



EUROPEAN COMMISSION
Competition DG

CASE AT.40135 FOREX
(Sterling Lads)

(Only the English text is authentic)

CARTEL PROCEDURE
Council Regulation (EC) No 1/2003

Article 7 Regulation (EC) 1/2003

Date: 02/12/2021

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Brussels, 2.12.2021
C(2021) 8612 final

COMMISSION DECISION

of 2.12.2021

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

AT.40135 - FOREX (Sterling Lads)

(Text with EEA relevance)

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COMMISSION DECISION

of 2.12.2021

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(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

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

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

Having given the undertaking concerned the opportunity to make known its views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003

¹ OJ, C 115, 9.5.2008, p. 47.

² OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (“the Treaty”). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of “Community” by “Union” and “common market” by “internal market”.

³ For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period.

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

and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty.⁴

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

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

Whereas:

1. INTRODUCTION

- (1) The Addressees of this Decision have engaged in an infringement of Article 101(1) of 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 EEA and consisted of agreements and concerted practices that had the object of restricting and/or distorting competition in the sector of foreign exchange (“Forex” or “FX”)⁵ spot trading of G10 currencies. The G10 currencies concerned by this Decision comprise the US, Canadian, Australian and New Zealand Dollars (respectively USD, CAD, AUD and NZD), the Japanese Yen (JPY), the Swiss Franc (CHF), the Sterling Pound (GBP), the Euro (EUR), and the Swedish, Norwegian and Danish Crowns (respectively SEK, NOK and DKK). In other words, 11 currencies altogether, which correspond to the market convention for currencies covered by the G10 designation.
- (2) This Decision is addressed to the following legal entities: Credit Suisse Group AG, Credit Suisse AG and Credit Suisse Securities (Europe) Limited (collectively “Credit Suisse” or the “Addressees”).
- (3) The infringement involves the participation of Credit Suisse and four other undertakings (all together the “participating undertakings”) in a conduct that took place within a [...] chatroom⁶ called ‘Sterling Lads’ (identification number ddc0d4) (the chatroom is hereinafter referred to as the “STG Lads chatroom” or “the chatroom”).
- (4) The four other participating undertakings, which are not addressees of this Decision but of a separate decision pursuant to Article 10a(2) of Commission Regulation (EC) No 773/2004 in the framework of parallel settlement proceedings, include:
 - (a) [Non-addressee];
 - (b) [Non-addressee];
 - (c) [Non-addressee];⁷
 - (d) [Non-addressee].

⁴ OJ L 123, 27.4.2004, p. 18.

⁵ The term “foreign exchange” (‘Forex’ or ‘FX’) refers to the trading of currencies, which happens in a decentralised manner. It includes all aspects of buying, selling and exchanging currencies at current or determined prices.

⁶ [...] chatrooms (or [...]) are a messaging/chat tool integrated in the[...] Professional service [...].

⁷ For consistency and clarity reasons, when referring to [non-addressee] in this Decision the Commission will use the acronym [non-addressee], which was the name of the company at the time of the infringement.

- (5) In the present proceedings, the Commission is committed to ensure the equal treatment of all participating undertakings in the same infringement, irrespective of whether their liability is established in one or two procedures, in line with the principles set out in the case law.⁸ In so far as any content of this Decision makes reference to the participation of undertakings other than Credit Suisse, such references are made for the sole purpose of allowing Credit Suisse to fully exercise its rights of defence and to ensure that the equal treatment of all participating undertakings emerges from the text of the Decision.

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The sector concerned

- (6) The infringement addressed in this Decision relates to the FX spot trading activity of G10 currencies of the participating undertakings. A spot foreign exchange or FX spot transaction is defined as an agreement between two parties to exchange two currencies. That is, to buy a certain amount (the “notional amount”) of one currency against selling the equivalent notional amount of another currency at the current value at the moment of the agreement (the “exchange rate”, see recitals (9) and (10)), for settlement on the spot date (which is usually transaction’s day (“T”) plus 2 days).⁹
- (7) FX transactions represent the largest share of world’s financial transactions and are among the most liquid financial transactions. A 2013 survey conducted by the Bank of International Settlements (“BIS”)¹⁰ suggests a total turnover of more than USD 5 trillion per day, out of which USD 2 trillion would result from FX spot transactions alone.
- (8) To execute an FX transaction, end-customers typically contact “dealers” (financial institutions who employ “traders”) acting towards end-customers as “market makers” (see Section 2.3) via the latter’s sales desk or directly on their internet trading platform. Dealers typically quote two-way prices (a bid and an ask price) that can vary depending on the transaction size and on the traded currencies. An end-customer can therefore contact several dealers and choose among the most favourable quotes before trading.¹¹
- (9) One particularity of FX trading is that all currencies are quoted in pairs, because each FX trade involves buying and selling two underlying currencies and each currency is valued in relation to another. Since currencies are always traded in pairs, in foreign exchange there is not such a thing as a currency’s absolute value but a relative value compared with other currencies. The market price of one currency is set in a given

⁸ Judgment of 20 May 2015, *Timab Industries and CFPR v Commission*, T-456/10, EU:T:2015:296, paragraphs 72-74, upheld by judgment of 12 January 2017, *Timab Industries, CFPR v Commission*, C-411/15P, EU:C:2017:11; see also judgment of 28 March 2019, *Pometon SpA v. Commission*, T-433/16, EU:T:2019:201, paragraphs 343 and 344.

⁹ The case does not concern FX spot e-commerce trading activity within the meaning of FX spot trades that are automatically booked by, or executed by either the relevant bank’s proprietary electronic trading platforms or computer algorithms.

¹⁰ Bank of International Settlements, Quarterly Review 38, (December 2013), [...].

¹¹ See Bjønnes, Rime. “Dealer behavior and trading systems in foreign exchange markets”, *Journal of Financial Economics* 75 (2005) 571–605 and King, Osler, Rime. “Foreign exchange market structure, players and evolution”, Norges Bank working paper, 2011-10.

currency pair, that is, a value if it is exchanged against another. The foreign exchange rate is the rate at which one currency will be exchanged for another.

- (10) The conventions governing the quotation of different currency pairs have been fairly stable over time. The USD is usually quoted as the base currency, meaning that most exchange rates are expressed as units of a given currency required to purchase one US dollar (for example USD/JPY = 110.52 means 110.52 JPY per 1 USD). The exceptions are the EUR, the GBP, the AUD and the NZD, which are quoted as the base currency (for example EUR/USD = 1.1255 means 1.1255 USD per 1 EUR). Most exchange rates are quoted to five significant digits, with the final (or smallest) digit known as a “pip”. A pip is short for ‘Price Increment Point’. A one-pip change is, for example, a change from 1.2345 to 1.2346 in a EUR/USD currency pair and a change from 110.52 to 110.53 in a USD/JPY currency pair.
- (11) In line with the view expressed by Credit Suisse in its reply to the Statement of Objections (“SO”),¹² assessing the role and impact of interdealer information sharing requires understanding the functioning of FX transactions.
- (12) Historically,¹³ FX transactions were executed directly by telephone on direct lines between parties. During the telephone era, FX trading was limited to contacts between trading parties for their business needs and proprietary to the two counterparties. In order to gather information, traders often called each other asking for quotes or to pass off open risk positions with the intention to trade (see recital (34)). In the early 1990s, the development of electronic screen-based broking systems such as the Reuters and the Electronic Broking System (“EBS”) platforms started.¹⁴ Electronic platforms now allow market participants to access streaming price information, which updates continuously. Trades entered on electronic platforms are cleared and settled electronically, thereby increasing operational efficiency, streamlining trade processing and settlement, reducing operational risks, and lowering trading costs.
- (13) Credit Suisse considers that¹⁵ FX spot trading activities were extremely opaque before the EBS platforms were put in place, and remained relatively opaque after their introduction. According to Credit Suisse¹⁶, that feature would ultimately justify all the exchanges analysed in this Decision (see Sections 4.1.3.1 and 5).
- (14) The Commission agrees that during the telephone era, FX trading was fairly opaque. As stated in recital (12), at that time, information about FX trades was proprietary to the two counterparties. However, in contrast, nowadays trades entered on electronic platforms are cleared and settled electronically. Therefore, contrary to what Credit Suisse claims, FX markets are now regarded as transparent¹⁷ because real-time prices

¹² [...]

¹³ [...]

¹⁴ More than 25 years before the infringement.

¹⁵ [...]

¹⁶ [...]

¹⁷ A study mentioned by Credit Suisse ([...]) defines market transparency as the ability of market participants to observe information about the trading process. Pre-trade transparency refers to the wide dissemination of current bid and ask quotations, depths as well as other pertinent trade related information such as the existence of large order imbalances. Post-trade transparency refers to the public and timely transmission of information on past trades, including execution time, volume, price, and possibly

(including the best available bid and ask prices) and corresponding trading volumes are available in the platforms to virtually all participants. This information on best bid and ask prices is constantly updated, without interruption. The information available on electronic platforms is therefore sufficient for traders to make their own judgment about the evolution of FX rates before entering into FX transactions.

- (15) There is no need for traders to engage in contacts, including participating in multilateral chatrooms,¹⁸ to gather non-public information not present on those platforms to make their trading decisions.
- (16) This is illustrated by the fact that in the wave of global enforcement, by the end of 2013, most banks had instructed their traders to leave multilateral chatrooms in which competitors participated and traders remained able to carry out their trading activities. [...].¹⁹ Communications between traders may however be necessary with the view of implementing those trading decisions, that is, to explore trading opportunities with each other as potential counterparties in the ordinary course of their business.

2.2. Market participants

2.2.1. End-customers

- (17) Customers typically include corporate customers and financial institutions, comprising asset managers, hedge funds, corporations, banks and central banks.²⁰
- (18) Corporate customers typically use FX trading to support the treasury operations associated with their core business activities. The extent of their FX trading activity largely depends on the general economic activity. As such, corporate customers primarily use foreign currencies as a **medium of exchange** or as a means to hedge their foreign cash flows. They typically pay little attention to future exchange rate movements and do not engage in speculative FX trading. This type of FX forecasting is therefore not among their ‘core competencies’. Their trades are often not considered to anticipate short-term FX movements and returns and are not considered ‘informative’.
- (19) In their role as end-customers, financial institutions are a broad category that includes hedge funds, asset managers, banks and central banks. They typically trade larger amounts of currencies than corporate customers, hold FX positions for longer and use currencies primarily as a **store of value**. Financial institutions therefore have strong incentives to acquire information liable to influence the evolution of FX rates and consequently tend to be better informed than other end-users. Their trades may anticipate short-term FX movements and returns, hence, they are considered ‘informative’.

2.2.2. Dealers and Traders

- (20) Although the term ‘dealers’ refers to the financial institutions dealing with currency exchanges and the term ‘traders’ refers to the agents employed by the financial

information about buyer and seller identifications. See also Madhavan A. “Market microstructure: A survey”, *Journal of Financial Markets* 3 (2000) 205-258.

¹⁸ For the purpose of this Decision, “multilateral chatroom” means a chatroom that was attended by three or more participants.

¹⁹ [...]

²⁰ [...]

institutions to conduct their currency exchange trades, these terms are used interchangeably in common practice. Historically, large commercial and investment banks have been dealers. Dealers set up specific trading desks where individual traders trade a specific currency group.

- (21) FX traders are employees of financial institutions who actually trade the currencies on a specific trading desk. They stand ready to trade with anyone needing foreign exchange at a moment's notice. The sales desks are the interface between the traders and the end-customers. They are responsible for maintaining good relationships with customers.
- (22) FX traders generally deal with large amounts of currencies, the transaction sizes being proportional to the size of the end-customers. Indeed, corporations or financial institutions trading with FX traders directly or via sales representatives (see recital (8)) are generally large companies. It can therefore be inferred that the transaction sizes relevant in this case are usually large. Traders tended to discuss in multilateral chatrooms the most uncommon transactions, notably in terms of size. For instance the participating traders mentioned in some exchanges in the chatroom transaction sizes in the order of '3 ton'²¹ for 300 million or '275'²² for 275 million or 'deuce'' for 200 million.²³ This Decision does not concern transactions made by relatively smaller retail clients, which are usually done via dedicated bank websites.
- (23) FX traders make money by selling a currency against another at a higher price than that at which they bought it. Trading revenue therefore depends on the amount of currency volume traded and on the difference between the purchase price and the sale price of the same currency (the 'bid-ask spread', see recital (32)). Additionally, traders may also make profit from holding a particular open risk position in their book (long or short) in anticipation of better trading conditions at a later stage (see recital (35)). To align the interests of FX traders with those of bank shareholders, traders typically receive bonuses tied to their individual profits and the profits of the entire trading floor while their individual risk-taking is constrained by position and loss limits.

2.2.3. *Brokers*

- (24) Brokers are financial intermediaries who match counterparties to a transaction without being a party to the trade. They can operate electronically (electronic broker) or by telephone (voice broker). Brokers' revenues are proportional to the amount of trades executed by traders on their platform.

2.3. **Market dynamics**

2.3.1. *In general*

- (25) FX transactions are made over-the-counter ("OTC"). Accordingly, there is no central regulatory authority that oversees currency spot trading. The FX market remains decentralized with high liquidity²⁴ and continuous trading (there is no time during the

²¹ [...]

²² [...]

²³ [...]

²⁴ Liquidity describes the degree to which an asset or security (in this case, a currency pair) can be quickly bought or sold in the market without affecting the asset's price.

day when the market formally closes). As submitted by Credit Suisse, trades are privately negotiated and unreported.²⁵

- (26) The FX spot trading activity encompasses both:
- (a) **market making**: the execution of customer's orders to exchange a currency amount by its equivalent in another currency; and
 - (b) **trading on own account** (also called "**proprietary trading**"): the execution of other currency exchanges in order to manage the exposure resulting from the market making transactions or to modify a currency exposure independently of any customer order. Proprietary trading typically occurs in the interdealer market (see recitals (37) to (39)).
- (27) One can therefore distinguish two types of FX trading activity: **market making and proprietary trading**²⁶. This distinction depends on whether traders essentially act as market makers providing liquidity in the market or whether they trade and speculate with the bank's own money.²⁷

2.3.2. *Market making*

- (28) In their capacity as market makers, traders stand ready to trade any currency pair at any moment on behalf of customers at the quoted prices.²⁸ ²⁹ To initiate a FX trade, an end-customer typically contacts a trader (usually via the sales desk) indicating the currency pair and the quantity the end-customer wishes to trade and asking for the price. The trader then states a price at which he or she is willing to buy (the "bid price") and a price at which he or she is willing to sell (the "ask price"). Finally, the customer decides whether to buy, sell, or pass.³⁰ So, a market maker "makes the market" by ensuring that customers willing to buy and customers willing to sell meet, indirectly, with him playing an intermediary role.³¹ A market maker is responsible for creating the so-called "market liquidity".³²
- (29) Thus, a market maker: (i) sets bid prices and ask prices for a certain currency pair; (ii) commits to accepting spot transactions at these prices; and (iii) subsequently takes the resulting exposure onto his/her own book.³³ As such, a market maker is a counterparty in a Forex transaction, who - unlike brokers - bears the resulting exposure of the transactions he or she enters into.
- (30) Customer-driven trading activity (market making) involves different types of orders. For the purpose of this Decision, there are three types of orders relevant in the STG Lads communications:

²⁵ [...]

