Limited and Credit Suisse Group AG) participated from 21 June 2010[975] until 24 March 2015[976], namely a period of 1738 days or 4.75 years;

– Deutsche Bank (DB Group Services (UK) Limited and Deutsche Bank AG) participated from 19 January 2010[977] until 28 March 2014[978], namely a period of 1530 days or 4.18 years. The subsidiary Deutsche Securities Inc. participated from 22 March 2010 until 25 February 2013, namely a period of 1072 days or 2.93 years[979].

(843) Crédit Agricole[980] proposes three shorter options for the duration of its participation, arguing, firstly, that the infringement either ceased or was interrupted when [Deutsche Bank then BAML employee] left Deutsche Bank; secondly, that there were some unproblematic communications involving it; and, thirdly, that there was a gap (whilst [Deutsche Bank then BAML employee] was on gardening leave) and then a marked decrease in infringing communications between [Crédit Agricole employee] and [Deutsche Bank then BAML employee] once the latter was at BAML. Alternatively, Crédit Agricole contends that, once communications which it deems to be '*unproblematic*' are excluded, the duration is reduced to fifteen months between January 2013 and March 2014.

(844) As set out in Section 5.2.3., the decline in the frequency of evidence regarding communications between the core traders shortly after [Crédit Agricole employee] joined Crédit Agricole – a factor which was effectively beyond their control and which they sought to mitigate – did not alter the fundamental characteristics of the cartel. The traders continued to exchange sensitive information on customers, strategies and pricing and to take advantages of opportunities to collude. Their objectives remained the same during the quieter trading environment in 2014. [Deutsche Bank then BAML employee's] resignation from Deutsche Bank and three

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970 This corresponds to the date of [BAML employee's] withdrawal from persistent chatrooms involving the other participants. There are no further anticompetitive contacts in the Commission's file from any non-persistent chats [BAML employee] engaged in with [Deutsche Bank employee] or [Credit Suisse employee].

971 See recital (558).

972 See recital (572).

973 [Crédit Agricole employee] rejoined the persistent chatroom "DB/CA/CS $ CHAT" […], and did so with intent to continue the collusive arrangement, as is evidenced by his involvement in anticompetitive conduct from the immediately following date. See recitals (451)-(452).

974 See recital (576).

975 See recital (193).

976 See recital (576).

977 See recital (116).

978 See recital (551).

979 See Table 1 in recital (99).

980 […]

and a half month absence from the market inevitably led to a gap in professional communications, even if the three traders ([Crédit Agricole employee], [Deutsche Bank then BAML employee] and [Credit Suisse employee]) continued to meet socially and were well aware of each other's activities. Within days of joining BAML, moreover, [Deutsche Bank then BAML employee] was involved in a collusive contact with [...] (Credit Suisse[981]) and within three weeks of joining BAML he was involved in a collusive contact with […] (Crédit Agricole[982]). Moreover, there were contacts which restricted competitition between […] (Crédit Agricole) and […] (Credit Suisse) during this period[983]. Thus there is no justification for reducing the duration of Crédit Agricole's involvement in the infringement.

(845) Finally, the claim that only six communications are not "*clearly unproblematic*"[984] is unconvincing, since there is a sequence of many more communications set out in Section 4 in which Crédit Agricole was directly involved which amount to restrictive conduct.

(846) Credit Suisse maintains that[985]: "*the Commission has not proved CS' participation in the relevant conduct between August 2014 and March 2015*", asserting that there are no infringing contacts involving [Credit Suisse employee] from between 4 August 2014 and 12 March 2015 and "*the Commission has not proved CS' awareness of bilateral chats between the other traders*" in this period and that, furthermore, the two contacts between [Credit Suisse employee] and [Crédit Agricole employee] in March 2015 are not collusive.

(847) Concerning the period post-February 2013, in which the traders used bilateral chats, as set out in recitals (807)-(808), they were well aware that bi-lateral contacts were taking place between each of the traders of the same nature and with the same objectives as the previous, multi-lateral contacts. As noted in recital (534), the overall market context of more reduced trading in USD SSA bonds in that period meant that there were fewer occasions to discuss. However, they continued when they had the occasion.

(848) As regards the two contacts in March 2015, it is clear that on 12 March 2015[986] […] (Crédit Agricole) and […] (Credit Suisse) coordinated their trading strategy towards a particular customer, to the effect that [Crédit Agricole employee] declined to quote a price in competition with [Credit Suisse employee]. This was therefore a form of price collusion. On 24 March 2015[987], […] (Credit Suisse) sends […] (Crédit Agricole) a list of Credit Suisse prices to its customers, which was a clear exchange of commercially sensitive information.

(849) Finally, in line with the case law[988], any time intervals alleged by Credit Suisse between instances of anticompetitive exchanges with the other participants should be seen against the background of the overall duration of Credit Suisse's involvement in the infringement – which lasted almost five years (and is the longest of all of the

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981 See recital (558).
982 See recital (563).
983 See recitals (555),(561).
984 […]
985 […]
986 See recitals (573)-(574).
987 See recital (576).
988 See recital (799) and Case T-53/03, *BPB plc v Commission*, paragraph 256.

participants in the infringement) from 21 June 2010 to 24 March 2015. In this context, the intervals between Credit Suisse's anticompetitive exchanges is not such as to credibly indicate that Credit Suisse's participation in the infringement had been interrupted. This is particularly the case given that the longest intervals between exchanges occurred during the period following the move from multilateral to bi-lateral exchanges and a reduction of trading on the SSA market leading to fewer occasions to collude[989]. Nevertheless, even during these periods Credit Suisse remained aware of the continuation of the infringing conduct through the network of bi-lateral contacts[990]. Furthermore, Credit Suisse never sought to distance itself publicly from the infringing conduct.

(850) BAML asserts[991] that, as far as its participation is concerned the period from 22 July 2014 to 27 January 2015 cannot: "*be included in the duration of any infringement"*. BAML points to the lower frequency of documented contacts, the fact that both [Deutsche Bank then BAML employee] and […] had changed employers, the use of bilateral chatrooms and concerned matters "*in relation to which the Commission received no leniency evidence that identified such conduct as being anti-competitive*".

(851) As regards the period from July 2014, as set out in recitals (767), (801) and (802), the arguments of BAML have to be rejected. The nature or objectives of the conduct did not change. The change in [Deutsche Bank then BAML employee] and […]'s employers made no difference to their infringing activities and the contemporaneous evidence obtained during announced inspections demonstrates the same type of anticompetitive conduct. There is a single objective which the parties pursued before and after July 2014, as can be inferred from the identical nature of the objectives of the practices at issue, of the products concerned, of the undertakings which participated in the collusion, of the mechanism and patterns of exchanges, of the individuals involved and, lastly, of the geographical scope of those practices[992].

(852) For the period between January 2010 and October 2012, BAML reiterates the arguments discussed in recitals (794)-(798) with regard to the duration and potential impact of the anticompetitive behaviour and of the intervals between the infringing communications, and to which the Commission has already responded at those recitals. In conclusion, the Commission does not agree that the duration of BAML's participation in the infringement should be modified and certain periods disregarded.

7. ADDRESSEES

7.1. Principles

(853) The Union's competition law applies to the activities of "undertakings". The concept of undertaking is not identical to the notion of corporate legal personality in national commercial or fiscal law. An undertaking is an economic concept that covers any

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989 See recital (534).
990 See recital (777)
991 […]
992 Case T-240/17, *Campine NV and Campine Recycling NV v Commission,* paragraph 273.

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[993].

(854) It 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[994].

(855) According to the settled case law of the Court of Justice, for the purposes of Union competition law the concept of an undertaking must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal[995]. The conduct of subsidiaries may be imputed to their parent company, even though the parent company does not participate directly in the infringement, if the parent company and the subsidiary form a 'single economic unit' and therefore form a single 'undertaking'[996]. This is in particular the case when 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[997]. 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. And where the subsidiary that has infringed Article 101 of the Treaty is directly or indirectly wholly owned by its parent company, there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary. In those circumstances, it is sufficient for the Commission to prove that the subsidiary is 100% or near 100% owned by the parent company in order to presume that the parent company exercises a decisive influence over the commercial policy of the subsidiary. The parent company will 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[998].

7.2. Application in this case

(856) An employee performs his or her duties for and under the direction of the undertaking for which he works and, thus, is considered to be incorporated into the economic unit comprised by that undertaking. For the purposes of a finding of infringement of Union competition law any anticompetitive conduct on the part of an

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993 Judgment of the Court of 10 September 2009, *Akzo Nobel a.o. v Commission,* C-97/08 P, ECLI:EU:C:2009:536, paragraphs 54-55 and the case law referred to in those paragraphs.

994 Case C-97/08 P, *Akzo Nobel a.o. v Commission,* paragraphs 56-57 and the case law referred to in those paragraphs.

995 See Case C-97/08 P, *Akzo Nobel a.o* v *Commission*, paragraphs 54 and 55 and the case-law cited.

996 The existence of an economic unit may be inferred from a body of consistent evidence, even if some of that evidence, taken in isolation, is insufficient to establish the existence of such a unit. See Judgment of the Court of 1 July 2010, *Knauf Gips* v *Commission*, C-407/08 P, ECLI:EU:C:2010:389, paragraph 65.

997 See Case C-97/08 P, *Akzo Nobel a.o.* v *Commission*, paragraph 58 and the case-law cited.

998 Case C-97/08 P, *Akzo Nobel a.o. v Commission*, paragraphs 58-61 and the case law referred to in that paragraph. See also Judgment of the Court of First Instance of 30 September 2009, *Elf Aquitaine SA v Commission*, T-174/05, ECLI:EU:T:2009:368, paragraphs 125 and 155-156 and the case law referred to in those paragraphs 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 the case law referred to therein, as well as paragraph 100, as confirmed by Judgment of the Court of 29 September 2011, *Arkema SA v Commission*, C-520/09 P, ECLI:EU:C:2011:619, paragraphs 39 and 41.

employee is thus attributable to the undertaking to which he or she belongs and that undertaking is, as a matter of principle, held liable for that conduct[999].

(857) On the basis of the events described in Section 4 of this Decision, it is concluded that traders of each of the following parties participated in the cartel, and therefore the parties are found liable for the infringement.

7.2.1. *Bank of America Merrill Lynch*

(858) The Commission considers that employees of *Merrill Lynch International* directly participated[1000] in the infringement described in this Decision[1001]. The Commission, therefore, holds *Merrill Lynch International* liable for its direct and repeated participation in the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement from 19 January 2010[1002] until 23 October 2012[1003]; and again from 22 July 2014[1004] until 27 January 2015[1005].

(859) All BAML employees that were involved in the infringement were directly employed by *Merrill Lynch International*, which was a wholly owned subsidiary of *Bank of America Corporation* during the period mentioned in recital (858)[1006]. The latter company is presumed to have exercised decisive influence over *Merrill Lynch International*'s conduct on the market, and, on this basis, the Commission holds *Bank of America Corporation* liable in its capacity as parent company of *Merrill Lynch International* for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement from 19 January 2010 until 23 October 2012, and again from 22 July 2014 until 27 January 2015. In light of the above, Bank of America Corporation and Merrill Lynch International will be held jointly and severally liable for the fines imposed pursuant to Art 23(2) of Regulation (EC) No 1/2003.

7.2.2. *Crédit Agricole*

(860) The Commission considers that employees of the London branch of *Crédit Agricole Corporate and Investment Bank ("CACIB")* directly participated in the infringement described in this Decision[1007]. The Commission, therefore, holds *CACIB* liable for its direct participation in the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement from 10 January 2013[1008] until 24 March 2015[1009].

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999 See Judgment of the Court of 21 July 2016, *SIA 'VM Remonts' a.o. v Konkurences padome,* C-542/14, ECLI:EU:C:2016:578, paragraphs 23-24.

1000 See recital (842). Further explanation of the two periods in which the undertaking was involved can be found in recital (783).

1001 See Table 1 (recital (99)) for the dates of the first and last contacts mentioned in Section 4 involving BAML employees […].

1002 See recital (116).

1003 This corresponds to the date of [BAML employee's] withdrawal from persistent chatrooms involving the other participants. There are no further anticompetitive contacts in the Commission's file from any non-persistent chats [BAML employee] engaged in with [Deutsche Bank employee] or [Credit Suisse employee].

1004 See recital (558).

1005 See recital (572).

1006 See recital (69).

1007 See Table 1 (recital (99)) for the dates of the first and last contacts mentioned in Section 4 involving Crédit Agricole employee […].

1008 [Crédit Agricole employee] rejoined the persistent chatroom "DB/CA/CS $ CHAT" on his first day trading at Crédit Agricole, and did so with intent to continue the collusive arrangement, as is evidenced

(861) *CACIB* was a nearly (around 97%) wholly owned subsidiary of *Credit Agricole S.A.* during the period mentioned in recital (860)[1010]. The latter company is presumed to have exercised decisive influence over the conduct of *CACIB* on the market, and, on this basis, the Commission holds *Credit Agricole S.A.* liable in its capacity as parent company of *CACIB* for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement from 10 January 2013 until 24 March 2015. In light of the above, Credit Agricole S.A. and Crédit Agricole Corporate and Investment Bank will be held jointly and severally liable for the fines imposed pursuant to Art 23(2) of Regulation (EC) No 1/2003.

7.2.3. *Credit Suisse*

(862) The Commission considers that employees of *Credit Suisse Securities (Europe) Limited* ("CSSEL") directly participated in the infringement described in this (EC) Decision[1011]. The Commission, therefore, holds CSSEL liable for its direct participation in the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement from 21 June 2010[1012] until 24 March 2015[1013].

(863) CSSEL was a wholly owned subsidiary of *Credit Suisse Group AG* during the period mentioned in recital (862)[1014]. The latter company is presumed to have exercised decisive influence over CSSEL's conduct on the market, and, on that basis, the Commission holds *Credit Suisse Group AG* liable in its capacity as parent company of with CSSEL for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement from 21 June 2010[1015] until 24 March 2015[1016]. In light of the above, Credit Suisse Group AG and Credit Suisse Securities (Europe) Limited will be held jointly and severally liable for the fines imposed pursuant to Art 23(2) of Regulation (EC) No 1/2003.

7.2.4. *Deutsche Bank*

(864) The Commission considers that employees of *DB Group Services (UK) Limited* and *Deutsche Securities Inc.* directly participated in the infringement described in this Decision[1017]. The Commission, therefore, holds these companies liable for their direct participation in the infringement of Article 101 of the Treatyand Article 53 of the EEA Agreement for the following periods: DB Group Services (UK) Limited, from 19 January 2010[1018] until 28 March 2014; and Deutsche Securities Inc. from 22 March 2010 until 25 February 2013.

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by his involvement in anticompetitive conduct from the immediately following date. See recitals (451)-(452).

1009 See recital (576).

1010 See recital (72).

1011 See Table 1 (recital (99)) for the dates of the first and last contacts mentioned in Section 4 involving Credit Suisse employee […].

1012 See recital (193).

1013 See recital (576).

1014 See recital (75).

1015 See recital (193).

1016 See recital (576).

1017 See Table 1 (recital (99)) for the dates of the first and last contacts mentioned in Section 4 involving Deutsche Bank employees […].

1018 See recital (116).

(865) *DB Group Services (UK) Limited* and *Deutsche Securities Inc.* were wholly owned subsidiaries of *Deutsche Bank AG* during the period concerned[1019]. The latter company is presumed to have exercised decisive influence over the conduct on the market of *DB Group Services (UK) Limited* and *Deutsche Securities Inc.*, and, on this basis, the Commission holds *Deutsche Bank AG* liable in its capacity as parent company of *DB Group Services (UK) Limited* and *Deutsche Securities Inc.* for the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement from 19 January 2010 until 28 March 2014.

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

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

(867) In the present case, it is not possible to declare with absolute certainty that the infringement has ceased for all the participants. The Commission therefore requires the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

8.2. Article 23(2) of Regulation (EC) No 1/2003

8.2.1. Principles

(868) Under Article 23(2) of Regulation 1/2003, the Commission may, by decision, impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

(869) The principles used by the Commission to set fines are laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 ("the Guidelines on Fines")[1020].

(870) On the basis of the Guidelines on Fines, the Commission determines a basic amount for each undertaking party to the infringement. The basic amount results from the addition of a variable amount and an additional amount. Both components of the basic amount are determined on the basis of an undertaking's value of sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area within the EEA. For that purpose, the Commission normally takes the sales made by an undertaking during the last full business year of its participation in the infringement[1021]. If the last year is not sufficiently representative, the Commission may choose another approach.

1019 See recital (77).

1020 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.

1021 Point 13 of the Guidelines on Fines.

(871) The Commission uses rounded figures in determining the basic amount of the fines[1022]. The basic amount can be increased or reduced where the Commission finds that either aggravating or mitigating circumstances exist.

(872) The Commission sets the fines at a level sufficient to ensure deterrence.

(873) Finally, the Commission applies, as appropriate, the provisions of the 2006 Leniency Notice.

8.2.2. Intent

(874) In relation to the question whether an infringement has been committed intentionally or negligently and is, therefore, liable to be punished by a fine in accordance with Article 23(2) of Regulation 1/2003, first subparagraph, it follows from settled case-law that that condition is satisfied where the undertaking concerned cannot be unaware of the anticompetitive nature of its conduct, whether or not it is aware that it is infringing the competition rules of the Treaty. As such, the fact that the undertaking concerned has characterised wrongly in law its conduct upon which the finding of the infringement is based cannot have the effect of exempting it from imposition of a fine in so far as it could not be unaware of the anticompetitive nature of that conduct[1023].

(875) In the present case, the Commission considers that, based on the facts described in this Decision and the assessment contained above, the infringement has been committed intentionally.

(876) The individuals involved were aware of the commercial value and usefulness of the information disclosed which further buttresses the conclusion that the infringement was committed intentionally, as further detailed in recitals (882)-(886)[1024].

(877) Moreover, the infringement described in this Decision consists, inter alia, of price fixing with respect to USD SSA Bonds. With respect to this type of infringement, parties cannot claim that they did not act deliberately[1025]. In any event, even if it were found that the parties in this case did not act intentionally, for the reasons set out in this section 8.2.2, they would have acted, at the very least, negligently.

Arguments concerning intent

(878) Credit Suisse states that[1026]: "*[Credit Suisse employee] did not deliberately set out to engage in cartel arrangements. Legitimate market-making was the motivation for his communications*". Credit Suisse further justifies [Credit Suisse employee's] activities on the grounds that: "*the information disclosed by [Credit Suisse employee] could have been valuable and useful for pro-competitive market-making and price coordination by market-makers in the specific context of SSA bond trading can be*

1022 Point 26 of the Guidelines on Fines. As regards the weightings of the representative bonds used in the determination of the adjustment factors (see recital (901)), these will not be rounded.

1023 Judgment of the Court of 18 June 2013, *Bundeswettbewerbsbehörde and Bundeskartellanwalt v Schenker & Co. a.o.*, C-681/11, ECLI:EU:C:2013:404, paragraphs 37-38.

1024 See, for example, the chats cited in footnotes 531 and 533

1025 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.

1026 […]

benign and is not intrinsically anticompetitive". It concludes that: "*At worst, [Credit Suisse employee]/CS acted negligently*".

(879) Crédit Agricole also contends that[1027]: "*To the extent that the EC finds that information flowing between three individuals crossed a line between legitimate and illegitimate information exchange, the wider market context has to be taken into account when considering whether any conduct on the part of [Crédit Agricole employee] was intentional*". Moreover, it states that the Commission has not "*made out*" the allegations of coordination on prices shown to specific counterparties and/or the market in general against Crédit Agricole and thus cannot conclude that Crédit Agricole was involved in price fixing.