²⁶ The terms 'trading on own account' and 'proprietary trading' can be used interchangeably.

²⁷ [...]

²⁸ For currency pairs, prices are often referred to as 'exchange rates', though the terms prices and exchange rates can be used interchangeably in this context.

²⁹ [...]

³⁰ See <https://admiralmarkets.com/education/articles/forex-basics/how-do-forex-market-makers-work>.

³¹ Market makers therefore permit continuous trading by overcoming the asynchronous timing of investor orders. See Madhavan A. "Market microstructure: A survey", *Journal of Financial Markets* 3 (2000) 205-258.

³² [...]

³³ A trader's book is his/her transaction portfolio.

- (a) Customer immediate orders, to immediately enter trades for a certain amount of currency based on the prevailing market rate;
 - (b) Customer conditional orders (for example stop-loss or take-profit orders), which are triggered when a given price level is reached and opens the traders' risk exposure. They only become executable when the market reaches a certain level;
 - (c) Customer orders to execute a trade at a specific Forex benchmark rate or "fixing" for particular currency pairs, which in the current case only concerned the WM/Reuters Closing Spot Rates (hereinafter the "WMR fixes") and the European Central Bank foreign exchange reference rates (hereinafter the "ECB fixes").
- (31) The WMR and ECB fixes are two benchmark rates in the Forex market. The rates are determined over a one-minute fix period, from 30 seconds before to 30 seconds after the time of the fix. The client enters into a trade before the underlying benchmark rate is published. Once the fix rate is known (usually a few minutes after the fix period), the trader then completes the trade with the client at the specified volume and at the price determined by the published benchmark. From clients' orders at the fix, traders get a certain trading exposure also called 'open risk position' (see recital (34)) that they typically want to hedge in the market in order to close it. The traders can choose to execute this hedging trade before the fix, at the time of the fix, or after the fix. Traders might also choose not to hedge their positions. In addition, traders can execute transactions at the time of the fix that are not related to client fix orders.
- (32) The difference between a trader's ask price and bid price, for a given currency pair and a certain notional amount, is called the **bid-ask spread**. This spread enables the trader to be compensated for the immediacy service they provide and the subsequent risk of holding a certain currency in inventory.
- (33) As a result, by agreeing to buy or sell at any point in time, traders are exposed to market fluctuations as they may accumulate unbalanced positions if, for example, they have sold more than what they have bought.³⁴ Those unbalanced positions are called open risk positions.
- (34) An **open risk position** in a certain currency is a position that has been recorded by a trader in his/her trading book following a spot FX transaction. The position remains open until an opposing trade takes place. An open risk position represents market exposure (the risk) for the trader. Open risk positions can be 'long' or 'short'. In long positions, the trader holds a positive amount of a certain currency in his/her trading book and will have to sell this currency in order to close the position. In short positions, the trader holds a negative amount of a certain currency in his/her portfolio and will have to buy this currency in order to close the position³⁵. The "size" of a position is the positive or negative amount of a certain currency that a trader holds in his/her trading book. If a trader wants to reduce or to close an open risk position, he

³⁴ [...]

³⁵ For example, a dealer begins the day with an empty trading book, meaning no position in any currency. If the dealer sells EUR 1 million against USD and assuming an EUR/USD exchange rate of 1.1500, he or she will create two open risk positions: a 'long' position, the size of which is USD 1 150 000 and a 'short' position of EUR 1 000 000. In order to close this short position, the dealer will have to buy back EUR 1 000 000 (not necessarily against USD).

will pass the accumulated inventory onto other traders or another client with matching needs. This process has been greatly facilitated by the advance of electronic trading technologies.

2.3.3. *Proprietary trading*

- (35) Traders might also be willing to create, keep or increase open risk positions in their trading book, not necessarily in connection to end-customer (market making) trades as set out in recital (28).³⁶ Indeed, if a trader holds a long position in a certain currency, the trader will gain if the value of this currency increases as compared to other currencies. Conversely, for short positions, the trader will gain if the value of this currency decreases as compared to other currencies.
- (36) Proprietary trading occurs when traders primarily engage in trading activity on the banks' own money rather than on behalf of their clients, and look to exploit a competitive advantage over the market by building open risk positions that would enable them to earn excess returns. When trading on their own account, traders having a certain currency exposure into their books may choose to (i) hold it, (ii) close it by entering into an equivalent reverse transaction or (iii) increase the exposure further. Both the magnitude of currency exposure traders are willing or able to keep in their books and the pace at which they modify currency exposure depends on their expectations on future FX movements and the risk they are ready to take within their position and risk limits. This activity is called **trading on own account**, because it takes place on behalf of a trader's own undertaking.

2.3.4. *The interdealer activity*

- (37) When FX traders are not servicing incoming orders from end-customers in their market making capacity, they typically trade with each other on the so-called "interdealer market". In that case, the traders are each other's counterparties.³⁷ In the interdealer market, traders have access to two different trading channels. First, traders can trade directly (bilaterally) with each other, usually over an electronic system or, less commonly, by phone. The initiator of the trade typically requests bid and ask quotes for a certain currency amount. Quotes are usually given on a take-it-or-leave-it basis, leaving no room for improvement. Therefore, if the bilateral conversation ends with a trade, it is executed at the bid or the ask price.
- (38) The second channel for trading is through brokers, of which there are two different types. Voice brokers are the traditional brokers, and communication takes place through closed radio networks on an ad-hoc basis. Electronic brokers announce best bid and ask prices of currency pairs on their screens and make this information available on their platform. Electronic brokers have become very popular since their introduction in the 1990s. They provide some degree of centralization in an otherwise decentralized market.
- (39) Traders may trade in the interdealer market for several reasons. First, they may want to adjust their own inventory positions after incoming market making trades from end-customers. Second, they may act as counterparties to other traders adjusting their

³⁶ [...]
³⁷ [...]

inventory. Finally, they may want to take a position for the purposes of their proprietary trading activities.³⁸

2.4. Information content and order flow in FX trading

- (40) FX rates – like asset prices more generally – move in response to new information about their fundamental value³⁹. This information can originate from the market in general.⁴⁰ Some significant market participants also bring information to the market and this information becomes embedded in the market price. One can distinguish between trades, according to their informative content:
- (a) Non-informative (or uninformed or non-directional) trades or “flows”⁴¹ refer to transactions that are not expected to anticipate FX movements, typically transactions from non-financial corporations (see also recital (18)).
 - (b) Informative (or informed or directional) trades or “flows” are transactions that are typically associated with subsequent movements in exchange rates, typically transactions from informed end-customers such as financial institutions (see also recital (19)). The flows of some large and international corporate clients may also be considered informative.
- (41) In the short term, FX rates are primarily driven by traders’ order flows;⁴² while market fundamentals⁴³ determine exchange rates in the longer term.
- (42) Credit Suisse introduces a conceptual distinction between trades with informed customers, and other trades: “*Trades with specific customers, such as well-informed financial institutions carry predictive value as to rates evolutions*”.⁴⁴ Incoming orders from informed end-customers – like any other trades – are negotiated privately. The trader that receives them is therefore the only one having access to this information that gives him/her a hint on FX rates tendencies. This private information is commercially sensitive, as it provides the trader with a considerable informational advantage in the determination of the key competition parameters in FX trading: prices, spreads and the management of inventory risk.
- (43) In this regard, Credit Suisse refers to a study linking order flow to exchange rates that corroborates the existence of a close link between daily exchange rate

³⁸ See Bjønnes, Rime. “Dealer behavior and trading systems in foreign exchange markets”, *Journal of Financial Economics* 75 (2005) 571–605.

³⁹ The fundamental (or intrinsic or underlying) value of a currency is the measure of what this currency is worth. This measure is arrived at by means of an objective calculation and financial models, rather than using the currently trading market price of that asset. The term implies the work of currency analysts who attempt to estimate the currency value through the use of fundamental and technical analysis that include qualitative, quantitative and perceptual factors.

⁴⁰ For example, the publication of good employment statistics from the US would be interpreted as an improvement of the US economy and would therefore have a positive impact on the US dollar.

⁴¹ Traders often refer to incoming trades as ‘flows’ or ‘order flows’. The terms ‘trades’ and ‘flows’ can in this context be used interchangeably.

⁴² The order flow of a trader is the flow of orders entering a trader’s order book. It comprises indications such as the type of orders actually placed (limit orders, market orders or fix orders), the prices at which orders were placed and the size of these orders. Information from the order book provides a considerable informational advantage. While a single order might not cause a price change on its own, dozens of orders in the same direction all entering the market at the same time can push prices to change.

⁴³ Market fundamentals are economic, social or political aspects that potentially have an impact on, and so help determine the fundamental value of a currency.

⁴⁴ [...]

movements and order flow.⁴⁵ As order flow represents the willingness of end-customers to back their view with real money transactions, it is a key vehicle via which fundamental information impacts on current and future prices. Order flow is therefore strongly related to fundamentals and, in turn, can provide useful guidance to forecast exchange rate movements.

- (44) Orders from informed end-customers are crucial for traders because (i) the traders' customers and other competing traders do not have access to those sources of information and (ii) they can give traders hints on tendencies before they start materialising in the market (at which point customers and competitors become aware).
- (45) Actually, FX traders are also considered as informed market participants, given their access to order flow from informed end-customers. Access to customer orders is regarded as one of the most important sources of private information. To increase the amount of customer information coming their way, traders develop and cultivate their network of informed financial end-customers, including central banks, for example by sharing market intelligence or quoting attractive spreads.
- (46) In fact, traders actively alter prices and spread levels in response to modifications in their inventory and information considerations. Inventory risk and the information effect of incoming trades are therefore considered as key parameters in the setting of FX rates and spreads.

2.4.1. *The role of inventory*

- (47) A study⁴⁶ mentioned by Credit Suisse highlights the importance of the traders' own inventory in their price setting:

“While the primary function of the market maker remains that of a supplier of immediacy, the market maker also takes an active role in price setting, primarily with the objective of achieving a rapid inventory turnover and not accumulating significant positions on one side of the market. (...) Price may depart from expectations of value if the dealer is long or short relative to desired (target) inventory. (...) Market makers must actively adjust prices in relation to inventory, altering prices and not simply spreads. For example, if inventory is important, as it must be, then dealers who are already long may be reluctant to take on additional inventory without dramatic price reductions.”

- (48) This fact was already indicated in the Commission's SO: *“The identified agreement and the agreements and/or concerted practices were meant to affect the two basic parameters on which the participating banks should have been competing autonomously: (i) price and (ii) expert risk management”*.⁴⁷ The study provided by Credit Suisse essentially confirms the Commission analysis by stating that *“in carrying out FX spot trading, traders must deal with three essential parameters: (i) accurate market pricing, (ii) spread offering and (iii) expertise in risk management”*.⁴⁸ In other words, price (including bid-ask spreads) and the

⁴⁵ Rime, Dagfinn, Lucio Sarno and Elvira Sojli (2010) “Exchange Rate Forecasting, Order Flow and Macroeconomic Information”, *Journal of International Economics* 80(1), p. 72–88. [...]

⁴⁶ Madhavan A. “Market microstructure: A survey”, *Journal of Financial Markets* 3 (2000) 205-258 [...].

⁴⁷ [...]

⁴⁸ [...]

management of inventory risk are key parameters in price setting decisions. It remains uncontested by Credit Suisse that spreads are linked to price: “*Spreads quoted by traders are for specific currency pairs for certain trade sizes an essential competition parameter in FX spot trading activity (spreads affect the overall price paid by customers for trading currencies). The potential revenue earned by a trader is also affected by the spread. When quoting both bid and offer price to a client, the traders would generally apply a spread to a given market mid-point (whether in even amounts from that mid-point or otherwise) as part of this calculation.*”⁴⁹

2.4.2. The role of information

- (49) Access to reliable and up-to-date market information is essential for FX traders. It is well-known that academic research emphasizes the importance of information in decision-making.⁵⁰ In the short term, FX rates are primarily driven by traders’ order flows. When a trader receives a request for a trade, he will therefore revise his expectations and adjust his price and spread levels depending on his view on this incoming trade:
- (a) If the trader considers the trade as non-informative or non-directional (i.e. from an uninformed end-customer), he can safely hold it in inventory (keeping an open risk position in his trading book) and then later cross it against other end-customer trades.
 - (b) If the trader regards the trade as informative or directional (i.e. from an informed end-customer), he will be inclined to trade quickly to promptly reduce inventory risk, reducing or closing the open risk position in his trading book.⁵¹
- (50) Traders are therefore more likely to trade aggressively and in the same direction as the customer if the customer is informed. For example, after the purchase of a specific currency by an informed end-customer, the trader might find himself with a short position in that currency (after having sold it to the customer) and will then buy aggressively at the higher, less attractive ask price on the interdealer market.^{52 53} This will induce an upward movement on the currency price, consistent with the information implied by the purchase from the informed customer. The interdealer price thus naturally moves to embed the information brought to the market by end customers. This price shift will then be taken into account by other traders in the setting of their quotes to end-customers.

⁴⁹ [...]

⁵⁰ Madhavan A. “Market microstructure: A survey”, *Journal of Financial Markets* 3 (2000) 205-258, [...].

⁵¹ For example, an informed customer’s purchase of EUR against USD likely reflects this customer’s positive view on the EUR/USD rate, implying that the EUR price is likely to rise vs. the USD. If the dealer gets a short open risk position in EUR as a result of the trade, this inventory position represents a bad risk that the dealer will seek to reduce rapidly.

⁵² In this example, the trader might theoretically also choose not to hedge and so not to close its short position. However, this is fairly unlikely given the informative nature of the incoming trade and the trader’s expectation that the currency price might rise.

⁵³ In this example, after having sold to an end-customer, the dealer will trade on the interdealer market to close or ‘hedge’ a short position. As such, the dealer is a ‘price taker’ and will trade (buy) at the ask price quoted by another dealer (the seller) which will be a ‘price setter’.