(880) Crédit Agricole maintains that: "*even if [Crédit Agricole employee] 'ought to have known' that his conduct infringed competition law, that cannot be imputed to CA-CIB*", because he was, effectively, a "*rogue trader*". Crédit Agricole argues that the bank was not aware of his conduct before joining and that, whilst it had "*appropriate systems and controls in place*", these would not have flagged up his conduct. Furthermore, Crédit Agricole declares that, as all of the conduct took place in a London-based subsidiary: "*there is no precedent for the EC to hold the parent company jointly and severally liable in circumstances where the alleged infringement was committed at worst negligently*".

(881) BAML makes a number of claims to support its assertion that[1028]: "*even if MLI were to have infringed Article 101, it has not done so either intentionally or negligently*". In the first instance, it states that: "*the fact that individuals were aware of the 'commercial value and usefulness of the information disclosed' does not begin to prove that the individuals employed by BAML were aware of the anti-competitive nature of their conduct*" since "*market participants (both market makers and counterparties) and financial industry regulators would have been aware that the exchange of commercially sensitive information is necessary for an OTC market to function*". Secondly, BAML asserts that the Commission is mistaken in arguing that[1029] the inclusion of price fixing amongst the parties' collusive activities means that they cannot claim that they did not act deliberately, especially in the specific USD SSA bond market context, in which exchanges between competitors can be legitimate[1030].

(882) As set out in Section 5.2.2.[1031], the exchange of sensitive information between the traders participating in the infringement went far beyond that which is legitimate in an OTC bond market in which traders are required to transact with each other, either on a risk (profit)-taking basis or to source liquidity. BAML's claim that the Commission has recognised that "*the exchange of pricing, supply and demand information is essential*" in the USD SSA bond market[1032] is disingenuous. As noted in recitals (661) and (662), the Commission does not take issue with necessary exchanges between traders in relation to potential bilateral trades. However, information on client identities and trading strategies, as well as pricing to third-party

1027 […]
1028 […]
1029 See recital (877).
1030 […]
1031 See, in particular, recitals (659)-(674).
1032 […]

clients went well beyond any necessary exchange between traders. Nor was such information ‘public’ or simply ‘market colour’. As the Court has stated[1033]: “*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*”. BAML, Crédit Agricole and Credit Suisse have each stressed the market making role of their traders.

(883) Concerning the claims of BAML and Credit Suisse that the exchanges had benefits for customers and were even pro-competitive[1034], the Commission considers that such exchanges constitute a distortion in the competitive process on the market for the sole benefit of those participating in the collusion[1035]. Instead of being pro-competitive, such a distortion constitutes an expression of the very harm that Article 101(1) of the Treaty seeks to prohibit. Furthermore, the parties have provided no evidence that they offered greater benefit to customers in the form of, for example, lower spreads or any other element of terms of trade, including ability to meet orders, as compared to any other financial institutions trading USD SSA bonds. In any event, that would be a matter related to the restrictive character of the practice or its capacity to cause harm, but it would not detract from the conclusion that the conduct was intentional.

(884) As explained above, the traders of all four undertakings addressed by this Decision knowingly engaged in deliberate price fixing, both for specific counterparties[1036] and the market in general[1037]. This engagement cannot be justified on the grounds of legitimate liquidity sourcing or price discovery. In this regard, Crédit Agricole’s claim that there is no evidence of its involvement in price fixing is incorrect[1038]. Concerning BAML’s assertion that market participants, including customers, and financial industry regulators would have been aware that the exchange of information at stake in this Decision, including pricing information (which, it implies, includes pricing coordination) is necessary to trade, there is no suggestion from the communications that individual customers were aware, when they approached individual traders, that their identities and transaction choices might be disclosed to other traders; or that there might be coordination on the terms being quoted to them. As for financial regulators, as set out in recital (733), the regulatory requirements relating to coordinated support of new issues on the secondary market do not suggest an acquiescent regulatory environment.

(885) Concerning the parties’ responsibility for their employees’ conduct, in the first place, it is established case law that there is no need for authorisation or even knowledge by the undertaking of its individual employees’ anticompetitive activities for it to be held liable for that employee’s conduct[1039]. This is all the more so since “*participation in agreements that are prohibited by the FEU Treaty is more often than not clandestine and is not governed by any formal rules. It is rarely the case that an undertaking’s representative attends a meeting with a mandate to commit an*

1033 See Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 145.

1034 […]

1035 Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 102.

1036 See, for example, recitals (646), (647), (648) and (650).

1037 See, for example, recitals (655) and (729).

1038 See, for example, recitals (501), (541), (547) and (573).

1039 See, for example, Judgment of the Court of 16 February 2017, *Tudapetrol Mineralölerzeugnisse Nils Hansen KG v Commission*, C-94/15 P, ECLI:EU:C:2017:124, paragraph 28.

infringement"[1040]. In the second place, and in any event, each of the parties is an international investment bank with extensive legal and compliance resources employing traders who are skilled professionals. The compliance mechanisms that such investment banks have in place, including registration and storage of traders' chats, could and should have detected the anticompetitive nature of such coordination. In such a context, each of the parties had a means to directly investigate and monitor their employees' actions and could not have been unaware of the anticompetitive nature of such conduct as exchanges of information covering coordination on prices quoted to specific counterparts or shown to the market generally, current, or forward-looking commercially sensitive information on their trading activities and trade flows in the secondary market, confirmation and alignment of trading and pricing strategies, and coordination of trading activity[1041]. Deutsche Bank's application for immunity which signalled the conduct to the Commission shows precisely that the parties had the means to check the type of communication exchanged between the parties and realise its anticompetitive object. With specific regard to Crédit Agricole, the Commission recalls that a direct supervisor was well aware of the conduct of the supposed rogue trader.

(886) The Commission therefore considers that the parties infringed Article 101 of the Treaty intentionally, or at the very least negligently, such that it is entitled to impose fines on the parties pursuant to Article 23(2) of Regulation (EC) No 1/2003.

8.2.3. Value of sales

(887) In applying the Guidelines on Fines, the basic amount for each party results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement directly or indirectly relates, in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in that infringement. The additional amount is calculated as a percentage of between 15% and 25% of the same value of sales. The resulting basic amount may then be increased or reduced for each undertaking if aggravating or mitigating circumstances are retained.

(888) The basic amount of the fine to be imposed on the undertaking concerned is to be set by reference to the value of sales[1042], that is, the value of the undertaking's sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA. Normally, in order to determine the value of sales, the Commission takes the sales made by the undertaking during the last full business year of its participation in the infringement[1043]. There are circumstances in which another reference period might be considered to be more appropriate in view of the characteristics of the case or the available data, for example when the last year

1040 Case C-68/12, *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.,* paragraph 25; Joined Cases 100/80 to 103/80, *Musique Diffusion française a.o.* v *Commission,* paragraphs 97-98.

1041 Case C-681/11, *Bundeswettbewerbsbehörde and Bundeskartellanwalt v Schenker & Co. a.o,* paragraph 39: "*undertakings which directly coordinate their behaviour in respect of their selling prices quite evidently cannot be unaware of the anti-competitive nature of their conduct*."

1042 Point 12 of the Guidelines on Fines.

1043 Point 13 of the Guidelines on Fines.

of the infringement is not representative[1044]. Moreover, according to the case law, the Commission is not required to apply a precise mathematical formula and has a wide margin of discretion when determining the amount of each fine[1045].

(889) Financial products such as USD SSA Bonds do not generate sales in the usual sense as described in recital (870), 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.

(890) 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.

Annualised notional amounts traded as basis for a proxy for the value of sales

(891) It is consistent Commission 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'[1046]. These methods reflect trading profits netted against trading losses (which can vary significantly between undertakings and are not necessarily proportionate to trading volumes and values) and are comparable to a measurement of profit from trading actitivities rather than constituting an appropriate proxy for the value of sales under the Guidelines on Fines[1047]. They run counter to the logic applied in the Guidelines on Fines and the setting of the basic amount of the fines by reference to the value of sales as they do not adequately reflect the economic importance of the infringement or the relative weight of each undertaking in the infringement and may not create a sufficient deterrent effect. In light of the nature of USD SSA bonds and the trading thereof, the same considerations apply in the present case.

(892) Instead, it is appropriate to use the notional volume and value of the USD SSA bonds that the parties traded during their individual period of involvement in the cartel as the 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.

(893) The notional amounts relied on by the Commission correspond to the annualised notional amounts traded by each party in USD SSA bond transactions entered into

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1044 Judgment of the General Court of 16 November 2011, *Plásticos Españoles (ASPLA) v Commission*, T-76/06, ECLI:EU:T:2011:672, paragraphs 111-113.

1045 Judgment of the General Court of 13 September 2010, *Trioplast Industrier AB* v *Commission*, T-40/06, ECLI:EU:T:2010:388, paragraph 141; Judgment of the Court of 29 June 2006, *Showa Denko* v *Commission*, C-289/04 P, ECLI:EU:C:2006:431, paragraph 36.

1046 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).

1047 Case T-105/17, *HSBC Holdings plc a.o. v Commission*, paragraph 322.

with counterparties located in the EEA[1048] during the months corresponding to that party's individual participation in the infringement[1049]. When compiling the notional amounts, account is taken of the sum of the broker trades executed via inter-dealer brokers located in the EEA and the client trades with EEA counterparties, for all maturies, for the relevant months[1050]. Those monthly USD-denominated notional amounts are first converted into euros using the monthly average of the EUR-USD exchange rate available on the ECB website[1051]. For rounding purposes, the months that partly fall outside the period of individual participation are not taken into account.

(894) 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, in view of the varying size of the USD SSA Bond market and the high volatility of the bid-ask spread over the infringement period[1052], and the differing time periods in which the different addressees were involved, the Commission considers it more appropriate to base the annualised sales proxy on the value of sales actually made by the undertakings during the months corresponding to their respective participation in the infringement. 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, dividing the total amount by the number of full months of participation and subsequently multiplying this monthly average by 12. […].