- (51) Traders can communicate with each other about ‘market colour’⁵⁴ and can also engage in conversations with the view of exploring trading opportunities with each other as potential counterparties in interdealer trading in the ordinary course of their business.
- (52) By contrast, the FX Global Code⁵⁵ establishes as a principle that market participants (including traders) should limit access to information relating to the past, present, and future trading activity or positions of the market participant itself or of its clients.⁵⁶ Market participants should not disclose that kind of information to external parties, except under specific circumstances, for example to the extent necessary for settling a transaction⁵⁷ (see also recital (51)). Communications between market participants should not include specific client names, other mechanisms for communicating a client’s identity (for example, code names) or information specific to any individual client. Communications should also not disclose information about individual trading positions.⁵⁸

2.5. Conclusion

- (53) The FX market is considered transparent in the sense that the most recent FX rates are widely available to all market participants and the FX rates reflect all available public information after trades are executed. Market participants cannot therefore justify the need to engage in bilateral or multilateral conversation by stating that it helps them gather information on FX rates (see recitals (14) and (16)).
- (54) In his role as market maker, a trader receives orders from end-customers and offers them immediacy services by quoting bid and ask prices and showing its readiness to trade. Traders are able and expected to conclude their trades autonomously.
- (55) In determining their prices and spreads, (see recital (32)) traders will take into account their own inventory of open risk positions in order to manage their inventory risk. Traders will also analyse all the public information they consider relevant to the evolution of FX rates and that is available on electronic platforms. Finally, traders will rely on their own expectations about FX rates development.
- (56) Traders’ expectations are determined mainly by the flow of incoming trades from informed end-customers because they are expected to anticipate FX rate movements. Informed trades typically originate from financial institutions like hedge funds, asset managers, banks and central banks. Those institutions use currencies as a store of value and so tend to be better informed than other end-customers (see recital (19)).

⁵⁴ For a definition of “market colour”, see the Bank of International Settlements’ Report published in May 2016 (‘FX Global Code’) which defined the term as: “*a view shared by market participants on the general state of, and trends in the market*”, and provides additional context on the subject (see http://www.bis.org/mktc/fxwg/gc_may16.pdf).

⁵⁵ The FX Global Code is a set of global principles of good practice in the FX market that has been developed to provide a common set of guidelines to promote the integrity and effective functioning of the wholesale FX market. Credit Suisse quotes the FX Global Code in [...]. The FX Global code is available at https://www.globalfx.org/docs/fx_global.pdf.

⁵⁶ FX Global Code - principle 19.

⁵⁷ FX Global Code - principle 20.

⁵⁸ FX Global Code - principle 22.

2.6. Undertakings subject to these proceedings

2.6.1. *The Addressee of this Decision*

(57) Credit Suisse is a bank headquartered in Switzerland, operating worldwide, including the EEA. This Decision is addressed to the following legal entities:

- (a) Credit Suisse Group AG with registered offices at Paradeplatz 8, Zurich 8001, Switzerland;
- (b) Credit Suisse Securities (Europe) Limited with registered offices at One Cabot Square, London, E14 4QJ, United Kingdom; and
- (c) Credit Suisse AG with registered offices at Paradeplatz 8, Zurich 8001, Switzerland.

2.6.2. *The other participating undertakings*

(58) The other participating undertakings submitted to the Commission formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (settlement submissions) and have remained committed to settle. A separate decision is addressed to these other participating undertakings (or “settling parties”).

2.6.2.1. [Non-addressee]

(59) [...].

(60) [...]:

- (a) [...].

2.6.2.2. [Non-addressee]

(61) [...].

(62) [...]:

- (a) [...];
- (b) [...],⁵⁹ [...];
- (c) [...].

2.6.2.3. [Non-addressee]

(63) [...].

(64) [...]:

- (a) [...],⁶⁰ [...];
- (b) [...]⁶¹, [...].

2.6.2.4. [Non-addressee]

(65) [...].

(66) [...]:

- (a) [...];

⁵⁹ [...].

⁶⁰ [...].

⁶¹ [...].

(b) [...].

3. PROCEDURE

- (67) On 27 September 2013, [non-addressee] applied for a marker under points 14 and 15 of the Notice on immunity from fines and reduction of fines in cartel cases (hereinafter “the Leniency Notice”).⁶² The application was followed by a number of submissions consisting of oral statements and documentary evidence. By decision of 2 July 2014, the Commission granted [non-addressee] conditional immunity pursuant to point 8(a) of the Leniency Notice.
- (68) On 11 October 2013, [non-addressee] submitted an application for reduction of fines under the Leniency Notice. The application [...].
- (69) On 14 October 2013, [non-addressee] submitted an application for reduction of fines under the Leniency Notice. The application [...].
- (70) On 25 July 2014, Credit Suisse and other participating undertakings received a request for information.
- (71) On 17 July 2015, [non-addressee] submitted an application for reduction of fines under the Leniency Notice. The application [...].
- (72) On 1 March 2016 and 29 April 2016, the Commission sent new requests for information to Credit Suisse and other participating undertakings.
- (73) On 27 October 2016, the Commission informed the other participating undertakings that it considered that the evidence submitted [...] constituted significant added value with respect to the evidence already in its possession and accordingly notified to them its intention to apply a reduction of fines within the applicable bands, in accordance with point 29 of the Leniency Notice.
- (74) On 27 October 2016, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the participating undertakings and fixed a deadline pursuant to Article 10a(1) of Regulation (EC) N° 773/2004 for participating undertakings to manifest their eventual interest in engaging in settlement discussions, which they all confirmed.
- (75) Settlement meetings with all the participating undertakings took place between 9 November 2016 and 7 February 2018. At these bilateral meetings, the Commission informed the participating undertakings about the potential objections it envisaged raising against them and disclosed the evidence in the Commission file relied on to establish the facts supporting the potential objections. In that framework, Credit Suisse was [...] given access to [...] as well as an explanation of the calculation of their value of sales and of the fine parameters and was invited to introduce a settlement submission.
- (76) On 19 February 2018, Credit Suisse informed the Commission that it would not continue its participation in the settlement procedure. The Commission therefore

⁶² OJ C 298, 8.12.2006, p. 17.

reverted to the ordinary procedure for Credit Suisse in accordance with paragraph 19 of the Settlement Notice.⁶³

- (77) Between [...] and [...], the other participating undertakings submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (settlement submissions). All settling parties replied to the SO addressed to them on 24 July 2018 confirming that it reflected their respective settlement submissions and they remained committed to settle.
- (78) On 24 July 2018, the Commission adopted an SO addressed to Credit Suisse. Access to file was granted to Credit Suisse on 25 July 2018.
- (79) After the extension of the time period initially allowed for replying, Credit Suisse submitted its written observations to the SO on 4 October 2018 and, in its response, requested to be heard orally.
- (80) The oral hearing took place on 7 December 2018.
- (81) On 3 November 2020, Credit Suisse requested access to certain documents, including the index of the documents added to file since it last accessed it. On 26 January 2021, they were informed that a Supplementary Statement of Objections (“SSO”) was in preparation and that access to the documents related to the STG Lads case would be provided at that procedural moment.
- (82) On 18 March 2021, the Commission adopted a SSO addressed to Credit Suisse. Access to file was granted between 24 and 26 March 2021.
- (83) After the extension of the time period initially allowed for replying, Credit Suisse submitted its written observations to the SSO on 6 May 2021.
- (84) The second oral hearing took place on 8 June 2021.
- (85) Credit Suisse replied to outstanding questions from the oral hearing on 25 June 2021, after an extension of the initial deadline.

4. DESCRIPTION OF THE EVENTS

4.1. Nature, scope and functioning

- (86) As indicated in recital (3), this Decision concerns the conduct herewith described and also documented in communications that took place within a [...] chatroom called ‘Sterling Lads’ (identification number ddc0d4) between [employee of Credit Suisse] , a trader in the Forex market acting on behalf of Credit Suisse, and other participating traders: [employee of non-addressee] (for [non-addressee]); [employee of non-addressee] and [employee of non-addressee] (both for [non-addressee]); [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] (all for [non-addressee]); and [employee of non-addressee] (for [non-addressee]) (the chatroom is hereinafter referred to as the “STG Lads chatroom” or “the chatroom”).
- (87) The above-mentioned individuals were traders employed by their respective undertakings and all of them could trade G10 currencies in spot transactions on

⁶³ Commission Notice on the conduct of settlement procedures in view of the adoption of decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases. OJ C 167, 2.7.2008, p. 1–6 (hereinafter “the Settlement Notice”).

behalf of their respective employing undertaking at the corresponding dedicated FX spot trading desk.

- (88) [...] Professional service⁶⁴ users can create electronic chatrooms using the [...] tool, and invite other [...] Professional users. The creator of the chatroom will act as administrator.
- (89) Traders can join these chatrooms by either creating one or accepting an invitation to join a chatroom already created by another trader. Once they have joined a chatroom, they become members of it and they can log in⁶⁵ whenever they want (which, for the STG Lads chatroom, typically happened daily). When members are logged in, they have ongoing real-time access to all discussions in the chatroom until they log off; also, they can (by simply scrolling up) retrieve the discussions that the other members of the chatroom have had earlier, since the content of chatrooms is preserved and available for reviewing by all members.
- (90) Traders can lose their member status upon closure of the chatroom by the administrator, upon dismissal of the member by the administrator or upon losing the [...] Professional license (either because the company they work for has lost the license or because they have stopped working for a licensed company).
- (91) The Decision concerns G10 currencies as defined at recital (1). The participating traders themselves were primarily responsible for market making in specific currencies or pairs, but they could also further engage in trading activity on behalf of their own undertaking (proprietary trading) with respect to any G10 currency available in their books, which they also did to different extents during the relevant period, with a view to maximising the value of their respective holdings (see recital (26)). Therefore, the FX spot trading desks of G10 currencies of the participating undertakings stood ready to trade any of those currencies depending on market demand.
- (92) Specifically, the participating traders in the STG Lads chatroom had a particular focus on the GBP, which was most often traded against two main currencies (EUR and USD), but they could also trade in all G10 currencies. In fact, the file contains evidence of discussions on every single currency of the G10, showing that all of them were discussed at some point throughout the STG Lads communications since the creation of the chatroom.⁶⁶

4.1.1. *Evolution and duration of Sterling Lads membership*

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

⁶⁴ [...] Professional service at [...].

⁶⁵ Please note that in the chats quoted as contemporaneous evidence, the word “join” may appear in the automatic notifications generated by the system when a trader logged in, irrespective of whether it was the first time and was joining in as a member, or it was any other time and he simply logged in.

⁶⁶ See, among others, [...], of 18 April 2012, for EUR, GBP and USD; [...], of 22 May 2012, for CHF; [...], of 5 July 2012, for DKK; [...], of 9 March 2012, for NOK and SEK; [...], of 26 March 2012, for AUD, NZD and JPY; [...], of 6 March 2012, for CAD.

- (94) [Non-addressee] joined as a member and participated in communications in the chatroom from [...] ⁶⁷ to [...] ⁶⁸ ([employee of non-addressee] for [...], [employee of Credit Suisse] from 25 May 2011 ⁶⁹ to 4 November 2011 ⁷⁰ and [employee of non-addressee] from [...] ⁷¹ to [...] ⁷²).
- (95) [Non-addressee] joined as a member and participated in communications in the chatroom from [...] ⁷³ to [...] ⁷⁴ ([employee of non-addressee] for the entire period).
- (96) [Non-addressee] joined as a member and participated in communications in the chatroom from [...] ⁷⁵ to [...] ⁷⁶ ([employee of non-addressee] from [...] ⁷⁷ to [...] ⁷⁸, [employee of non-addressee] from [...] ⁷⁹ to [...] ⁸⁰ and [employee of non-addressee] from [...] ⁸¹ to [...] ⁸²).
- (97) [Non-addressee] joined as a member and participated in communications in the chatroom from [...] ⁸³ to [...] ⁸⁴ ([employee of non-addressee] for the entire period).
- (98) Credit Suisse joined as a member and participated in communications in the chatroom from 7 February 2012 ⁸⁵ to 12 July 2012 ⁸⁶ ([employee of Credit Suisse] for the entire period).

4.1.2. Description of [employee of Credit Suisse]’s involvement

- (99) [Employee of Credit Suisse] joined the STG Lads chatroom for the first time as a member on 25 May 2011, trading on behalf of [non-addressee], ⁸⁷ i.e. he was one of the founding members. He remained a member of the STG Lads chatroom until the day he left [non-addressee], on [...] (see recital (94)).
- (100) [Employee of Credit Suisse] later re-joined the STG Lads chatroom as a member on behalf of Credit Suisse ⁸⁸, on 7 February 2012. ⁸⁹ He remained in the chatroom trading on behalf of Credit Suisse until 12 July 2012 (see recital (98)). ⁹⁰

* In the public version of this Decision, the individual referred as ‘[employee of Credit Suisse]’ previously worked for a ‘non-addressee’. In the interest of clarity, this individual is always referred as [employee of Credit Suisse], but an ‘*’ will be added when his place of employment was not Credit Suisse.

⁶⁷ Chat of 25 May 2011 ([...]).

⁶⁸ Chat of 12 July 2012 ([...]).

⁶⁹ Chat of 25 May 2011 ([...]¹).

⁷⁰ Chat of 4 November 2011 ([...]).

⁷¹ Chat of 8 November 2011 ([...]).

⁷² Chat of 12 July 2012 ([...]).

⁷³ Chat of 25 May 2011 ([...]).

⁷⁴ Chat of 26 June 2012 ([...]).

⁷⁵ Chat of 25 May 2011 ([...]).

⁷⁶ Chat of 12 July 2012 ([...]).

⁷⁷ Chat of 25 May 2011 ([...]).

⁷⁸ Chat of 4 November 2011 ([...]).

⁷⁹ Chat of 9 November 2011 ([...]).

⁸⁰ Chat of 12 July 2012 ([...]).

⁸¹ Chat of 30 May 2011 ([...]).

⁸² Chat of 12 July 2012 ([...]).

⁸³ Chat of 5 August 2011 ([...]).

⁸⁴ Chat of 12 July 2012 ([...]).

⁸⁵ Chat of 7 February 2012 ([...]).

⁸⁶ Chat of 12 July 2012 ([...]).

⁸⁷ [Employee of Credit Suisse] was [non-addressee]’s employee from [...] to [...], see [...], p. 11.

⁸⁸ [employee of Credit Suisse] was Credit Suisse’s employee from [...] to [...], see [...].

⁸⁹ [...].

- (101) Therefore, [employee of Credit Suisse] ceased to be a member of the STG Lads chatroom on [...] [non-addressee], and re-joined the chatroom [...] after he was employed by Credit Suisse ([...] following the beginning of his contract with Credit Suisse).
- (102) During his time trading on behalf of Credit Suisse, [employee of Credit Suisse] participated in the STG Lads chatroom together with all other participating traders, with the exception of [employee of non-addressee], who was no longer a member by then. Nevertheless, [employee of Credit Suisse] was aware of the full membership over time, since he and [employee of non-addressee] (one of the three [non-addressee] participating traders) had been members of the chatroom simultaneously at the time when [employee of Credit Suisse] was trading on behalf of [non-addressee].
- 4.1.2.1. [Employee of Credit Suisse]’s involvement before joining Credit Suisse
- (103) While trading on behalf of [non-addressee], [employee of Credit Suisse], together with the other participating traders, engaged in extensive, recurrent and reciprocal exchanges of commercially sensitive information relating to different aspects of FX spot trading of G10 currencies that were not necessary for traders to perform their role and did not respond to the need to price effectively and to formulate their own risk strategy⁹¹.
- (104) Some of the chats were explicit in: (i) expressing gratitude when receiving certain current or forward-looking information (see recitals (119), (127) and (129)) (ii) indicating willingness to coordinate their trading to benefit any of the chatroom participants (see recitals (113), (114), (127) and (129)) or (iii) apologizing to each other when they may have departed from the trust and/or mutual expectations (see recitals (119)).
- (105) The participating traders provided updates when the sensitive information was superseded to ensure that inferences drawn from the exchanges remained relevant (see recitals (119) and (127)). [...] ⁹² and they trusted each other not to use that information against its provider.
- (a) Signing up to the chatroom was dependent on mutual trust between the members, requiring that invitations of new members had to be discussed and unanimously agreed to beforehand
- (106) On 14 June 2011, [employee of non-addressee] and [employee of non-addressee] discussed the invitation to [employee of non-addressee] to join the chatroom. [Employee of Credit Suisse], trading on behalf of [non-addressee], was logged in the chatroom at the time of the discussion (he logged in at 6:27:47, and left at 16:05:53).
- (107) In the extract, [employee of non-addressee] subtly reproached the fact that [employee of non-addressee] (“[employee of non-addressee]”) did not contribute to the chatroom with information that he received from [non-addressee] (“oh by the way [employee of non-addressee] i assume u got the info on the fix from ur mates at [non-addressee] that u still havent got into this chat”). [Employee of non-addressee] indicated that he intended to invite [employee of non-addressee] (“[employee of non-

⁹⁰ [...].
⁹¹ [...].
⁹² [...].

addressee]") into the chatroom (*"i'll put [employee of non-addressee] in tomorrow"*). [Employee of non-addressee] had already indicated to [employee of non-addressee] his willingness to join ([employee of non-addressee]: *"only if he wants in mate"*; [employee of non-addressee]: *"he said yes"*). Since [employee of Credit Suisse] was not actively participating in the conversation, [employee of non-addressee] pointed out that his agreement was also necessary before they invite [employee of non-addressee] to join the chatroom (*"only if [employee of Credit Suisse]'s cool with it tho"*)⁹³:

"06/14/2011 15:18:48 UTC [employee of non-addressee] posted: oh by the way [employee of non-addressee] i assume u got the info on the fix from ur mates at [non-addressee] that u still havent got into this chat. [[Employee of non-addressee] suggested that [employee of non-addressee] ("[employee of non-addressee]*") had received information from [non-addressee] that he had not yet shared in the STG Lads chatroom]*

06/14/2011 15:19:18 UTC [employee of non-addressee] posted: i'll put [employee of non-addressee] in tomorrow [[Employee of non-addressee] tells that he would invite [employee of non-addressee] to the chatroom the following day]

06/14/2011 15:19:24 UTC [employee of non-addressee] posted: haha [laughter and/or consent]

06/14/2011 15:19:28 UTC [employee of non-addressee] posted: only if he wants in mate [[Employee of non-addressee] told [employee of non-addressee] he should invite [employee of non-addressee] only if he wanted to become a member of the STG Lads chatroom]

06/14/2011 15:19:34 UTC [employee of non-addressee] posted: he said yes [[Employee of non-addressee] replied that [employee of non-addressee] had confirmed his willingness to become a member of the STG Lads chatroom]

06/14/2011 15:19:43 UTC [employee of non-addressee] posted: perfect

06/14/2011 15:19:44 UTC [employee of non-addressee] posted: only if [employee of Credit Suisse]'s cool with it tho [[Employee of non-addressee] added that the invitation also needed [employee of Credit Suisse]'s ("[employee of Credit Suisse]*") agreement]*

06/14/2011 15:19:58 UTC [employee of non-addressee] posted: hahah

06/14/2011 15:21:25 UTC [employee of non-addressee] posted: hahaha

06/14/2011 15:25:21 UTC [employee of non-addressee] posted: well like i say [employee of non-addressee] upto u if u invite him in" [[Employee of non-addressee] left it to [employee of non-addressee] ("[employee of non-addressee]*") whether or not to invite [employee of non-addressee]]⁹⁴*

- (108) These pieces of evidence show that the point was not to get [employee of non-addressee] in to discuss a particular information on a fix trading. It is not a simple invitation to a chatroom for occasional discussions, but an invitation to belong to a

⁹³ "[...]" or "[...]" are nicknames for [employee of Credit Suisse] frequently used by the other members of the STG Lads chatroom.

⁹⁴ [...].

circle of trust. Aware of the further implications of that invitation, [employee of non-addressee] insisted that [employee of non-addressee] should make a deliberate choice to sign up to the chatroom ([employee of non-addressee]: “*only if he wants in mate*”). Correspondingly, since [employee of non-addressee] was also aware of those implications, he felt obliged to explain that he would only invite the new member if all three existing members agreed ([employee of non-addressee]: “*only if [employee of Credit Suisse]’s cool with it tho*”). [...] ⁹⁵ [...].

- (109) [Non-addressee] indicates⁹⁶ that [...]
- (110) Moreover, the extract shows that: (i) [employee of non-addressee] had already explained the functioning of the chatroom to [employee of non-addressee], in a conversation which took place outside the Sterling Lads chatroom; (ii) [employee of non-addressee] contemplated the possibility that [employee of non-addressee] could disagree with the rules and refuse to join the chatroom ([employee of non-addressee] says that he would invite [employee of non-addressee] “*only if he wants in*”), which would not make sense if the chatroom was just an indispensable tool for legitimate trading purposes; (iii) as a result of the conversation between [employee of non-addressee] and [employee of non-addressee] on the functioning of the group of competing traders [employee of non-addressee] agreed to take part in it ([employee of non-addressee]: “*he said yes*”). Therefore, once he joined the chatroom, more than one month and a half later (see recital (111)), there was no need to explicitly write down the simple rules that were understood and respected by the participating traders.
- (111) [Employee of non-addressee], as administrator of the chatroom, finally invited [employee of non-addressee] on 5 August 2011. That day, [employee of non-addressee], again warned the other participating traders beforehand to make sure that none of them opposed [employee of non-addressee] joining the chatroom (“*if no one minds*”). [Employee of non-addressee] eventually joined the chatroom as a member on that very same day. The moment he joined, [employee of non-addressee] made sure [employee of non-addressee] could confirm that by signing up to the chat he could get interesting insights (“*[employee of non-addressee] as you can see from above, or maybe you can’t actually, we passed on some grt info today re sterling*”) and he reacted by showing readiness to take advantage of the information shared (“*i wudve fitted right in*”). These indicia show that [employee of non-addressee] knew the content and objectives of the chatroom before signing up because, once he joined, he showed no surprise by the membership or the nature of the exchanges and he remained in the chatroom:

“08/05/2011 11:19:11 [employee of non-addressee], Says [employee of non-addressee], gonna add [employee of non-addressee] to this next week, if no one minds

08/05/2011 11:19:58 [employee of non-addressee], Says nope do it - i spoken to him about it anyway - we both blame u

08/05/2011 11:20:03 [employee of non-addressee], Says so next week be gd

08/05/2011 11:20:04 [employee of non-addressee], Says haha

⁹⁵ [...].

⁹⁶ [...].

08/05/2011 11:20:09 [employee of non-addressee], Says hahah

08/05/2011 11:20:10 [employee of non-addressee] Says cool

[...]

08/05/2011 11:22:17 [employee of non-addressee], has joined the room

08/05/2011 11:22:17 [employee of non-addressee], Says *** [non-addressee] [...]

Disclaimer: [...]

08/05/2011 11:22:32 [employee of non-addressee] Says [employee of non-addressee] as you can see from above, or maybe you can't actually, we passed on some grt info today re sterling"

08/05/2011 11:22:47 [employee of non-addressee] Says i wudve fitted right in" ⁹⁷

- (112) These exchanges show that the participating traders acted within a private, closed circle and that they needed to trust each other, know what to expect from each other and needed to sign up to be members of the chatroom in order to obtain the information exchanged within.
- (b) The members of the chatroom helped each other within this closed circle of trust, even if the information concerned colleagues from their own bank but external to the chatroom.
- (113) On 30 September 2011, [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] announced in the chatroom that they were in the same position and would be selling GBP against dollars to clients at the fix price ([employee of non-addressee] and ([employee of non-addressee] selling 200 million GBP ("lose 200 quid at fix", "snap") and ([employee of non-addressee] 115 million GBP ("lose 115 at fix quid"). [Employee of non-addressee]'s interest was aligned too ("lose 300 lads").
- (114) In the course of the discussion, [employee of non-addressee] asked [employee of non-addressee] if "[employee of non-addressee]" (another [employee of non-addressee]) was trying to get rid of his position in the EUR/GBP currency for the fix ("*[employee of non-addressee] trying to offload a Ihs eurgbp fix mate...???*"). [Employee of non-addressee] had received an offer from "*[employee of non-addressee]*" and asked [employee of non-addressee] why "*[employee of non-addressee]*" wanted to offset this position. [Employee of non-addressee] reassured [employee of non-addressee] that the only reason was that "*[employee of non-addressee]*" did not like doing fix trades, but advised him to reject the offer if it did not suit his interests ("*[employee of non-addressee] never keen on fixes, if you want mate keep it*"). [Employee of non-addressee] answered that he would accept "*[employee of non-addressee]'s*" offer and then sell EUR in the market at the fix ("*we will be selling it at wmr*"), in the hope that this would increase the GBP/USD exchange rate ("*hope shud help the cable*") that they all needed to sell to clients. [Employee of non-addressee] agreed ("*exactly mate*").⁹⁸

⁹⁷ [...].

⁹⁸ [...].

09/30/2011 14:08:26 [employee of non-addressee], Says lose 200 quid at fix [[Employee of non-addressee] would be selling 200 million GBP to clients at the fix price]

09/30/2011 14:08:31 [employee of non-addressee] Says snap [same]

09/30/2011 14:08:51 [employee of non-addressee] Says lose 115 at fix [[Employee of non-addressee] would be selling 115 million GBP to clients at the fix price]

09/30/2011 14:10:24 [employee of non-addressee] Says lose 300 lads [[Employee of non-addressee] would be selling 300 million GBP to clients at the fix price]

09/30/2011 14:12:42 [employee of non-addressee] Says [employee of non-addressee] trying to offload a lhs⁹⁹ eurGBP fix mate...??? [[Employee of non-addressee] asked if another [non-addressee] trader, “[employee of non-addressee]”, was trying to endorse a difficult position on him]

09/30/2011 14:12:58 [employee of non-addressee] Says from the pub

09/30/2011 14:15:03 [employee of non-addressee] Says the broker said you has the opposite interest [employee of non-addressee], [employee of non-addressee] never keen on fixes, if you want mate keep it, otherwise i'll take it back and cross it into cable [[Employee of non-addressee] indicated that “[employee of non-addressee]” had approached [employee of non-addressee] because a broker had mentioned that the transaction could be interesting for him, [employee of non-addressee] advised [employee of non-addressee] to reject the transaction if this was not the case]

09/30/2011 14:15:36 [employee of non-addressee] Says no we more than happy to do it mate... [[Employee of non-addressee] recognised that the transaction indeed suited his trading interests]

09/30/2011 14:15:41 [employee of non-addressee] Says we will be selling it at wmr [[Employee of non-addressee] stated he would sell the EUR (against GBP) he is going to buy from “[employee of non-addressee]” at the fix]

09/30/2011 14:16:03 [employee of non-addressee] Says hope shud help the cable [[Employee of non-addressee] hoped that him buying GBP at the fix would raise the value of the GBP/USD exchange rate]

09/30/2011 14:16:41 [employee of non-addressee] Says exactly mate”.¹⁰⁰

- (115) Credit Suisse argues that [non-addressee]’ leniency statement, on which the Commission relies, explains this extract in a way consistent with a benign interpretation¹⁰¹. Moreover, according to Credit Suisse, “*the discussion does not support the interpretation that the traders would prioritise the interests of the members of STG Lads above the interests of their own banks or own colleagues*”; “*(t)here is nothing to suggest that the traders aimed to prejudice [employee of non-addressee]’s interests in any way*” and “*(t)here is nothing in this chat that illustrates the allegedly private, “strong circle of trust” nature of the STG Lads chatroom*”.¹⁰²

⁹⁹ LHS means “Left-hand side”: If a trader says he is “lhs”, it means that he has client orders to sell the base (first named) currency in a currency pair.

¹⁰⁰ [...]

¹⁰¹ [...].

¹⁰² [...].

- (116) However, as already explained in recital (109), [non-addressee] has clearly indicated that [...]. Therefore, this extract also falls within the scope of the reported conduct.¹⁰³ Furthermore, Credit Suisse’s arguments misrepresent the Commission’s interpretation of the extract. Indeed, the Commission neither explains, nor implies, that the exchanges between the participating traders sought to prejudice “[employee of non-addressee]” in any way.
- (117) The Commission has used the extract to prove that the participating traders were part of a circle of trust. This is shown by the fact that [employee of non-addressee] trusts [employee of non-addressee] to the point of feeling at ease to ask him about the intentions behind an offer he has received from one of [employee of non-addressee]’s colleagues and [employee of non-addressee] advises him to reject the transaction if it is not interesting for him (see the exchanges between 14:12:42 and 14:15:03). The fact that in this very case the information does not prejudice the third trader is irrelevant to the conclusion of the Commission.
- (118) As indicated by Credit Suisse, during the extract, [employee of non-addressee] provides [employee of non-addressee] with “*some insights to the trading preferences of [employee of non-addressee], who is a colleague at [non-addressee]*”.¹⁰⁴ But that statement is in contradiction with Credit Suisse’s claim, that the three traders follow an “*independently determined trading strategy*”. In this situation: (i) [employee of non-addressee], who is not included in the discussion, follows an independently determined strategy, (ii) [employee of non-addressee] offers to do the transaction with [employee of non-addressee] if [employee of non-addressee] prefers not to do it, so his strategy is directly influenced by the information he receives from [employee of non-addressee]; and (iii) [employee of non-addressee] decides to make the transaction after being reassured by [employee of non-addressee] on [employee of non-addressee]’s intentions, which reduces his risk.
- (119) On that same day, 30 September 2011, [employee of Credit Suisse] directly participated in an exchange of information on fix positions in the minutes preceding the WMR fix.¹⁰⁵ Right after the fix, [employee of non-addressee] apologised to the other participating traders because, right at the time of the fix, his position had changed with respect to what he had announced to them (see exchanges between 15:05:54 and 15:06:03), and therefore the information he had previously shared was not accurate anymore.