Table 2: Annualised notional amounts traded

Undertaking	Annualised notional amounts (EUR)	Bandwidth (EUR)
BAML	CONFIDENTIAL […]	[…]
Crédit Agricole		[…]
Credit Suisse		[…]
Deutsche Bank		[…]

Adjusting the annualised notional amounts traded to account for market particularities and the principle of proportionality

(895) These annualised notional amounts traded reflect the economic importance of the infringement and 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 USD SSA bond industry in particular are not taken into account.

1048 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 request for information sent by the Commission on 15 March 2017, which defined an EEA counterparty under point (vii) of section 1 Definitions/Instructions.

1049 See Section 2.4 for the undertaking and the relevant SSA bond desks. See Section 6 for the periods of individual participation.

1050 See recital (83) and footnote 75 for reference to the relevant request for information of 15.03.2017 and the corresponding replies.

1051 https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-usd.en html.

1052 See recitals (534) and (899).

(896) The principal particularity of the financial industry and SSA bond trading for the purposes of calculating the fines to be imposed on the parties is that USD SSA bonds are traded on the secondary market for a price that is expressed as a percentage of the notional amount. The revenue on those 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”.

(897) It is appropriate to take into account the bid-ask spreads related to the price spread levels of USD SSA bonds when calculating the proxy for the value of sales to be used in this case. To this end, the Commission discounts the above mentioned annualised notional amounts of USD SSA bonds traded on the secondary market by a factor based on the the applicable bid-ask spreads (“the adjustment factor”)[1053].

(898) The adjustment factor ensures that the fines are set at a level which reflects the reality of the market context and the economic importance of the infringement; as well as the principle of proportionality, while also ensuring that the fines have the requisite deterrent effect.

(899) Due to the high volatility of the bid-ask spread levels of USD SSA bonds throughout the infringement period – for example, bid-ask spread levels were on average wider during the bond crisis period in 2011 – and the discrepancy across issuing countries and maturities, a specific adjustment factor is applied for each party based on each party’s specific trading characteristics during the infringement period. This adjustment factor consists of an average bid-ask spread for each party (the “final bid-ask spread”), divided by 50%[1054]. The adjustment factor is applied to each bank’s annualised notional amounts traded. Trading and/or interest revenues are not included in the estimation[1055].

(900) The key element of each party’s adjustment factor is the final bid-ask spread, which is calculated separately for each party as the simple average of daily bid-ask spreads computed for each working day of each party’s infringement period.

$$\boxed{\textit{\textbf{Final bid-ask spread (\%)}} = \frac{\textit{(Daily bid-ask spread)}_{\textit{first working day}} + \textit{(Daily bid-ask spread)}_{\textit{second working day}} + \ldots + \textit{(Daily bid-ask spread)}_{\textit{last working day}}}{\textit{Total working days}}}$$

(901) Each daily bid-ask spread is calculated individually for each party and consists of the weighted average of the bid-ask spread level of 33 representative bonds to which 33

1053 The adjustment factor mirrors the amount by which the notionalised annual amounts will be discounted; thus an adjustment factor of 1.4% represents a discount of 98.6% (100% - 98.6% = 1.4%).

1054 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.

1055 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.

specific weights are assigned according to each party's specific breakdowns of notional amounts traded per issuer and per maturity[1056].

Daily bid-ask spread, day 1 *=*	*Bond 1: bid-ask spread level * weight* *+ Bond 2: bid-ask spread level * weight* *+ ...* *+ Bond 33: bid-ask spread level * weight*

(902) The 33 representative USD SSA bonds were selected from eight issuers spread over five maturity ranges[1057]. The representative sample of eight issuers included […][1058]. This sample was based on the breakdowns per issuer provided by the parties […][1059]. The five different maturity ranges are 0-3 years, 3-5 years, 5-7 years, 7-10 years and over 10 years. On this basis, the sample of representative bonds would include 40 bonds from eight selected issuers spread over five maturity ranges. However, given the limited significance of the long-term maturity range (over 10 years) in USD-denominated SSA bonds during the infringement period, only […] is included in that maturity range. As a result, on any given day of the infringement period, the sample of representative bonds used for the computation of the daily bid-ask spreads include 33 bonds, that is 32 bonds from the eight selected issuers spread over the four shortest maturity ranges, to which […] over 10 years is added.

(903) The bid-ask spread data (that is the difference between the ask price and the bid price) for these 33 representative bonds were collected from the Bloomberg BGN composite price source[1060], resulting in 33 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, a daily bid-ask spread consisting in a weighted average of these 33 data points has been calculated. The 33 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 issuer and per maturity that were provided by each party […][1061]. 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 33 weights remain constant throughout each party's infringement period.

1056 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%.

1057 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. See recital (88). Following arguments of the adressees' on the application of the methodology, the selection of representative bonds has been adapted. See recital (931)

1058 […]

1059 See recital (87) and footnote 78 for reference to the relevant request for information of 12.11.2019 and the corresponding replies.

1060 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.

1061 See recital (83) and footnote 75 for reference to the relevant request for information of 15.03.2017 and the corresponding replies. See recital (87) and footnote 78 for reference to the relevant request for information of 12.11.2019 and the corresponding replies.

(904) The adjustment factor for each party was rounded down to the third digit in percentage terms. The precise figure is included in the individual confidential Annex of this Decision.

Table 3: Adjustment factors

Undertaking	Adjustment factor	Bandwidth
BAML	CONFIDENTIAL […]	[…]
Crédit Agricole		[…]
Credit Suisse		[…]
Deutsche Bank		[…]

Final figures used as the proxy for the value of sales

(905) Based on the notional amounts in Table 2 and the adjustment factors in Table 3, the proxy for the value of sales is the following.

Table 4: Value of sales

Undertaking	Proxy for value of sales (EUR)
BAML	[…]
Crédit Agricole	[…]
Credit Suisse	[…]
Deutsche Bank	[…]

Arguments of BAML, Crédit Agricole and Credit Suisse concerning the proxy for the value of sales

(906) In their Responses to the SO and at the oral hearing, the BAML, Crédit Agricole and Credit Suisse argued[1062] that the Commission had not adequately explained in the SO the following aspects of its intended fining methodology such that the addressees could not understand whether the fining methodology would be appropriate, and, therefore, the ultimate amount of the fines justified:

– the reasons why annualised notional amounts has been selected as a proxy for the value of sales;

– the way the Commission determines the adjustment factor reflecting the applicable spreads to be applied to the notional amounts traded.

(907) On 6 November 2020, the Commission sent each of the addressees a letter, which provided further clarification as regards the calculation of the fines and invited them to provide the Commission with their views in that regard, which they did in the course of December 2020 and early January 2021[1063]. In its response of 4 December 2020, Deutsche Bank stated that it had no comments in relation to the letter of 6 November 2020.

Arguments concerning the procedure

(908) BAML asserts[1064], firstly, that the proposed fining methodology should have been set out in the SO and that, moreover there appears to be a discrepancy between "*certain*

1062 […]
1063 […]
1064 […]

information" (namely the proposed source of information on the relevant price spread to be used in the fines calculation) provided in the SO and the letter of 6 November 2020 providing further clarification on the fines methodology. BAML goes on to claim that there is a: "*continued failure to explain essential elements of the proposed methodology*", notably the selection of the representative bonds and the weights for issuers. Finally BAML argues that: "*the rights of defence require the Commission to provide an opportunity for an oral hearing on the Fines Letter*" and quotes from the Decision of 13 October 2011 of the President of the European Commission on the function and terms of reference of the Hearing Officer in competition proceedings: *"The oral hearing should also allow the parties to present their arguments as to the matters that may be of importance for the possible imposition of fines"*[1065]. It argues that an oral hearing involving the other addressees is required in order to ensure that the proposed methodology is free from error and that the principle of equal treatment is observed. It quotes from the judgment of the General Court in Case *Cimenteries CBR and others. v Commission* [1066] and the Opinion of Advocate General Tanchev in Case *Commission v NEX International, formerly Icap, Icap Management Services and Icap New Zealand*[1067] to argue that it should have access to elements of the fines calculation that are specific to each addressee (in particular the bid-ask spread specific to each party) in order to assess whether the other addressees are in a comparable or distinct position to BAML and to verify that the principle of equal treatment is observed.

(909) Crédit Agricole argues[1068] that the Commission's letter of 6 November 2020: "*does introduce new factors which should ordinarily be included in a statement of objections, and in relation to which CASA and CA-CIB should be accorded full rights of defence"*, by the Commission giving the parties opportunity to make oral representations.

(910) Credit Suisse contends that[1069]: "*CS (and the other banks) should be granted an opportunity to fully exercise their rights of defence in the light of the new and drastically different information provided in the Commission's letter"*.

(911) These arguments are rejected.

1065 Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the Hearing Officer in competition proceedings, recital 19.

1066 Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95,, *Cimenteries CBR a.o. v Commission*, at para 4735: "*a fortiori where, as here, the Commission has used detailed arithmetical formulas to calculate the fines…it is desirable that the undertakings concerned and, if need be, the Court should be in a position to check that the method employed and the steps followed by the Commission are free of error and compatible with the provisions and the principles applicable in regard to fines, and in particular with the principle of non-discrimination.*"

1067 Opinion of Advocate General Tanchev of 2 May 2019 *in Commission v NEX International, formerly Icap, Icap Management Services and Icap New Zealand,* C-39/18 P, ECLI:EU:C:2019:584, paras 41-42: "*the Court's case-law importantly also makes it clear that the Commission must nevertheless explain the weighting and assessment of the factors taken into account in determining the amount of the fines…How else would the courts be able to carry out adequate judicial review and to verify…whether a given undertaking was, for the purposes of the fine calculation and the criteria employed by the Commission, in a comparable or distinct situation vis à vis the other undertakings concerned, and to verify whether the Commission had observed the principle of equal treatment…*".