09/30/2011 14:29:56 UTC [employee of non-addressee] posted: we get at fix now a load [[Employee of non-addressee] will be buying an important amount of a currency from customers at the upcoming fix]

09/30/2011 14:29:59 UTC [employee of non-addressee] posted: quid [GBP]

09/30/2011 14:34:14 UTC [employee of non-addressee] posted: my fix disappearing now .. neting off [[Employee of non-addressee] would have nothing to trade at the fix]

¹⁰³ [...].

¹⁰⁴ [...].

¹⁰⁵ The time in the chats is expressed in Greenwich Mean Time (GMT). As from 27 March 2011, London entered in the British Summer Time (BST) which is GMT +1.

09/30/2011 14:34:18 UTC [employee of non-addressee] posted: netting [[Employee of non-addressee] confirms his statement]

09/30/2011 14:35:11 UTC [employee of non-addressee] posted: im now getting 90 cble [[Employee of non-addressee] will be buying 90 million GBP from clients at the upcoming fix]

09/30/2011 14:35:43 UTC [employee of non-addressee] posted: we a lot mate [[Employee of non-addressee] confirms his previous statement]

09/30/2011 14:35:45 UTC [employee of non-addressee] posted: lhs side here [[[Employee of non-addressee]] will be buying GBP from clients at the fix]

09/30/2011 14:35:56 UTC [employee of non-addressee] posted: thks mate [thanks]

09/30/2011 14:39:41 UTC [employee of non-addressee] posted: citi are rhs [[Employee of non-addressee] shared intelligence that Citigroup will be selling GBP at the fix]

09/30/2011 14:39:53 UTC [employee of non-addressee] posted: battle stations¹⁰⁶

09/30/2011 14:40:18 UTC [employee of non-addressee] posted: something not right

09/30/2011 14:45:07 UTC [employee of non-addressee] posted: nope

09/30/2011 14:47:22 UTC [employee of non-addressee] posted: im lhs a ton and a half now [[Employee of non-addressee] updates his position. He will now be buying 150 million GBP from clients at the fix]

09/30/2011 14:48:31 UTC [employee of non-addressee] posted: all matched here lads [[Employee of non-addressee] will not have any trading at the fix]

09/30/2011 14:48:37 UTC [employee of non-addressee] posted: was rhs in 400 odd [[Employee of non-addressee] had 400 million GBP to sell to clients at the fix, approximatively]

09/30/2011 14:49:49 UTC [employee of non-addressee] posted: just bght 120 cble v v easily [[Employee of non-addressee] had just bought 120 million GBP against USD very easily in the market]

09/30/2011 14:50:01 UTC [employee of non-addressee] posted: thx

09/30/2011 14:51:36 UTC [employee of non-addressee] posted: srill lhs 200 odd [[Employee of non-addressee] confirms his direction and specifies the amount]

09/30/2011 14:55:09 UTC [employee of non-addressee] posted: snap here [same]

09/30/2011 14:55:38 UTC [employee of non-addressee] posted: ntg here [nothing]

09/30/2011 15:05:54 UTC [employee of non-addressee] posted: sorry lads

09/30/2011 15:06:03 UTC [employee of non-addressee] posted: got paid for 100 quid right in the fix [[Employee of non-addressee] had eventually traded GBP right at the moment of the fix]"¹⁰⁷

- (120) Credit Suisse argues that the apology is not an admission on [employee of non-addressee]'s part that the information provided before the fix was misleading.¹⁰⁸

¹⁰⁶ Battle stations is an announcement aboard a naval warship to alert the crew to prepare for battle.

¹⁰⁷ [...].

(121) An attentive reading of the extract shows that [employee of non-addressee]’s apology responds to the fact that the information shared turned out to be inaccurate and was potentially misleading for the other traders in the chatroom, and therefore breached the rule that the information exchanged could be used to the benefit of the participating traders.¹⁰⁹ The information [employee of non-addressee] provided to the other participating traders in the minutes preceding the fix (see exchanges between 14:48:31 and 14:48:37) was not accurate anymore at the time of the fix. His position changed at that precise moment (see exchange at 15:06:03) and he had to trade in a way not expected by the other participating traders, as he could not update them on time. Even if this was not intentional, the other participating traders acted taking into account the information he had provided, which turned out to be wrong.

(c) The members of the chatroom consider themselves as a closed circle of trust designed to favour each other’s interests¹¹⁰

(122) On 4 October 2011, [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] discussed whether EUR/GBP traded in the market at a certain level. During the course of this conversation, [employee of non-addressee] referred to the chatroom participants as “*the new cartel*”.

10/04/2011 11:09:27 [employee of non-addressee] Says did 88 trade for much eurgbp? [[Employee of non-addressee] asks whether the EUR/GBP rate got traded at 88?]

10/04/2011 11:10:23 [employee of non-addressee] Says mishit mate [wrong direction]

10/04/2011 11:10:43 [employee of non-addressee] Says defo ?? [definitely?]

10/04/2011 11:10:48 [employee of non-addressee] Says didntsee it myself

10/04/2011 11:11:00 [employee of non-addressee] Says that what the boys here tell me

10/04/2011 11:11:03 [employee of non-addressee] Says i didnt see it

[...]

10/04/2011 11:13:23 [employee of non-addressee] Says so official hi 85? [[Employee of non-addressee] asks whether the exchange rate reached 85?]

10/04/2011 11:13:31 [employee of non-addressee] Says srL.just having words with someone [[Employee of non-addressee] apologises as he was talking to someone else]

10/04/2011 11:14:07 [employee of non-addressee] Says thats what we say here

10/04/2011 11:14:12 [employee of non-addressee] Says cool

10/04/2011 11:14:53 [employee of non-addressee] Says i'll back you [employee of non-addressee] [[Employee of non-addressee] told [employee of non-addressee] he would support him in his trading interests]

10/04/2011 11:15:12 [employee of non-addressee] Says the new cartel

¹⁰⁸ [...].
¹⁰⁹ [...].
¹¹⁰ [...].

10/04/2011 11:15:19 [employee of non-addressee]Says as long as [employee of non-addressee] keeps with us we ok”¹¹¹

- (123) Credit Suisse claims that this extract does not contain any illegitimate exchange of information, and that the Commission does not substantiate why this extract shows that the participating traders consider themselves to be part of a closed circle of trust.¹¹²
- (124) As for the first claim, it is irrelevant at this point whether the information exchanged pursued legitimate or illegitimate purposes. The extract was reproduced in order to provide context to [employee of non-addressee]’s reference to “*the new cartel*”. Indeed, in the extract, [employee of non-addressee] has received information on the market level of the EUR/GBP currency pair from an internal department in his bank (“*thas what the boys here tell me*”) which he shares with his competitors in the chatroom. It is in this context that he claims that the chatroom is “*the new cartel*”.
- (125) As for the second point, Credit Suisse indicates in its reply to the SO,¹¹³ the word “cartel” has several meanings (gang, syndicate, mob, band, organization, confederation, confederacy, federation, union, association, circle, society, combine, consortium, alliance, league, cabal, cell, coterie, crew and junta are the meanings mentioned by Credit Suisse). All of these alternative meanings, just like the technical meaning in competition terms, refer to the existence of a closed circle of trust among the members of the “cartel”, which is the conclusion that the Commission infers from this extract.
- (d) The traders participating in the STG Lads chatroom understood and expected the information they exchanged to be used for their mutual benefit, and not against each other’s interests.
- (126) On 26 May 2011, [employee of Credit Suisse] logged in the chatroom at 12:52:28 and remained logged on until 16:02:53. Therefore, during that day, [employee of Credit Suisse] had access to the extract below.
- (127) At the beginning of the extract, [employee of non-addressee] indicated that he has just sold an undetermined amount of GBP (“*sold quid*”) very easily (“*v easy*”), thereby signalling that there was a high demand for this currency on the market. [Employee of non-addressee] thanked [employee of non-addressee] for the information. Later, [employee of non-addressee] indicated that he will acquire 100 million (“*a ton*”) EUR during the fix, and some minutes later, still before the fix, he announced that he had acquired 100 million GBP. At that point, [employee of non-addressee] (who had previously indicated that he was trading on GBP) told him to “*stop*”. [Employee of non-addressee] hesitated and immediately afterwards realised that [employee of non-addressee] was telling him to “*stop buying*” GBP, which [employee of non-addressee] confirmed (“*yes*”). [Employee of non-addressee] apologising for being slow (“*sryslow*”) illustrates the fact that there was a tacit consensus to act in that way.

“05 /26/2011 13:49:05 [employee of non-addressee]Says sold quid there boys [[employee of non-addressee] informs that he has sold GBP]

¹¹¹ [...].
¹¹² [...].
¹¹³ [...].

05/26/2011 13:49:07 [employee of non-addressee] Says v easy [[Employee of non-addressee] informs that he sold GBP very easily]

05/26/2011 13:49:53 [employee of non-addressee] Says thx [thanks]

05/26/2011 14:35:15 [employee of non-addressee] Says get ton eur at fix [[Employee of non-addressee] informs that he intends to acquire EUR 100 million at the fix]

05/26/2011 14:35:46 [employee of non-addressee] Says big guy just bought eurUSD here 15/20 [[Employee of non-addressee] tells that he sold an undetermined amount of the EUR/USD currency pair to a big company with a 5 point spread]

05/26/2011 14:35:51 [employee of non-addressee] Says ta [thanks]

05/26/2011 14:35:55 [employee of non-addressee] Says thx [thanks]

05/26/2011 14:50:50 [employee of non-addressee] Says bgt ton [[Employee of non-addressee] bought 100 million]

05/26/2011 14:50:52 [employee of non-addressee] Says quid [[Employee of non-addressee] specifies that he bought GBP]

05/26/2011 14:52:08 [employee of non-addressee] Says stop

05/26/2011 14:52:27 [employee of non-addressee] Says ?

05/26/2011 14:52:49 [employee of non-addressee] Says stop buying

05/26/2011 14:52:49 [employee of non-addressee] Says haha [[Employee of non-addressee] laughs]

05/26/2011 14:53:03 [employee of non-addressee] Says sryslow [[Employee of non-addressee] apologises for being slow]

05/26/2011 14:53:31 [employee of non-addressee] Says buying

05/26/2011 14:53:33 [employee of non-addressee] Says yes”¹¹⁴

- (128) Credit Suisse claims that [non-addressee]’ leniency submission¹¹⁵ contradicts the Commission’s interpretation of the extract.^{116 117} However, that is not the case. An

¹¹⁴ [...].

¹¹⁵ [...].

¹¹⁶ [...].

¹¹⁷ Credit Suisse contests a specific sentence of the extract whose meaning does not have a significant bearing in the interpretation of the exchange. For the sake of completeness, the Commission addresses this claim here. Credit Suisse claims that the Commission misinterpreted a specific sentence of the extract (with the aim of indicating that the Commission has a bad understanding of the meaning of the evidence) ([...]). Credit Suisse refers to the sentence “05/26/2011 14:35:46 [employee of non-addressee], Says big guy just bought eurUSD here 15/20”; which the Commission translates as “[Employee of non-addressee] tells that he sold an undetermined amount of the EUR/USD currency pair to a big company with a 5 point spread”. For Credit Suisse, the sentence rather means “A large institution just bought EURUSD from [non-addressee] at the 15/20 level”. First, this specific sentence has been kept in the extract for the sake of completeness, but it does not have any relevance for the above-analysed exchange between [employee of non-addressee] and [employee of Credit Suisse]. Second, the Commission’s interpretation is based on its knowledge of the language used by the traders and the way they express themselves within the chatroom. When the participating traders provide information that comes from a source other than their own trading activity, they typically indicate the source (see, for example, [...], at 14:39:41; [...], between 11:10:48 and 11:11:03; [...], at 12:15:46; [...], at 14:25:18; [...], at 11:00:16; [...], at 09:34:21 and

attentive reading of the extract leads to understand that [employee of non-addressee] is instructing [employee of non-addressee] on his way of trading in the minutes leading to the fix. [Employee of non-addressee] acknowledges the instruction and apologises for taking time in understanding. [...] Irrespectively of his intention to make a joke or not, the fact is that [employee of non-addressee] insists once more to emphasize that his instruction to stop had been indeed to stop “buying”. What is then not clear is whether what he confirms (“yes”) is that he wanted [employee of non-addressee] to stop buying once more (that would be the third time he says it) or whether he agrees that [employee of non-addressee] had been slow. Both readings are consistent with the overall interpretation of the exchange.

- (129) On 9 June 2011, [employee of Credit Suisse], trading for [non-addressee] at the time, logged in the STG Lads chatroom at 06:12:18 and left it at 16:00:18. He was therefore present in the room when [employee of non-addressee] indicated that he had received some stop orders¹¹⁸ for the GBP/USD currency pair (“*cable*”) at a high level. This meant he had a certain amount of GBP that he was charged to sell to a client in exchange of USD as soon as the exchange rate for those two currencies reached a certain level that was a high level compared with the usual exchange rate of both currencies (“*on the last highs*”). He inquired on whether other participating traders were in the same position, to which two participating traders answered affirmatively ([employee of non-addressee] indicated that he had stops at level 50 (“*50 lvl*”), and [employee of non-addressee] at 7580.¹¹⁹ Once [employee of non-addressee] had managed to buy GBP (“*stops all cleared cable*”), [employee of non-addressee] indicated to [employee of non-addressee] that he sold 50 million GBP to a customer (“*lost bully quid*”) and traded aggressively as he “*tried to jam the stops*” in an effort to raise the price of the GBP against the USD to the necessary level to trigger [employee of non-addressee]’s stops. [Employee of non-addressee] indicated that his efforts to raise the price of the currency pair to the 7580 level had failed (“*but 70 is toppy for now*”). Further, the traders exchange information on their open risk positions. In reply to [employee of non-addressee]’s question “*will you stay long*”, [employee of non-addressee] answered that he would “*prefer short x*”.¹²⁰

06/09/2011 06:45:18 UTC [employee of non-addressee] usual stop cable just on the last highs [[Employee of non-addressee] informed that he saw stop orders for GBP/USD at the recent high exchange rates]

06/09/2011 07:06:37 UTC [employee of non-addressee] posted: [employee of non-addressee] any stops topside quid? [[Employee of non-addressee] asked [employee of non-addressee] if he had stop orders for GBP at a high level]

11:08:45). That is the reason why the Commission interprets the word “here” as meaning a trade done by [employee of non-addressee] himself, so he is aware of the precise price of the transaction. As seen in other pieces of evidence, when the participating traders indicate a bid or offer price, they usually do so using the last 2 digits (see [...]). Therefore, it is logical to conclude that the transaction applied a 5-point spread.

¹¹⁸ [...] (see [...]).

¹¹⁹ Note that those two levels (‘50’ given by [employee of non-addressee] and ‘7580’ given by [employee of non-addressee]) are comparable. ‘50’ most probably refers to the last two digits in the four-digit exchange rate (for example, 1.6350 if we assume that the “big figure” was 1.6300 for the GBP/USD exchange rate on that day) while ‘7580’ would refer to the range 1.6375-1.6380).

¹²⁰ See recital (34) for an explanation of short and long open risk positions.

06/09/2011 07:08:12 UTC [employee of non-addressee] posted: Morning (Sterling Note),[...]

06/09/2011 07:08:23 UTC [employee of non-addressee] posted: yes a few [employee of non-addressee]

06/09/2011 07:08:27 UTC [employee of non-addressee] posted: 50 Ivi [[Employee of non-addressee] indicated he had stops orders for GBP at level 50]

06/09/2011 07:08:54 UTC [employee of non-addressee] posted: ta [thanks]

06/09/2011 07:15:43 [employee of non-addressee] Says stops all cleared cable [[Employee of non-addressee] informed that he had bought his GBP in the market]

06/09/2011 07:16:32 [employee of non-addressee] Says tks [employee of non-addressee] [[Employee of non-addressee] thanked [[Employee of non-addressee] for the information]

06/09/2011 07:16:50 [employee of non-addressee] Says have some at 7580.. will be away [[Employee of non-addressee] informed that he had some stop orders at a higher level and he would be away from his trading desk]

06/09/2011 07:16:54 [employee of non-addressee] Says for a slagggggg

06/09/2011 07:16:58 [employee of non-addressee] Says ditto

06/09/2011 07:48:36 [employee of non-addressee] Says lost bully quid [[Employee of non-addressee] informed that he had sold 50 million GBP to a customer]

06/09/2011 07:48:39 [employee of non-addressee] Says no hop [no hope]

06/09/2011 07:48:50 [employee of non-addressee] Says looks nasty bro

06/09/2011 07:48:53 [employee of non-addressee] Says looked

06/09/2011 07:54:25 [employee of non-addressee] Says natch i tried to jam the stops [[employee of non-addressee] informed that he traded aggressively]¹²¹

06/09/2011 07:54:32 [employee of non-addressee] Says but 70 is toppy for now [[Employee of non-addressee] stated that, despite his aggressive trading, the level of the currency pair did not exceed 70 (while [employee of non-addressee]'s order would be activated at 75-80)]

06/09/2011 07:54:36 [employee of non-addressee] has left the room

06/09/2011 07:54:37 [employee of non-addressee] Says ah bollix

06/09/2011 07:54:43 [employee of non-addressee] Says depends on data

06/09/2011 07:54:46 [employee of non-addressee] Says will you stay long [[Employee of non-addressee] asks [employee of non-addressee] about his intentions on his trading position]

06/09/2011 07:55:09 [employee of non-addressee] Says prefer short x" [[Employee of non-addressee] indicated that he preferred to be or to stay "short EUR/GBP].¹²²

¹²¹ [...]
¹²² [...].

- (130) Credit Suisse claims that the Commission’s interpretation of this extract is not sufficiently substantiated.¹²³ Moreover, according to Credit Suisse, the Commission misunderstands some details of the content of the chatrooms and the mentioned future strategy is not the one indicated by the Commission.¹²⁴ Credit Suisse also claims that the Commission incorrectly translates [employee of non-addressee]’s “*prefer short x*” statement.¹²⁵
- (131) However, none of Credit Suisse’s arguments addresses the fact that the extract shows [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] exchanging confidential information on their current trading strategies. The fact remains that [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee], who are competitors in the market, find that they have common trading interests at a specific point and do share information on how they are going to act upon those interests.
- (132) Furthermore, the extract illustrates that the participating traders were aware that the information exchanged was not supposed to be used against the trader providing commercially sensitive information, but rather in order to operate on the market with that knowledge. The traders therefore indicated willingness to adapt their trading activities to benefit any of the chatrooms participants. This conclusion follows from the fact that traders shared the information on the level of their stop orders¹²⁶ (see exchanges between 06:45:18 and 07:16:50) with the intention to get clarity on the value of the GBP and how likely it is that it will reach the level necessary to prompt their orders and consequently to adapt their trading behaviour.
- (133) In the chat, [employee of non-addressee] says that he “jammed” the stops, that is, that he traded aggressively in an effort to raise the value so that [employee of non-addressee]’s stops would be triggered. In a competitive environment, this information would not be shared among competitors and therefore could not be used by the traders to adapt their trading strategy.
- (134) [employee of non-addressee]’s stop orders were filled before the others’, of which he informs [employee of non-addressee] and [employee of non-addressee] at 07:15:43. After that, [employee of non-addressee] informed [employee of non-addressee] that he would be absent, and therefore unable to trade, for some time (for whatever reason).¹²⁷ Upon [employee of non-addressee]’s return, [employee of non-addressee] updated him on his trading activity: he indicated that he had been buying aggressively in order to try and raise the level of GBP, but that his strategy had not been successful. After that, he indicated his future strategy.
- (135) While [employee of non-addressee] intended to raise the price of the GBP against the USD, the fact remains that [employee of non-addressee] shared his intention to raise the price of one currency against the other. Indeed, the three participating traders find themselves in a similar trading position: the three of them have stop orders for GBP

¹²³ [...]

¹²⁴ [...]

¹²⁵ [...]

¹²⁶ See footnote 118

¹²⁷ Even admitting Credit Suisse’s interpretation, that the term “slag” refers to one of [employee of non-addressee]’s clients, or even ignoring the sentence, the Commission’s conclusions about the exchanges would remain the same.

at different levels. It was in their interest that the price of GBP rose in order to trigger the stops.

4.1.2.2. [employee of Credit Suisse]’s involvement after joining Credit Suisse

- (136) On 7 February 2012, [employee of Credit Suisse] (now Credit Suisse) re-joined the private¹²⁸ and multilateral STG Lads chatroom that he was a member of when working for [non-addressee]. This happened [...] after becoming Credit Suisse’s employee (see recital (100)). As described in Section 4.1.2.1(a), re-joining required requesting a personal invitation from the chatroom administrator ([employee of non-addressee]) to include his name. Re-joining also required that the other members accepted him back in and trusted him.
- (137) The content of the chats of that day show that [employee of Credit Suisse] was invited at 14:49:02, and he joined within seconds to resume, in his new capacity as Credit Suisse’s trader (*[employee of Credit Suisse], CREDIT SUISSE SECURI*)¹²⁹, exchanges of information on outstanding customers’ orders, on open risk positions and/or on bid-ask spreads similar to the ones he had participated in when he was trading for [non-addressee].
- (138) The relevant excerpts of the conversation upon [employee of Credit Suisse] joining the chatroom as Credit Suisse’s trader show that the other traders present in the chatroom knew that he was rejoining after his previous participation as [non-addressee]’ trader: “*back into the groove*” ([employee of non-addressee]), “*return of the [employee of Credit Suisse]*” ([employee of non-addressee]), “*i get to say [employee of Credit Suisse] again*” ([employee of non-addressee]) and so did [employee of Credit Suisse], “*hope u don’t mind me re joining*” ([employee of Credit Suisse]), who was cheered and called by his nickname, showing the close relationship between the members.
- (139) This shows that [employee of Credit Suisse] was aware of the identity of the administrator and of the other members. He was welcome back without any need to introduce any member to him or *vice-versa* or to update him on the purpose or mutual expectations regarding the chatroom. The chatroom members were even aware that he had started working the day before, “*...how did u feel when ur alarm clock went off yesterday?*” ([employee of non-addressee]), which illustrate their close relationship with [employee of Credit Suisse].

02/07/2012 14:48:44 [employee of non-addressee] Says can you pls do the honours and invite young [employee of Credit Suisse] back into the groove

02/07/2012 14:48:52 [employee of non-addressee] Says i reckon he’s learnt his lesson

*02/07/2012 14:49:02 [employee of non-addressee] Says *** [employee of non-addressee] has invited the following users to this room: [employee of Credit Suisse]*

02/07/2012 14:49:02 [employee of non-addressee] Says stop talking so much [employee of Credit Suisse]

¹²⁸ For the purpose of this Decision, “private chatroom” means a chatroom reserved to the chatroom’s members.

¹²⁹ [...].

02/07/2012 14:49:10 [employee of non-addressee]Says [EMPLOYEE OF CREDIT SUISSE]

02/07/2012 14:49:23 [employee of Credit Suisse] has joined the room

02/07/2012 14:49:34 [employee of non-addressee]Says return of the [employee of Credit Suisse]... [[employee of Credit Suisse] re-joined the chatroom on behalf of Credit Suisse]

02/07/2012 14:49:47 [employee of Credit Suisse] Says hola £ boys hope u dont mind me re joining [[employee of Credit Suisse] refers here to his previous participation in the chat, which is still in his mind with the implications it had]

02/07/2012 14:49:49 [employee of non-addressee]Says i get to say [employee of Credit Suisse] again

02/07/2012 14:49:52 [employee of non-addressee]Says yeah

02/07/2012 14:50:06 [employee of Credit Suisse] Says lower case not so loud

02/07/2012 14:50:06 [employee of non-addressee]Says hello mate....how u doin?

02/07/2012 14:50:19 [employee of Credit Suisse] Says [employee of non-addressee] hear u are stg king now

02/07/2012 14:50:38 [employee of non-addressee]Says until the music stops..im in the chair

02/07/2012 14:51:13 [employee of Credit Suisse] Says cool well rip as much as u can until it stops

02/07/2012 14:51:31 [employee of non-addressee]Says haha...thx ..i'll see what i can do[...]

02/07/2012 14:53:38 [employee of Credit Suisse] Says hows the consevatory

02/07/2012 14:53:39 [employee of non-addressee] Says came second best

02/07/2012 14:53:47 [employee of non-addressee]Says hahaha dont start

02/07/2012 14:54:05 [employee of non-addressee]Says how have u been ...is the question ..down to single figs yet ?

02/07/2012 14:54:12 [employee of non-addressee]Says on the course

02/07/2012 14:55:38 [employee of Credit Suisse] Says nah getting there few more pars and birdies than there used to be

02/07/2012 14:56:12 [employee of non-addressee]Says great ..and fun getting there...how did u feel when ur alarm clock went off yesterday?

02/07/2012 14:56:35 [employee of Credit Suisse] Says yesterday was ok 9am start today was problem

02/07/2012 14:56:54 [employee of non-addressee]Says i love that [employee of non-addressee] lost u for a while¹³⁰

- (140) Upon re-joining, [employee of Credit Suisse] did not ask any question to verify what re-joining entailed or what he was expected to do. He knew what the membership

¹³⁰ [...]

entailed based on his previous participation and was going along with such assumptions. The information exchanges simply resumed in [employee of Credit Suisse]’s presence and with his active participation.

- (141) Furthermore, [employee of Credit Suisse] did not inform the other participating traders in the chatroom that he would not participate in some types of information exchanges or in actions of the kind he had witnessed or taken part in in the past, he did not declare that he no longer abided by any of the tacit rules founding their mutual trust and assistance. In fact, roughly one hour after re-joining the chatroom he actively participated together with the other traders in an exchange of information on their respective positions for the fix without any link with an approach for a potential transaction (see recitals (204) to (206) and (503)).
- (142) On 2 April 2012, [employee of Credit Suisse] (Credit Suisse) apologised to the other participating traders for a delay in answering a direct question about his trading position (the question is asked at 06:47:33 and answered at 07:11:46). He was aware that it was important for the participating traders to keep up a constant flow of information, since the information exchanged was only useful for a specific time window. Therefore, if the traders fail to exchange their information timely, they fall short of the tacit rules that the participating traders would gather in the private STG Lads chatroom to disclose and exchange information throughout the trading day and that the information exchanged could be used to the benefit of the participating traders.

“04/02/2012 06:47:24 UTC [employee of Credit Suisse] posted: first batch of my stops done there 35-40 [[Employee of Credit Suisse] indicated that he had executed the stop orders he had in his book, and the level]

04/02/2012 06:47:33 UTC [employee of non-addressee] posted: many more [employee of Credit Suisse] ? [[Employee of non-addressee] asked [employee of Credit Suisse] if he had still many more stop orders to execute]

04/02/2012 06:47:45 UTC [employee of non-addressee] posted: barrier at 50, got 50 to go ahead of it [[Employee of non-addressee] had a barrier order at level 50]

04/02/2012 06:48:14 UTC [employee of non-addressee] posted: ive small offers at 50+55 few stops at 7580 [[Employee of non-addressee] exposed his position, with some immediate and stop orders]

04/02/2012 07:10:28 UTC [employee of non-addressee] posted: looks like i’ll be paying u guys [[Employee of non-addressee] seemed to be in a different position than the other participating traders]

04/02/2012 07:11:46 UTC [employee of Credit Suisse] posted: sry lights 50-70 [[employee of Credit Suisse] answered to [employee of non-addressee]’s question, apologising. He had not answered immediately]

04/02/2012 07:11:55 UTC [employee of non-addressee] posted: you got many [employee of non-addressee] ? [[Employee of non-addressee] continued to inquire about other participating traders’ positions]

04/02/2012 07:12:23 UTC [employee of non-addressee] posted: no similar to [employee of non-addressee]

04/02/2012 07:12:33 UTC [employee of non-addressee] posted: ok ta”¹³¹

- (143) In its reply to the SO,¹³² Credit Suisse claims that the apology in the extract is simply “a courteous and polite apology” and it is plausible to think that this apology responds to the fact that “[employee of Credit Suisse] apologises because he is unable to match a trade”.
- (144) This is beyond the point. The extract simply illustrates that the traders apologised to each other when they failed to act in the way they were expected to. Moreover, Credit Suisse’s alternative explanation, that [employee of Credit Suisse] apologises because he is unable to match a trade, does not fit the content of the extract, because the orders discussed in this extracts are stop orders.
- (145) In this extract, [employee of Credit Suisse] first indicates that he has executed his stop orders at level 35-40. Had [employee of non-addressee] sought to simply hedge his own orders by trading with any of the other participating traders (that is, to match his position) his questions on the other traders’ positions would have been much more specific: he would have stated his own position and ask whether some of the other participating traders had a matching position.
- (146) Instead, [employee of non-addressee] asks a general question to all other participating traders together (and then individually), and indicates his own position. It so happens that [employee of non-addressee] knew already since 06:47:24 that [employee of Credit Suisse] and himself were trading in the same direction (and so, they could not match). So, [employee of Credit Suisse]’s apology does certainly not respond to the fact that he cannot match, which [employee of non-addressee] already knew. The most plausible explanation is therefore that [employee of Credit Suisse] apologises for the fact that it took him 24 minutes to answer [employee of non-addressee]’s question.
- (147) On 26 April 2012, [employee of Credit Suisse] logged in the chatroom at 6:14:54, and was therefore present in the chatroom when other participating traders exchanged information on their trading and one of them indicated that the information provided about the orders in his book was “fyg” (“for your guidance”). This shows that the information was provided so that the other participating traders could operate on the market with the benefit of that common knowledge.