1068 […]

1069 […]

(912) It is settled case law that, provided that the Commission indicates expressly in the SO that it will consider whether it is appropriate to impose a fines on the undertakings concerned and sets out the principal elements of fact and of law that may give rise to a fine, such as the gravity and the duration of the alleged infringement and the fact that it has been committed intentionally or negligently, it fulfils its obligation to respect the undertakings' right to be heard[1070].

(913) 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 intends to apply[1071]. Rather, the oral hearing should allow the parties to present their arguments on matters that might be important for the possible imposition of fines.

(914) In this regard 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 views could be taken into account in the final decision.

(915) In line with the case law of the Court of Justice of the European Union, the SO sets out that[1072], on the basis of its preliminary conclusions, the Commission considered that: (i) it would be appropriate to impose a fines on the parties; (ii) the type of conduct indentified was, by its very nature, among the worst kind of violation of Article 101 of the Treaty, justifying setting the gravity factor to be applied at the higher end of the scale; and (iii) that the infringement had been entered into intentionally or at least negligently. The Commission also identified the duration of each party's infringement and how this would be taken into account in the fine calculation.

(916) Moreover, the Commission went further and also set out the reasons necessitating the application of a specific proxy for the value of sales based on the notional amounts of USD SSA bonds traded by the parties during their individual period of involvement in the cartel and informed the parties concerned about the notional amounts used for such calculation[1073]. The SO informed the parties that the notional amounts would then be reduced with an adjustment factor that took into account the particularities of the financial industry and the USD SSA bonds industry in particular and that the Commission "*provisionally*" intended to estimate this factor from evidence on file and from available data relative to price spreads[1074].

(917) After having heard the arguments of the parties in response to the SO and in the oral hearing, the Commission then went even further and provided additional detail in a letter of 6 November 2020 of the evidence and approach used for calculating the estimated spread levels and the related adjustment factor[1075]. The letter of 6 November 2020 did not contain any new objections compared to the SO. Rather, it provided the parties with additional information concerning the reasons for the

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1070 Judgment of the Court of First Instance of 15 March 2006, *BASF AG v Commission*, T-15/02, ECLI:EU:T:2006:74, paragraph 48 and the case law cited. See also Judgment of the General Court of 7 November 2019, *Campine NV and Campine Recycling NV v Commission,* T-240/17, ECLI:EU:T:219:778, paragraph 355.

1071 Case T-240/17, *Campine NV and Campine Recycling NV v Commission*, paragraph 360.

1072 SO, paragraphs (640), (653)(b), (642), (631) and (647).

1073 SO, paragraphs (644)-(648).

1074 SO, paragraph (648).

1075 See recitals (889) to (905).

Commission's choice of the proxy of the value of sales (including the adjustment factor), the underlying figures retained in their regard as well as the resulting amount of their respective proxy. Following receipt of the letter of 6 November 2020 the parties were given 20 working days to submit their observations on the content of the letter. Upon the request for an extension of this deadline from three of the parties[1076], they were granted until 8 January 2021 to submit their observations. On 8 January 2021, all three parties on whom fines are imposed submitted substantive observations on the letter of 6 November 2020.

(918) As regards the source of information on price spreads, the letter of 6 November 2020 explained that[1077], after analysis: "*The data contained on the file does not provide a sample that would be sufficient in itself to ensure that all relevant maturities and issuers declared by the parties in their responses to the Commission's requests for information are proportionately represented*" and that the Commission has therefore collected bid-ask spread data from the Bloomberg BGN composite price source on a daily basis for the representative bonds. In other words, having provisionally foreseen the use of both data on its file and public data and having determined that the file data was not sufficiently representative, the Commission chose the most appropriate data source for calculating the applicable price spreads. Having given the parties concerned the opportunity to submit observations on that clarification in writing, the Commission's approach is fully in line with the Union Courts' case law[1078]. Indeed, the Court of Justice of the European Union hasconsistently held that the right to be heard does not mean that the person concerned must be given the opportunity to express his or her views orally. The opportunity to provide comments in writing also allows that right to be observed[1079]. Moreover, the responses to the SO and the observations on the letter of 6 November 2020 were transmitted to the cabinet of the Commissioner responsible, to DG Competition's hierarchy, to other Commission services, including the Hearing Officer and to 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[1080].

Arguments concerning the appropriateness of the methodology

(919) BAML argues that[1081]: "*the methodology for calculating a proxy for the value of sales proposed in the Fines Letter is flawed in a number of important respects*", claiming in particular that it errs in assuming that BAML earns half the bid-ask spread on each transaction, overstates its revenues and is likely to discriminate between addressees. BAML proposes a different methodology which "*only considers revenue from transactions*" in which its expert estimates that the bank: "*sold market making services*" and earned a positive half spread and "*which excludes from the calculation*" those transactions in which it is estimated that the bank "*purchased*

1076 BAML, Crédit Agricole and Credit Suisse.

1077 Commission letter of 6 November 2020 at paragraph 24.

1078 Case T-240/17, *Campine NV and Campine Recycling NV v Commission,* see for example paragraph 358.

1079 Case T-380/17, *Heidelberg Cement AG and Schwenk Zement KG v Commission*, 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.

1080 […]

1081 […]

market making services" and had a negative half spread[1082]. The resulting proxy for the value of sales is […] below that provisionally indicated by the Commission in its letter of 6 November 2020 to BAML.

(920) An analysis of BAML's proposed methodology reveals that, in reaching an alternative value for the proxy for the value of sales, BAML has only included the notional amount from those trades which are estimated as being profitable. In order to estimate this, the actual trade price from BAML's database of executed trades during the relevant periods was compared to the Bloomberg BGN mid-price[1083]. In the case of a purchase (the BAML trader bought the bond), if the actual price was lower than the mid-price, then the trade is considered as profitable and is included in the calculation. For a sale (the BAML trader sold the bond), if the actual price was higher than the Bloomberg BGN mid-price then the trade was profitable and thus included in the calculation. Conversely, for a purchase where the actual trade price was higher than the mid-price or a sale where the actual trade price was lower than the mid-price, then the trade is considered ex-post as being loss-making and consequently as a trade where the trader was actually: "*purchasing market making services"* – and is excluded from the calculation of amounts traded.

(921) In addition to the exclusion of trades considered to be loss-making, a further fundamental flaw in this ex-post estimation of individual transaction revenue is the use of the Bloomberg BGN mid-price as the reference point. This is because what is being compared are transaction prices throughout the day with end of day prices. The Bloomberg BGN mid-price is the average of (or mid-point between) the BGN bid price and the BGN ask price and those prices are end-of-day prices[1084]. Thus what is being compared are apples (intra-day prices from actual transactions) and pears (a mid-price derived from end-of-day bid and ask prices)[1085]. It is impossible to make an accurate estimation of whether, in BAML's words, market making services were being 'sold' or 'purchased' on this basis and the Commission maintains that the use of total notional amounts, as opposed to estimated profitable trades, is a more appropriate basis for the calculation of the proxy for the value of sales.

(922) Credit Suisse proposes an alternative methodology for estimating the bid-ask spread based on its actual trading data. Noting that in the Euro Interest Rate Derivatives Case, the Commission examined specific data from the banks as part of its

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1084 Although for present-day prices, Bloomberg BGN prices are real-time prices and are computed intra-day as new quotes arrive (see https://data.bloomberglp.com/professional/sites/10/Fixed-Income-Cash-Pricing-Sources.pdf), for historical prices only the end-of-day bid price and ask price are available. Even if historical BGN prices were not end-of-day prices, the fact remains that for each working day only one price data point is available for bid prices and for ask prices. Due to the passage of time and the inherent volatility of bond prices throughout a day, those single bid or ask price data cannot therefore be compared to, respectively ask prices or bid prices of trades executed by a bank at any time during that day to compute bid-ask spreads.

1085 In contrast, as explained in recital (903), the Commission used only Bloomberg BGN bid and ask prices to compute the daily bid-ask spreads. Bloomberg BGN bid and ask prices are estimated at the same moment (end of day). Consequently, computing a spread by substracting the BGN bid price from the BGN ask price does not suffer from a time gap that would potentially bias any resulting spread. However, this end day spread cannot be applied to intra-day prices, as BAML does in its model. In contrast, the Commission's approach is to use the average end day spread for a particular representative bond throughout the period of participation and apply to the notional amount traded.

methodology when calculating a proxy for the value of sales[1086], Credit Suisse provides estimations of the bid-ask spreads from its actual trades, and concludes that[1087]: *"…while the Letter's estimate of the spread was […].., the highest average spread calculated using CS trading data (partially-balanced on a daily basis over the full set of trades) is almost five times lower at […]"*.

(923) Credit Suisse's approach, only takes account of "*fully balanced trades*" or alternatively of "*partially balanced trades*"[1088]. Fully balanced trades are trades executed by Credit Suisse where the same bond has been both bought and sold over a certain period of time (a day, a week or a month) and where the notional amount bought and sold matched exactly. Partially balanced trades include fully balanced trades and also trades executed by Credit Suisse where the same bond has been both bought and sold over a certain period of time (a day, a week or a month) but where the notional amount bought and sold differ. All other trades are excluded from Credit Suisse's approach. This approach is fundamentally flawed for two reasons. Firstly, unless the two legs (purchase and sale) of a trade occur exactly at the same time and for the same volume, there is no point in comparing the bid price and the ask price of a specific bond to compute the bid-ask spread[1089]. Because of intraday price volatility[1090], the bid price of a bond purchase cannot be compared with the ask price of the reverse trade executed at another point in time on the same day (and even less so during the same week or month). As a transaction price depends (among other factors) on the notional amount traded, there is also no point in comparing bid and ask prices of transactions where the notional amounts traded do not exactly match as is the case for partially balanced trades. Secondly, even if fully balanced trades on a daily basis would be a reliable indicator of bid-ask spreads (*quod non*), they only represent […] of the notional amounts traded by Credit Suisse. As such, fully-balanced trades do not constitute a sufficiently representative sample for the purposes of calculating a proxy for the value of sales.

(924) Furthermore, Credit Suisse's argument that the Commission made use of actual trading data in determining the adjustment factor in the Euro Interest Rate Derivatives case is not pertinent to the USD SSA bonds sector. In cases involving interest rate derivatives, the Commission made use of both public data (International Swaps and Derivatives Association) statistics on the level of netting inherent in the derivatives industry) and individual netting data from the financial institutions involved in the case[1091]. The reason for this was that interest rate derivatives are largely bespoke, non-homogenous financial products for which public pricing data is limited. USD SSA bonds are publicly quoted, exchangeable financial instruments for which detailed, verifiable pricing information, including on bid-ask spreads, is available and therefore the most appropriate, transparent source of data.

(925) The alternative methodology proposed by Crédit Agricole shows similarities to that proposed by Credit Suisse: Crédit Agricole identified trades where the same USD SSA bond was traded in opposite directions on the same day or within five working

1086 […]
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1088 […]
1089 […]
1090 The period 2009-2014 is described by Credit Suisse as *"highly volatile"* for SSA bonds […]
1091 Commission Decision C(2016) 8530 final of 7 December 2016 in Case AT.39914 Euro Interest Rate Derivatives at recitals (643)–(645).

days. The notional amounts traded may vary. On that basis, Crédit Agricole states that[1092]: *"...we find an average bid-ask spread ... equal to [...] basis points."* representing *"a 74% reduction ... compared to the Commission's estimate"*. This alternative methodology suffers from the same fundamental flaws as those cited in recital (923): because of intraday price volatility, the bid price of a bond purchase cannot be compared with the ask price of the reverse trade executed on the same day. Moreover, as Crédit Argicole itself admits[1093]: *"the sample over which we can compare the effective spreads of intra-day offsetting trades ... is very limited"*.

(926) It is also worth noting that in a letter sent to the Commission on 3 July 2019, Crédit Agricole stated[1094] that: *"In the absence of actual transaction prices with which to calculate the bid-ask spread, price-spread indices that are both bond-specific and time specific should be used as proxies (...) One appropriate source for this data is the data vendor Bloomberg which provides, for each individual bond for each day, an end-of-day ask-price and an end-of-day bid-price. The difference between these two prices provides, for each bond, a daily end-of-day bond-specific spread"*. Crédit Agricole thus explicitly agrees that using historic prices retrieved from Bloomberg would be an appropriate source for calculating bid-ask spreads – which is the very approach that the Commission has adopted (with the refinement of calculating a weighted average for the daily bid-ask spread, as set out in recitals (900) to (903)).

(927) The Commission maintains that its use of the entire notional amounts traded adjusted by a factor based on appropriate and verifiable public data is more appropriate than the alternatives proposed by either BAML, Credit Suisse or Crédit Agricole, all of which are based on an arbitrarity estimate or very limited sample of trades and compare prices that are not comparable. Furthermore, the use of only those trades considered to be profitable, as proposed by BAML, understates the economic importance of the infringement as a whole.[1095]

(928) BAML[1096], Crédit Agricole[1097] and Credit Suisse[1098] also argue that the Commission wrongly assumes that half of the bid-ask spread is earned on each transaction and that this assumption does not reflect the traders' economic situation, in particular when traders seek liquidity from other parties or offload positions via the inter-dealer market. In that case, the traders may 'pay' the spread instead of earning it.

(929) This claim is also unfounded. Seeking liquidity, holding or offloading open positons 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 or she feels that seeking liquidity for that order might be costly or that the resulting open position might be challenging to offload – he or she will quote a relatively unattractive price

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1095 Case T-105/17, *HSBC Holdings plc a.o. v Commmission*, paragraph 322: *"The approach taken by the Commission* [the use of adjusted total cash receipts] *tends to give a better reflection of the value of sales – and therefore the economic importance of the infringement – than the alternative approach proposed by the applicants during the administrative procedure based on net cash receipts and payments.*"

1096 […]

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(a low bid price or a high ask price) that reflects those expectations and that takes his/her own portfolio risks 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 or her portfolio beyond his or her authorised risk limits, a trader can also refuse to quote[1099]. Finally, a trader is not obliged to hedge an open position immediately and can hold a specific bond until he or she 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. On this basis, it is considered that the application of an adjustment factor consisting of half the bid-ask spread to all notional trading revenues is an appropriate approach for the purposes of fine calculation, rather than a division into gainful and loss-making trades, which would not reflect the full scale of the infringement.

Arguments on the application of the methodology

(930) BAML contends that[1100] "*It is not possible to understand from the Fines Letter how the Commission has selected the 'representative bonds' used in the methodology"*. BAML further claims[1101] that some representative bonds have a time to maturity outside of the relevant maturity range. It also maintains that[1102] bonds from two issuers ([…] and […]) have been used by the Commission that were not mentioned in its reply to a request for information on the breakdown of notional amounts traded and that it is not possible for BAML to understand the weighting by issuer used by the Commission for bonds in the 7-10 year and 10 year and above maturity ranges. Crédit Agricole maintains that[1103]: "*22% of the daily observations where the Commission identifies a representative USD-denominated SSA bond for an issuer maturity bucket are misallocated*". Credit Suisse also claims[1104] that the choices of representative bonds are arbitrary, that several representative bonds have a tenor[1105] longer than the maturity range they were assigned to, and that the rounding rules used by the Commission for the issuer and maturity weights are unjustified and arbitrary.

(931) The Commission considers that the claim raised by BAML, Crédit Argicole and Credit Suisse regarding representative bonds having a time to maturity outside of their relevant maturity range is well-founded. The set of representative bonds has been adapted accordingly within the 0-3 years, 3-5 years, 5-7 years and 7-10 years maturity ranges[1106]. Credit Suisse's reasoning on rounded weightings percentages also showed its merits. The issuer and maturity weightings used in the above calculation have consequently been adapted for all addressees so that the exact rescaled percentages are used instead of rounded figures. The computation of the weights of […] and […] (for BAML) and the weighting by issuer for bonds in the 7-

1099 See recital (696).
1100 […]
1101 […]
1102 […]
1103 […]
1104 […]
1105 The tenor of a bond is the remaining time to maturity.
1106 See the individualised Annex to this Decision.

10 year and 10 year and above maturity ranges is also explained in the individualised Annex to this Decision.

(932) BAML[1107], Crédit Agricole[1108] and Credit Suisse[1109] have all argued that the Commission uses constant weights whereas the relative weights in each issuer and maturity change over time, in response to market conditions or changes in the addressees' market activity, and that weights should be reset daily (BAML, Crédit Agricole) or yearly (Crédit Suisse). In addition, both BAML[1110] and Crédit Agricole[1111] argue that if the Commission applies its methodology, it should apply it on each individual trade, taking into account the Bloomberg bid and ask prices of the bond actually traded on the specific dates and for the specific volumes in order to engage in a genuinely individual approach.

(933) The Commission rejects these claims. For the reasons set out in recitals (889) to (892), financial products such as USD SSA bonds do not generate sales in the usual sense and it is therefore appropriate 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[1112]. The methodology described in recitals (889) to (905) 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 (930) and (931), and the use of daily BGN Bloomberg bid-ask spreads enables a transparent and feasible determination of the proxy for the value of sales, which can be consistently applied to all parties. 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 results in a valid calculation methodology for the period as a whole. BAML, Crédit Agricole and Credit Suisse have provided no convincing evidence that their approaches as set out in recital (932), involving extra layers of detailed data gathering and calculation over thousands of trades per day, would enhance the reasonableness of the methodology in any meaningful way; or that a failure to do so would render the Commission's chosen approach inappropriate.

(934) Finally, Crédit Agricole asserts that[1113]: "*the Methodology is inconsistent with the Guidelines[1114] in that it uses an annualised approach rather than focussing on the last full year of the infringement, which would be 2014*". BAML also further adjusts its calculation under its alternative methodology to produce a lower figure by taking the year 2014[1115].

1107 […]
1108 […]
1109 […]
1110 […]
1111 […]
1112 Case T-105/17, *HSBC Holdings plc a.o. v Commmission*, paragraph 321.
1113 […]
1114 That is, the Guidelines on Fines.
1115 […]

(935) As noted in recital (894), 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, in view of the varying size of the USD SSA Bond market and the high volatility of the bid-ask spread over the infringement period[1116] and the differing time periods in which the different addressees were involved, the Commission considers more appropriate to base the annualised sales proxy on the value of sales actually made by the undertakings during the months corresponding to their respective participation in the infringement[1117].

Conclusion on value of sales

(936) In the light of the particular characteristics of the financial services sector and the UDS SSA bond industry, and having analysed the arguments and proposed alternative methodologies put forward by the addressees, it is conisdered that the approach it has taken with regard to the calculation of the proxy for the value of sales is consistent with the logic underlying the use of value of sales for calculating fines under Article 23(3) of Regulation (EC) No 1/2003 and is appropriate in the present circumstances. The Commission further considers that none of the alternative methods proposed by the parties constitutes a more appropriate method for calculating fines in this case.

8.2.4. Basic amount of fine

(937) The value of sales (in this case, the proxy identified in recital (905)) is used as a starting point to calculate the variable and additional components of the basic amount of the fine.

(938) In fixing the amount of any fine, pursuant to Article 23(3) of Regulation 1/2003, regard shall be had both to the gravity and to the duration of the infringement.

8.2.4.1. Gravity

(939) For **gravity**, the Guidelines on Fines provide as a general rule that the proportion of the value of sales taken into account must be set at a level up to 30% of the value of sales for the variable amount and between 15% and 25% of the value of sales for the additional amount. 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.