“04/26/2012 06:52:45 [employee of Credit Suisse] Says they say ccy lead, to maybe in 6 months time we will be booming

04/26/2012 06:58:57 [employee of non-addressee] Says [employee of non-addressee] [[Employee of non-addressee]]

04/26/2012 06:59:03 [employee of non-addressee] Says you got a barrier¹³³ at 00 [[Employee of non-addressee] asked [employee of non-addressee] whether he has received an order from [non-addressee]’ FX options desk at a level of 00 (00 being the last two digit in a four-digit exchange rate)]

04/26/2012 06:59:07 [employee of non-addressee] Says yes

¹³¹ [...]

¹³² [...].

¹³³ A barrier order is a trade order placed by FX options desk with the FX spot desk to ensure a currency pair does not reach the option’s strike price. [...].

04/26/2012 06:59:15 [employee of non-addressee] Says 20 ish [[Employee of non-addressee] specified that the amount was around 20]

04/26/2012 06:59:17 [employee of non-addressee] Says i'm 99 offered 20 fyg [[Employee of non-addressee] indicated that he was currently selling 20 million of the currency at the level 99, for [employee of non-addressee]'s guidance]

04/26/2012 06:59:17 [employee of non-addressee] Says thats all"¹³⁴

- (148) Credit Suisse claims that the conclusion of the Commission about this extract “overlooks the fact that in essence, all information in the chatroom was provided for the guidance of others”.¹³⁵
- (149) The Commission agrees that the information provided by the participating traders in the evidence explained in the present Decision was provided to guide the other participating traders, which were their competitors, on their subsequent behaviour in the market. The fact of sharing the information about their trading to guide their competitors' behaviour on the market indicates that the traders revealing information did not fear that the other participating traders would use it against the ones who shared it. Otherwise, they would not have shared it.
- (150) On 1 June 2012, [employee of Credit Suisse], trading on behalf of Credit Suisse, and three other participating traders, and in the absence of [employee of non-addressee], complained of [employee of non-addressee]'s lesser commitment to the STG Lads chatroom and the fact they suspected him of communicating outside the information obtained in the chatroom. They thought he just reported “the good stuff” to traders in another chatroom. In view of this suspected breach of the tacit rules by [employee of non-addressee], the other traders considered whether they should enforce these rules by expelling [employee of non-addressee] from the chatroom:

08:25:13 [employee of Credit Suisse]: keeps it low

08:25:15 [employee of non-addressee]: ha

08:25:20 [employee of non-addressee]: he's full eurUSD now

08:25:27 [employee of non-addressee]: with the big boys

08:25:39 [employee of non-addressee]: we are lucky he's still in this chat

08:25:47 [employee of Credit Suisse]: think throw him out this chat [[employee of Credit Suisse] thought about excluding [employee of non-addressee] from the chatroom]

08:26:20 [employee of non-addressee]: if he has aother pop at the queen..i am inclined to agree with u [employee of Credit Suisse] [internal joke based on external discussions with [employee of non-addressee]]

08:26:20 [employee of non-addressee]: ye..

08:26:34 UTC [employee of non-addressee] posted: he just reports the good stuff back to the cartel

¹³⁴ [...].

¹³⁵ [...].

06/01/2012 08:27:01 UTC [employee of non-addressee] posted: he's forgotten his roots" ¹³⁶

- (151) Credit Suisse claims that the references to [employee of non-addressee] in the extract are exclusively a joke among the participating traders based on [employee of non-addressee]'s [...].¹³⁷
- (152) Specifically, Credit Suisse claims that the sentence "keeps it low" of [employee of Credit Suisse] refers to [employee of non-addressee]'s [...]. Although this could be true (previously to the extract, the traders were commenting on the high number of [...] trading on GBP), it is obvious from the interventions of [employee of non-addressee] between 08:25:15 and 08:25:39 that [employee of non-addressee] takes it as referring to the fact that [employee of non-addressee] is now less active in the Sterling Lads chatroom.
- (153) Indeed, the sentences "he's full eurUSD now", "with the big boys" and "we are lucky he's still in this chat" do expressly refer to [employee of non-addressee]'s trading activities and the fact that he seemed to participate in a different chatroom. Following [employee of non-addressee]'s intervention, [employee of non-addressee] followed up on the fact that [employee of non-addressee] participated in a different chatroom "the cartel" (with the "big boys" previously mentioned by [employee of non-addressee]) to which he "reports the good stuff". Whatever the consequences attached to this fact, the extract therefore confirms that exchanging fewer information and reporting the information to traders outside the chatroom is considered reprehensible by the participating traders.¹³⁸
- (154) [Employee of Credit Suisse] mentioned the possibility to exclude [employee of non-addressee] from the chatroom. Even accepting that this comment might be a joke, the joke would be that the proposed measure was exaggerated with respect to [employee of non-addressee]'s failures, but still, this would mean that [employee of non-addressee] fell short of complying with the tacit rules.
- (155) In conclusion, [employee of Credit Suisse] did not join a chatroom of traders at random, nor was he invited by chance. Rather, after joining Credit Suisse, [employee of Credit Suisse] re-joined the on-going conduct in a chatroom of which he had been a founding member with the same understanding he had when he was employed by [non-addressee]. Even if the other traders had changed the tacit rules during the period in which he was not a member of the chatroom (*quod non*), [employee of Credit Suisse] could only assume or take the risk that these rules continued to be in force (as during his time in [non-addressee]), since he did not receive or request any clarification to the contrary and he did not declare any reservation concerning the rules or the working of the cartel upon re-joining it.
- (156) Moreover, as a founding member of the STG Lads chatroom, [employee of Credit Suisse] was aware that the participation in the chatroom would bring the participating traders the ability to adjust their respective market behaviours in mutually advantageous ways. Therefore, it is logical to conclude that [employee of

¹³⁶ [...].

¹³⁷ [...].

¹³⁸ As showed in Commission Decision of 16 May 2019, *FOREX (Three Way Banana Split)* (Case AT.40135), [employee of non-addressee] was part of the Three Way Banana Split chatroom at that moment. [...] ([...]).

Credit Suisse] brought to his position at Credit Suisse the knowledge that he acquired during his time as [non-addressee]' trader vis-à-vis the functioning of the STG Lads chatroom.

4.1.3. *Arrangements reached within the chatroom*

- (157) The participating trader of Credit Suisse and the other participating traders ([non-addressee], [non-addressee], [non-addressee] and [non-addressee]) took part in nearly daily communications. As part of these communications, they engaged in extensive, recurrent and reciprocal exchanges of information, in the STG Lads chatroom, relating to different aspects of FX spot trading of G10 currencies.
- (158) This Decision does not concern the communications between the participating traders in the STG Lads chatroom, in the ordinary course of their business, relating to matters such as the provision of information needed and intended to explore trading opportunities with each other as potential counterparties or as potential customers, or communications about market colour.
- (159) This Decision concerns communications between the participating traders in the STG Lads chatroom, exchanging - in a private multilateral chatroom and on an extensive and recurrent basis - certain current or forward-looking commercially sensitive information about their trading activities, such as their outstanding customer orders, open risk positions and bid-ask spreads, with respect to FX spot trading of G10 currencies. This current or forward-looking commercially sensitive information shared was of either immediate commercial value, or of commercial value lasting for a period of minutes or at most hours after it had been shared (depending on the type of information), or until it had been superseded by new updated information that overrode it (a practice hereinafter referred to as '**exchange of information**').
- (160) The exchange of information removed part of the uncertainties that are inherent to Forex trading, increased the level of transparency and entailed an asymmetry of information between the participating and the non-participating traders, increasing the likelihood that the former would make a profit from it.
- (161) This Decision concerns the following specific types of exchange of information that occurred in the STG Lads chatroom (see Section 4.1.3.1):
- Exchange of information on outstanding customers' orders (i.e. conditional orders, orders for the fix and immediate orders);
 - Exchange of information on open risk positions;
 - Exchange of information on bid - ask spreads; and
 - Exchange of information on other details of current or planned trading activities.
- (162) The consistent flow of exchanges of commercially sensitive information occasionally enabled the traders to identify situations in which they risked interfering with each other's interests, thereby facilitating the possibility for them to occasionally coordinate their actions in the form of "**standing down**". This practice concerned instances in which traders refrained from trading as they otherwise had planned to undertake during the time of the fix on account of another trader's announced position or trading activity. The modification of some participating traders' behaviour during that time lapse reduced the risk that a transaction by a participating trader would not achieve the desired outcome and avoided simultaneous trading in opposite directions.

(163) Participating in the STG Lads chatroom also entailed for the participating traders operating in a circle of trust, mutual expectations and benefits. This required respecting a set of tacit rules that manifested in the exchanges of information and in occasional instances of coordination. These rules could be summarised as follows: (i) the participating traders would gather in the private STG Lads chatroom to disclose and exchange information throughout the trading day; (ii) the information exchanged in the chatroom would not be disclosed by the recipient traders to other competing traders outside the private chatroom; (iii) the information exchanged could be used to the benefit of the participating traders including to identify occasions appropriate for coordination; and, (iv) this information would not be used against those who shared it. Taken together, those tacit rules are referred to as the ‘**underlying understanding**’.

4.1.3.1. Extensive and recurrent exchanges of information

(164) The exchanges of certain current or forward-looking commercially sensitive information were not random or limited to punctual incidents. The participating traders in the STG Lads chatroom followed a persistent pattern of recurrent and extensive exchanges of information consistently held over time.

(165) Since the flow of the incoming orders directly determined the information exchanges, and was not perfectly foreseeable or stable from one day to the other, the persistent pattern followed by the exchanges was necessarily fluid and flexible, rather than rigidly established, including information updates to account for fresh orders or new context:

- The participating traders would typically join the chatroom in the early hours of their working day and start their day by exchanging commercially sensitive information on their current and intended trading activity, based on the constant flow of customer orders (including conditional orders) and their variable hedging needs. Exchanges typically extended for several hours, usually until the end of their working day.
- The participating traders reported continuously and kept each other updated on most moves: their strategies on the market, their outstanding customers’ orders, identity of clients, bid-ask spreads quoted for certain trade sizes, long or short open risk positions and corresponding amounts, and other current or forward-looking information.
- The participating traders typically made sure the information they had provided did not become obsolete, once superseded by fresh orders or new context. They therefore maintained a running commentary of their trading activity providing frequent updates throughout the day to avoid any misunderstanding.
- In the hour preceding fixing time, the participating traders would typically start exchanging information on their orders at the fix.

(166) This pattern, which is illustrated by the table below, was established from the very beginning of the exchanges in the chatroom, extending to the time during which [employee of Credit Suisse] participated on behalf of Credit Suisse and remained consistent until the end of the exchanges within the chatroom.

Reference of the chat	Timing of extracts	Description of the pattern
7 February 2012 ¹³⁹	07:38:23 - 07:50:25	The extract shows that the participating traders logged in the chatroom early in the morning and extensively exchanged commercially sensitive information on their trading activity and customers' orders (including conditional orders) until late in the afternoon.
	14:48:13 - 14:49:10 14:49:23 - 14:49:47	On that day, [employee of Credit Suisse] re-entered the Sterling Lads chatroom on behalf of Credit Suisse at 14:49:23.
	15:28:19 - 15:28:25 15:28:55 - 15:52:04	Between 15:28:19 and 15:52:04, the participating traders exchanged information on their positions for the upcoming fix.
	13:41:47 - 13:42:39 15:29:09 - 15:41:42 16:11:52 - 16:13:03 16:28:18	Throughout the day, they kept revealing information on their outstanding customer orders and risk positions in order to avoid any misunderstanding and to make sure that the information they disclosed remained up to date. For instance, [employee of non-addressee] revealed he did not have any position for the fix at 15:29:09 and updated the information on his position at 15:41:42.
	17:16:57	The participating traders ended their information exchanges late in the afternoon.
9 February 2012 ¹⁴⁰	07:39:57 08:39:22 - 10:41:01	The extract shows that the participating traders joined the chatroom in the early hours of their working day and started to exchange commercially sensitive information on their trading activity and customers' immediate and conditional orders.
	15:46:59 - 15:52:25 15:54:11 - 15:54:21	From 15:46:59, they exchanged information on their position for the upcoming fix and made sure that the shared information did not become obsolete by providing updates. For instance, at 15:54:41, [employee of non-addressee] updated the information on his position for the fix.
	12:14:38 - 12:14:48 12:23:41 - 12:29:28 14:21:45 - 14:31:58	The exchanges of information extended for several hours until the end of their working day.

¹³⁹ [...]

¹⁴⁰ [...]