(940) In its assessment of the gravity in this case, the Commission takes into account inter alia the findings described and assessed in recitals (613), (630), (637)-(639), (643), (681), (739)-(741), (747)-(749), and in particular the following circumstances:

(a) The infringement consisted of several types of anticompetitive conducts, namely coordination of prices quoted to specific counterparties, coordination on prices to show to the market generally, exchange of current or forward-looking commercially sensitive information on their trading activities and trade flows in the secondary market, exchanges of confirmation and alignment of trading and pricing strategies and coordination of trading activity[1118]. These

[1116] See recitals (534) and (899).

[1117] See, for example, Commission Decision C(2016) 8530 final of 7.12.2016 at recital (640).

[1118] See recital (637).

elements amounted to price-fixing arrangements, collusive exchange of information, market sharing and customer allocation[1119];

(b) The types of conduct set out in point (a) constitute horizontal by object infringements between competitors 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[1120]; and

(c) The cartel arrangements relate to transactions worldwide, and therefore covered the entire EEA.

(941) Accordingly, the Commission considers that it is appropriate to set the proportion of the value of sales to be taken into account for calculating the basic amount of the fine at 16%.

Arguments concerning gravity

(942) BAML claims[1121] that: "*the Commission has no basis for concluding that "a proportion at the higher end of the scale" is justified",* that the Commission did not "*take into account the market power of the undertaking and the impact on the market"* and that the Commission "*failed to take into account the fact that the trades which were allegedly affected by the conduct under investigation represent a small proportion of all of the trades made by MLI during the relevant period"*.

(943) Crédit Agricole makes a number of claims[1122] to support their assertion that "*a lower gravity factor is warranted with respect to CA-CIB"*. First it claims that "*CA-CIB could only at best be described as a fringe player in the secondary market for USD SSA bonds"* and that it therefore "*saw smaller flows, less client activity and generally traded less frequently than other players in the market"*. Secondly, Crédit Agricole asserts that "*the EC has not conducted any meaningful analysis of the market shares",* and that "*the combined market shares of the addressees of the SO would not have represented a significant portion of the market"*.

(944) Credit Suisse asserts[1123] that: "*the four traders involved in the conduct represented a relatively small part of the SSA bonds secondary market and the overall effect of their conduct was, at worst, benign for customers"*.

(945) Credit Suisse further requests that: "*at worst, a symbolic fine would be warranted"* due to "*[Credit Suisse employee's] modest overall income from his market-making activity"* stemming from "*the difficult market conditions [Credit Suisse employee] faced over the period"*.

(946) With regard to the allegedly limited market power and small combined market share of the parties, point 22 of the Guidelines on Fines refers to the possible consideration of the parties' combined market share when assessing the applicable gravity percentage. However, the Court of Justice has recalled that there is no binding or exhaustive list of criteria to be taken into account when assessing the gravity of an

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1119 See or example recitals (321), (358), (392), (523), (652) and footnote 479.
See also recitals (647), (655), (674).

1120 Point 23 of the Guidelines on Fines.

1121 […]

1122 […]

1123 […]

infringement[1124]. In this case, the Commission did not further increase the gravity based on the combined market share of the undertakings involved.

(947) Regarding Crédit Agricole's alleged limited involvement, according to point 22 of the Guidelines on Fines the gravity percentage is determined in function of the nature of the infringement and not to the particular involvement of a party in this infringement. Furthermore, the economic importance of Crédit Agricole is already taken into account in the proxy for values of sales and in particular by using each party's individual annualised notional amounts traded as the starting point for calculating this proxy.

(948) Regarding Credit Suisse's contention that only a symbolic fine should be imposed given the modest overall income derived, this is not an aspect which is related to the gravity of the infringement. Price fixing and the other colluding practices detailed in this Decision are among the most serious competition infringements. The Commission's discretion in imposing a symbolic fine has been used in cases where "*the legal situation was unclear*" or "*no Community case law existed*"[1125] in relation to the infringement of Union competition law[1126]. Symbolic fines are rather an exception allowed under the Guidelines on Fines, and the decisional practice of the Commission makes it clear that the imposition of symbolic fines "*does not, however, represent a policy to be adopted in all future similar cases*"[1127]. The Court of Justice has confirmed that "*the imposition of a symbolic fine does not in any circumstance constitute an obligation on the Commission, but is merely an option coming within its discretion*"[1128]. Moreover, the case law has confirmed that the same undertaking involved in a different cartel could not benefit from the imposition of merely a symbolic fine[1129]. In this case, the infringing behaviour is similar to a pattern of collusive contacts regarding the bid-ask price spread on the financial markets which had been the subject of sanction in the past by the Commission, and Credit Suisse has itself acknowledged its participation in a previous infringement concerning the bid-ask spread for which the Commission imposed a fine[1130].

(949) Therefore, the parties' arguments concerning the gravity of the infringement fall to be rejected.

1124 Judgment of the General Court of 26 October 2017, *Marine Harvest ASA v Commission*, T-704/14, ECLI:EU:T:2017:753, paragraph 469.

1125 Decision of the Commission of 25 July 2001 in Case AT.36915 Deutsche Post, recital (193): "*Despite the fact that the Commission considers that DPAG's behaviour in some respects goes beyond what can be determined with certainty from German case law, it must be concluded that the said case law resulted in a situation where the legal situation was unclear. Moreover, at the time when the majority of the interceptions, surcharging and delays in the present case took place, no Community case law existed that concerned the specific context of cross-border letter mail services*".

1126 Decision of the Commission of 10 December 2003 in Case AT.37857 Organic Peroxides, recital (454), upheld by Judgment of the Court of First Instance of 8 July 2008, *AC-Treuhand AG v Commission*, T-99/04, ECLI:EU:T:2008:256.

1127 Decision of the Commission of 20 July 1999 in Case AT.36888, 1998 Football World Cup, recital (125).

1128 Judgment of the General Court of 6 February 2014, *AC-Treuhand AG* v *Commission*, T-27/10, ECLI:EU:T:2014:59, paragraph 288.

1129 Judgment of the Court of 22 October 2015, *AC-Treuhand AG v Commission*, C-194/14 P, ECLI:EU:C:2015:717.

1130 Decision of the Commission of 21 October 2014 in Case AT.39924 Swiss Franc Interest Rate Derivatives, C(2014) 7602 final.

8.2.4.2. Duration

(950) The Commission also takes into consideration the **duration** of the infringement by multiplying the applicable proxy of the value of sales by the number of years of each party's participation in the infringement. The multipliers for duration are calculated on the basis of the number of days of participation in the infringement[1131].

(951) Based on the criteria explained above and the duration for each party as set out in recital (842), the applicable duration multiplier to be taken into account for the purposes of calculating the fine to be imposed on the addressees is as following:

Table 5: Duration in years

Undertaking	Duration (in years)
BAML	3.28
Crédit Agricole	2.20
Credit Suisse	4.75
Deutsche Bank	4.18

8.2.4.3. Additional amount

(952) For the **additional amount**, the Commission includes in the basic amount a sum of between 15% and 25% of the value of sales to deter the undertaking from entering into such illegal practices on the basis of the criteria listed above with respect to the variable amount[1132].

(953) Taking into account the factors set out in recital (940) the percentage to be applied for the purposes of calculating the additional amount is 16% of the proxy for the value of sales.

(954) Based on the criteria explained above, the basic amount for the fine to be imposed on the addressees is:

Table 6: Basic amount of the fine

Undertaking	Basic amount (EUR)
BAML	[…]
Crédit Agricole	[…]
Credit Suisse	[…]
Deutsche Bank	[…]

8.2.5. Adjustments to the basic amount

(955) In relation to each undertaking, the Commission may reflect in the fines imposed any aggravating and/or mitigating circumstances, such as those listed, in a non-exhaustive way, in points 28 and 29 of the Guidelines on Fines.

1131 See Section 6
The additional component is added to the basic amount in order to deter undertakings from even entering into infringements and does not have to be multiplied in function of the duration of participation.

1132 Point 25 of the Guidelines on Fines.

(956) The Commission considers that neither mitigating nor aggravating circumstances apply in this case.

(957) BAML has argued[1133] that mitigating factors are appropriate in its case as there was a termination of the conduct prior to the start of the Commission's investigation, there was a lack of legal certainty regarding the conduct, there was a lack of knowledge or involvement of the bank's management and because BAML "*inherited*" employees who were already participating whilst at other financial insitutions.

(958) As regards BAML's claim that its participation in any conduct had ended before the start of the Commission's investigation, whilst the end date of BAML's second involvement is set at 27 January 2015 and [BAML employee's] employment ended on […][1134], the Commission cannot be certain that the conduct in question has ended or when it ended. In this regard, Article 3 of this Decision specifically requires the parties to bring the conduct to an end in the event that they have not already done so. In any event, the dates of BAML's repeated participation in the infringement are reflected in the duration. On the question of legal certainty, the Commission does not consider that the conduct in this case, involving horizontal practices relating to price coordination, was novel or unprecedented[1135]. Moreover the liability of BAML's employees can be fully attributed to the BAML[1136] and any previous participation in infringing conduct by those employees cannot mitigate BAML's responsibility.

(959) Crédit Agricole has also maintained[1137] that any involvement was via a "*rogue trader*" of whose practices the bank was unaware and who was dismissed before the Commission's investigation began[1138]. Crédit Agricole also argue that it was not involved in the "*establishment*" of any conduct, played only a "*passive*" role and was a "*fringe player*" in the market. Furthermore, it maintains that it was fully cooperative with the Commission's investigation and has instituted a new compliance programme.

(960) Crédit Agricole is liable for the actions of its employees[1139] and the evidence on the file demonstrates that its trader was fully active in the infringing conduct in the period in which he was employed by the bank. Crédit Agricole's position on the USD SSA bond market cannot justify or mitigate its participation in such practices as price coordination and its cooperation with a Commission investigation, in the sense

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1133 […]

1134 See recital (99). [BAML employee's] last date of employment by BAML was before the Commission sent its first RFIs to various banks, including BAML in this case in December 2015 but after the conduct had been reported to the Commission and other regulatory authorities.

1135 See recitals (739)-(749). See also Case T-105/17, *HSBC Holdings plc a.o. v Commmission*, paragraph 144.

1136 Joined Cases T-389/10 and T-419/10, *Siderurgica Latina Matin SpA (SLM) v Commission*, paragraph 410.

1137 […]

1138 [Crédit Agricole employee] was dismissed by Crédit Agricole on 1 December 2015, within a week of the end of [BAML employee's] employment at BAML.

1139 Joined Cases T-389/10 and T-419/10, *Siderurgica Latina Matin SpA (SLM) v Commission*, paragraph 410.

of responding correctly to RFIs, does not amount to voluntary cooperation outside the Leniency Notice and cannot be grounds for granting a reduction of the fine[1140].

(961) Credit Suisse argues that[1141]: "*CS/[Credit Suisse employee] did not intentionally commit the infringement alleged in the SO. At worst, CS/[Credit Suisse employee] acted negligently*." Credit Suisse alleges that the market context should be taken into account when determining whether a mitigating factor is appropriate.

(962) As noted in Section 5.2.3.2.2, and particularly recital (785), the Commission considers that Credit Suisse contributed intentionally to a common plan to restrict and/or distort competition on the secondary market for trading USD SSA bonds with the aim of increasing its revenues via this collusion. Irrespective of whether Credit Suisse's participation in the infringement was intentional or negligent, however, given that (i) the conduct related to horizontal price fixing, which, by its very nature, is one of the most harmful restrictions of competition; and (ii) the proportion of the value of sales taken into account for the present infringement nevertheless remains towards the bottom of the higher end of the gravity scale set out at point 21 of the Guidelines on Fines, there is no justification for a reduction in the fine on the basis of Credit Suisse's claim that its trader acted negligently. As regards the market context, as set out in Section 5.2.2.3, the Commission does not consider that the structure and environment of the secondary market for trading in financial instruments such as USD SSA bonds provide any justification for behaviour leading to horizontal price fixing cartels. In this regard, and in the context of the arguments by BAML, Crédit Agricole and Credit Suisse that they could or should not be held responsible for the actions of their employees[1142], it should be noted that the financial services industry is characterised by a high level of regulatory and compliance procedures including, for example, the internal retention of audio and other communications, which facilitates awareness of employees' professional communications.

Specific increase for deterrence

(963) In determining the amount of the fines, the Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect and has discretion to apply a deterrence multiplier provided that it does not discriminate among parties to the case[1143]. In particular, the Commission may increase the fines to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates[1144].

(964) The total worldwide net turnover of BAML for the business year 2020 was between EUR 73 billion and EUR 74 billion, and that of Crédit Agricole was between EUR 55 billion and EUR 56 billion. […]. It is therefore appropriate - in order to set the amount of the fines at a level which ensures that it has a sufficient deterrent effect - to apply a multiplication factor to the fines to be imposed on each of these

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1140 Joined cases C-293/13 P and C-294/13 P, *Fresh Del Monte Produce v Commission*, paragraph 184, where it was confirmed that a reduction of the fine: "*is justified only where an undertaking provides information to the Commission without being asked to do so*".

1141 […]

1142 See Joined Cases T-389/10 and T-419/10, *Siderurgica Latina Matin SpA (SLM) v Commission*, paragraph 410.

1143 Judgment of the General Court of 12 December 2012, *Novácke Chemické Závody v Commission*, T-352/09, ECLI:EU:T:2012:673, paragraph 64.

1144 Point 30 of the Guidelines on Fines.

companies. On this basis, the Commission considers it appropriate to apply a multiplier of 1.3 to the fines to be imposed on BAML, and a multiplier of 1.2 to the fines to be imposed on Crédit Agricole.

(965) The addressees argue[1145] that applying a deterrence multiplier would be unnecessary, inappropriate and disproportionate. BAML supports that assertion on the basis that the infringement: "*ended a considerable period of time ago*" and that: "*MLI has implemented compliance measures to ensure that the conduct which is the subject of the investigation will not be repeated*". BAML and Crédit Agricole argue that any Decision in itself would cause: "*significant reputational damage*". Finally, Credit Suisse claims that an increase for deterrence is disproportionate: "*because, among other reasons, [Credit Suisse employee]/CS did not intentionally commit an infringement*".

(966) According to settled case-law, when setting a multiplier for deterrence the Commission is not required to take account of factors other than the overall turnover and the relative size of the undertakings concerned[1146]. The deterrence multiplier is, according to point 30 of the Guidelines on fines, applied independently of the characteristics of an undertaking's behaviour in the cartel or possible reputational damage as a consequence of such behaviour. Credit Suisse's argument that neither [Credit Suisse employee] nor Credit Suisse have committed the infringement intentionally has already been rebutted in recitals (957)-(962).

8.2.6. Legal maximum

(967) The fine imposed on each undertaking participating in the infringement cannot exceed 10% of its total turnover relating to the last available business year preceding the date of the Commission decision.

(968) In this case, none of the fines imposed exceed 10% of the relevant addressees' total turnover relating to the business year preceding the date of this Decision[1147].

8.2.7. Limitation periods

(969) According to Article 25(1)(b) and (2) of Regulation (EC) No 1/2003, a limitation period of five years applies to the Commission's power to impose fines pursuant to Article 23 of Regulation (EC) No 1/2003. Time begins to run on the day on which the infringement ceases. The limitation period is interrupted following any action taken by the Commission for the purpose of the investigation (Article 25 of Regulation (EC) No 1/2003). The limitation period has not expired in this case.

8.2.8. Application of the Leniency Notice

(970) On 4 August 2015, Deutsche Bank applied for immunity from fines under Section II of the Leniency Notice[1148], and was the first to submit information and evidence that would enable the Commission to carry out a targeted inspection in connection with the infringements concerned by this Decision, as required by point 8(a) of the

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1145 […]

1146 Judgment of the Court of 13 June 2013, *Versalis v Commission*, C-511/11 P, ECLI:EU:C:2013:386, paragraph 95.

1147 The Commission requested the banks to provide their total turnover on both a gross and a net basis. The fines do not exceed 10% of the total turnover for any of the undertakings concerned irrespective of the total turnover used (gross or net).

1148 See recital (78).

Leniency Notice[1149]. The Commission considers that Deutsche Bank also fulfilled the criteria set out in points 12 and 13 of the Leniency Notice. By decision of 4 December 2015 the Commission granted Deutsche Bank conditional immunity from fines pursuant to point 8(a) of the Leniency Notice. Deutsche Bank has cooperated with the Commission investigation genuinely, on a continuous basis and expeditiously throughout the administrative procedure. Deutsche Bank ended its involvement in the alleged cartel and the Commission is not aware of any evidene indicating that Deutsche Bank has destroyed, falsified or concealed evidence of the alleged cartel or disclosed the fact or any of the content of its contemplated application, except to other competition authorities and/or with the consent of the Commission. The Commission has also not found evidence that the undertaking had coerced other undertakings to join the cartel or to remain in it.

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

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

(972) On the basis of the foregoing, the fines imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are:

Undertaking	Fine amount (EUR)
Deutsche Bank	0
BAML	12 642 000
Crédit Agricole	3 993 000
Credit Suisse	11 859 000

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 US dollar denominated SSA bonds covering the entire EEA, which consisted of agreements and/or concerted practices that had the object of restricting and/or distorting competition in the sector of USD SSA bonds:

(a) DB Group Services (UK) Limited and Deutsche Bank AG participated from 19 January 2010 until 28 March 2014; during this period, Deutsche Securities Inc. participated from 22 March 2010 until 25 February 2013.

(b) Bank of America Corporation and Merrill Lynch International first participated from 19 January 2010 until 23 October 2012; and again from 22 July 2014 until 27 January 2015;

[1149] The assessment is made exclusively on the basis of the type and the quality of the information submitted, irrespective whether or not an inspection has taken place, or whether the type of evidence was more suitable for follow up by means of an RFI.

(c) Crédit Agricole Corporate and Investment Bank and Credit Agricole S.A. participated from 10 January 2013 until 24 March 2015;

(d) Credit Suisse Securities (Europe) Limited and Credit Suisse Group AG participated from 21 June 2010 until 24 March 2015;

Article 2

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

(a) DB Group Services (UK) Limited, Deutsche Securities Inc. and Deutsche Bank AG, jointly and severally liable: EUR 0

(b) Bank of America Corporation and Merrill Lynch International, jointly and severally liable: EUR 12 642 000

(c) Crédit Agricole Corporate and Investment Bank and Credit Agricole S.A., jointly and severally liable: EUR 3 993 000

(d) Credit Suisse Securities (Europe) Limited and Credit Suisse Group AG, jointly and severally liable: EUR 11 859 000

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.40346

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[1150].

Article 3

The undertakings listed in *Article 1* shall immediately bring the infringements referred to in that Article to an end 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.

1150 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

Deutsche Bank AG
Taunusanlage 12
60325 Frankfurt am Main
Germany

DB Group Services (UK) Limited
23 Great Winchester Street
London EC2P 2AX
United Kingdom

Deutsche Securities Inc.
Sanno Park Tower
2-11-1 Nagatacho, Chiyoda-ku
Tokyo, 100-6171
Japan

Credit Suisse Group AG
Paradeplatz 8
CH-8001 Zurich
Switzerland

Credit Suisse Securities (Europe) Limited
One Cabot Square
London E14 4QJ
United Kingdom

Crédit Agricole S.A.
12 Place des Etats-Unis
92127 Montrouge Cedex
France

Crédit Agricole Corporate and Investment Bank
12 Place des Etats-Unis
92547 Montrouge Cedex
France

Bank of America Corporation
1209 Orange Street – Corporation Trust Center
Wilmington DE 19801
United States of America

Merrill Lynch International
2 King Edward Street
London EC1A 1HQ
United Kingdom

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

Done at Brussels, 28.4.2021

For the Commission

Margrethe VESTAGER
Executive Vice-President