Reference of the chat	Timing of extracts	Description of the pattern
	16:42:42	
14 February 2012 ¹⁴¹	07:27:10	The extract shows that the participating traders logged in the chatroom early in the morning.
	09:43:50 - 09:44:12 09:53:31 - 10:08:57 11:24:30 12:41:16 - 12:44:04	They exchanged commercially sensitive information on their trading activity and customers' orders (including conditional orders) and made sure that the information they had provided remained up to date. At 11:24:30, [employee of non-addressee] updated the information he disclosed at 09:53:31 to the other participating traders about conditional orders ('stops') in his portfolio.
	15:41:40 - 15:41:45 15:55:15	Before the fixing time, at 15:41:40 and 15:41:45, [employee of non-addressee] and [employee of non-addressee] revealed that they had no position for the fix. Fifteen minutes later, [employee of non-addressee] updated the information on his risk position for the fix.
	16:19:08	Information exchanges extended throughout the day and ended after the fix on that day.
13 March 2012 ¹⁴²	06:49:40	The extract shows that the participating traders started their discussions in the early hours of their working day.
	07:54:41 - 08:20:41	They exchanged commercially sensitive information on their trading activity and customers' orders. They kept updating the information they shared whenever needed. For instance, at 08:20:18, [employee of non-addressee] updated the information he gave at 07:56:18 to the other participating traders about orders in his portfolio.
	15:16:29 - 15:31:30	In the hour preceding the fix (from 15:16:29 to 15:31:30), the participating traders exchanged information on their positions for the fix. They left the chatroom at the end of their working day.
	16:28:11	
27 March 2012 ¹⁴³	05:47:58 - 05:48:00	The extract shows that the participating traders started their exchanges of information early in the morning.

141 [...].
142 [...].
143 [...].

Reference of the chat	Timing of extracts	Description of the pattern
	06:34:13 - 06:47:52 08:13:10 - 08:17:58 09:47:16 - 10:44:55 14:16:34 - 14:16:50 14:18:23 - 14:18:39 16:17:21	They disclosed commercially sensitive information on their trading activity and customers' immediate and conditional orders throughout the day and updated the information that became obsolete. For instance, at 10:44:26, [employee of non-addressee] explicitly committed to update [employee of non-addressee] on his fix order positions in the USDJPY currency pair, which he eventually did, at 14:16:41, on [employee of non-addressee]'s request at 14:16:34. The participating traders left the chatroom at the end of their working day.
14 May 2012 ¹⁴⁴	05:31:53 06:46:18 07:55:15 - 08:36:54 08:55:34 - 08:55:35 11:14:03 - 11:14:28 14:50:48 - 14:55:51	The extract shows that the participating traders joined the chatroom early in the morning. They disclosed commercially sensitive information on their trading activity and customer orders (immediate and conditional orders). Before the fixing time, at 14:50:48, they started to exchange information on their orders for the fix and stopped their exchanges of information after the fix.
3 July 2012 ¹⁴⁵	06:02:22 07:58:34 - 08:23:23 14:13:34 - 14:13:49 14:53:43 - 14:56:08	The extract shows that the participating traders joined the chatroom in the early hours of their working day. They disclosed and updated commercially sensitive information on their trading activity and customer orders throughout the day. Before the fixing time, they started to exchange information on their orders at the fix. At 14:56:08, [employee of Credit Suisse] updated the information he gave to the other participating traders at 14:53:43 (less than 3 minutes earlier) on his position for the fix in the GBPUSD currency pair.

¹⁴⁴ [...].

¹⁴⁵ [...].

Reference of the chat	Timing of extracts	Description of the pattern
5 July 2012 ¹⁴⁶	14:56:19	The participating traders stopped their exchanges of information earlier than usual on that day (at 14:56:19).
	06:12:47	The extract shows that the participating traders started their exchanges of information early in the morning.
	06:55:31 12:54:18	They revealed commercially sensitive information on their trading activity, such as conditional orders (for instance at 06:55:31) and client trades (for example at 12:54:18).
	14:34:47 - 14:51:06	In the hour preceding the fix, they started to disclose information on their orders for the fix and made sure that the information they had provided remained up to date. For instance, At 14:50:01, [employee of non-addressee] updated the information he gave to the other participating traders at 14:45:50 (less than 5 minutes before) on his position for the fix in the GBP/USD currency pair.
	15:53:23	The participating traders left the chatroom at the end of their working day

¹⁴⁶ [...]

- (167) This constant flow of information shared within the chatroom allowed the participating traders to have a full picture of what their competitors were doing - and also what they were not doing - while actually trading in the market. This flow of information contributed to create mutually consistent expectations and to remove uncertainty between the participating traders as regards the timing, extent and details of the intended conducts to be adopted on the market. It also comforted the participating traders in making their subsequent decisions informed by that knowledge.
- (168) As indicated in recital (161), this Decision concerns the following specific types of exchange of information that occurred in the STG Lads chatroom, namely:
- Exchange of information on outstanding customers' orders;
 - Exchange of information on open risk positions;
 - Exchange of information on bid - ask spreads; and
 - Exchange of information on other details of current or planned trading activities
- (169) These specific types of exchange of information are discussed in the recitals (170) to (285) below.
- (a) Exchange of information on outstanding customers' orders
- (170) The exchange of information on outstanding customers' orders concerned (i) customers' conditional orders¹⁴⁷ (such as 'stop-loss' orders), (ii) orders for the fix¹⁴⁸ and (iii) immediate orders.¹⁴⁹
- (171) The disclosure of information related to customers' orders removed some of the uncertainties that are inherent to Forex trading activities. These exchanges increased the level of transparency for the chatroom's members about their trading activities and about the potential direction (up or down) of the involved exchange rates. These information exchanges were taken into account by the participating traders to devise their future trading strategy and resulted in an asymmetry of information between the STG Lads chatroom participating traders and the non-participating traders,¹⁵⁰ providing the former with a competitive advantage and increasing the likelihood that they would make a profit from it.

¹⁴⁷ See, for instance, chats described in recitals (183) to (195) and chats of 25 May 2011 ([...]), 31 May 2011 ([...]), 15 June 2011 ([...]), 30 June 2011 ([...]), 4 July 2011 ([...]), 12 September 2011 ([...]), 19 September 2011 ([...]), 18 October 2011 ([...]), 1 November 2011 ([...]), 8 November 2011 ([...]), 17 November 2011 ([...]), 29 November 2011 ([...]), 20 December 2011 ([...]), 13 January 2012 ([...]), 26 January 2012 ([...]).

¹⁴⁸ See, for instance, chats described in recitals (204) to (213) and chats of 25 May 2011 ([...]), 31 May 2011 ([...]), 7 June 2011 ([...]), 13 June 2011 ([...]), 27 June 2011 ([...]), 4 July 2011 ([...]), 20 July 2011 ([...]), 5 August 2011 ([...]), 7 August 2011 ([...]), 12 September 2011 ([...]), 15 September 2011 ([...]), 21 September 2011 ([...]), 3 October 2011 ([...]), 17 October 2011 ([...]), 19 October 2011 ([...]), 27 October 2011 ([...]), 31 October 2011 ([...]), 2 November 2011 ([...]), 1 December 2011 ([...]), 14 December 2011 ([...]).

¹⁴⁹ See, for instance, chats described in recitals (223) to (228) and chats of 3 January 2012 ([...]) and, 13 January 2012 ([...]).

¹⁵⁰ Traders who were not members of the Sterling Lads chatroom. See also [...].

- (172) Acquiring knowledge about how a market will move or the levels at which a market will show resistance and support could enable a trader to better position himself to profit or to avoid loss. In this way, the traders who received confidential information gained a competitive advantage. [...].¹⁵¹ For instance, the information that client buy orders have been placed with other banks, may comfort a trader in his expectation that the involved exchange rate will go up. He may buy the currency pair in question to take advantage of the price movement he expects, even though he is not assured that his expectations on exchange rates will materialise.¹⁵² In this scenario, the trader who receives the otherwise confidential information would end up trading differently to how he would have traded without the information.
- (173) The participating trader of Credit Suisse and the other participating traders were expected to share and shared with each other confidential information related to their respective customers' outstanding orders. This applied to:
- (a.1) *Exchange of information on customers' conditional orders*¹⁵³
- (174) Conditional orders, such as 'stop-loss' and 'take-profit' orders, are triggered when a given price level is reached and opens the traders' risk exposure. In this case, the participating traders frequently revealed certain current or forward-looking commercially sensitive information on conditional orders such as the size or the level of the orders or the type of customers to other participating traders on an extensive basis.
- (175) The frequency, content and nature of the information exchanges relating to customers' conditional orders support the Commission's finding that at any given point in time, the participating traders would normally be informed about the future direction of the conditional orders discussed (i.e. whether those orders were buy or sell orders) because they were able to compare the orders levels with the market levels at that time.¹⁵⁴ Therefore, they did not need to reveal the direction of the trades in the chatroom. They also informed the other participating traders when their stop orders had been executed.
- (176) [...].¹⁵⁵ The participating traders could devise their future trading strategy with the benefit of that information. In this respect, the recurrent update of knowledge of customers' confidential conditional orders placed with the participating traders was relevant to the participating traders' decision-making and allowed them to adjust their trading strategies as a result of exploiting that level of insider information of competitors in their trading activities for their own benefit.
- (177) Moreover, revealing the existing triggering level of clients' conditional orders (which are pending and confidential) to competing traders cannot be justified as being necessary for the purpose of exploring trading or trading with each other. Two traders can engage in transactions with each other when they have pending clients' conditional orders to hedge their risk. In such a case, the trader who acts as a

¹⁵¹ [...]

¹⁵² The price of a currency, as with any other commodity, is determined by supply and demand factors. All things remaining equal, the filling of a large client buy order should typically lead to a rise in price.

¹⁵³ When a currency price hits the level of conditional orders, the traders fill the clients' orders at or around the specified price.

¹⁵⁴ If the conditional stop-loss order level is above (below) the market level, the order is a buy (sell) order.

¹⁵⁵ [...]

counterparty needs to know the volume, the direction of the trade and the currency pair involved but does not need to know whether the transaction responds to a conditional order at all or details such as the level of conditional orders.

- (178) Such disclosures of conditional orders exposed the provider of the information to the risk of market opportunism by the other participating traders. In this case, the disclosure of such information provided the participating traders with an insight into the potential hedging conduct of the trader who disclosed the information. In principle, by disclosing his/her conditional orders, a trader runs the risk that the other participating traders use that information to trade against him/her, for instance by carrying out a transaction on the interdealer market before him/her to take advantage of the anticipated impact of his hedging trade on the currency value and thereby making a profit, to the detriment of the trader. In this case, such risk exposure was compounded by the fact that the traders revealed such information recurrently to several competing traders at several trading desks at once.
- (179) The exchange of information on customers' conditional orders entailed that the traders in the chatroom were better informed than the non-participating traders of the levels at which conditional orders tended to cluster as well as the direction of the orders discussed. The participating traders could devise their future strategy in the market with the benefit of that information. The execution of conditional orders might affect the evolution of the currency price depending on their size and their direction. The size is not explicitly mentioned in all the chats but the transactions discussed by traders are typically large (see recital (22)). The price of a currency, as with any other commodity, is determined by supply and demand factors. All things remaining equal, the purchase (sale) of currencies linked to large client orders should typically lead to a rise (fall) in price. Therefore, [...].¹⁵⁶
- (180) The more that is known about competitors' conditional orders for a specific currency pair, the greater the degree of confidence a trader may have about the potential evolution of the exchange rate in question. The participating traders may thereby have taken advantage of this greater degree of confidence to adjust their trading behaviours. In this respect, [...].¹⁵⁷
- (181) For instance, if a trader is informed that buy conditional orders have been placed around a specified market level for a specific currency pair, he may buy this currency pair when the market moves in the direction of the orders triggering level and then sell it afterwards, taking advantage of the expected price movement if it materialises effectively. In this scenario, [...].¹⁵⁸
- (182) [Employee of Credit Suisse] engaged in some of those exchanges while trading on behalf of Credit Suisse. All the instances described below in chronological order show the recurring exchange of information on conditional orders being unwarranted to conduct bilateral trades in the ordinary course of a trader's business, thereby unnecessarily increasing the mutual availability of information on their trading strategies, conditions and constraints, and thereby increasing the possibility of spotting occasions of coordination.

¹⁵⁶ [...]
¹⁵⁷ [...]
¹⁵⁸ [...]

- (183) On 14 February 2012, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] exchanged information about conditional orders in EUR/USD and USD/JPY. [Employee of non-addressee] revealed that he had received buy stop orders for EUR/USD whose triggering levels could be reached (*'still have a few eurUSD stops higfher that look vulnerable'*). [Employee of non-addressee] disclosed that he had also received the same type of orders (*'got eur stops coming in here too just above'*). That disclosure of information helped the participating traders to increase their degree of confidence that the EUR/USD price would increase¹⁵⁹, giving them an advantage over their less-informed competitors by allowing them to better position themselves to profit or to avoid losses. For instance, they could have bought that currency pair and sold it afterwards in order to make a profit. Later, [employee of non-addressee] asked the other participating traders whether they had conditional orders in USD/JPY at levels he specified and indicated he had some stop orders placed at that level. The exchanges of information then focussed on this currency pair. [Employee of Credit Suisse] revealed at 12:44:04 that he had stop orders similar to those of [employee of non-addressee].

"02/14/2012 09:43:50 [employee of non-addressee] Says i feel eurGBP cud be the leader on next run...still have a few eurUSD stops higfher that look vulnerable [[Employee of non-addressee] thought that the market would privilege the trading in EUR/GBP. His book included stop orders for EUR/USD at a level higher than the existing market value. He thought the triggering value of those stop orders could be reached]

02/14/2012 09:44:12 [employee of non-addressee] Says ok ta [thanks]

[...]

02/14/2012 09:53:31 [employee of non-addressee] Says got eur stops coming in here too just above [[Employee of non-addressee] informed that he had new stop orders for EUR slightly above the market value of the currency]

02/14/2012 10:07:25 [employee of non-addressee] Says anything inUSDJPY at this 78.25-35 lvi lads ? [[Employee of non-addressee] asked other participating traders if they had stop orders for the USD/JPY currency pair at the 78.25-35 level]

02/14/2012 10:07:34 [employee of non-addressee] Says seeing a few sellers mate [[Employee of non-addressee] replied that he was not aware of stop orders in USD/JPY, but that he had some immediate orders at the indicated level]

02/14/2012 10:07:45 [employee of non-addressee] Says we've a few stops [referring to his intervention of 10:07:25, [employee of non-addressee] confirmed that he had some stop orders placed at the level indicated]

02/14/2012 10:07:59 [employee of non-addressee] Says few offers [answering to [employee of non-addressee], [employee of non-addressee] indicated that he did not have any stop order in USD/JPY, but that he did have some immediate orders at the indicated level]

02/14/2012 10:08:01 [employee of Credit Suisse] Says more stops than offers [answering to [employee of non-addressee], [employee of Credit Suisse] indicated

¹⁵⁹ See footnote 152.

that he had both immediate orders and stop orders in USD/JPY, with more stop orders than immediate ones]

02/14/2012 10:08:57 [employee of non-addressee] Says tks

[...]

02/14/2012 12:41:16 [employee of non-addressee] Says rooksies buy usdjpy
[[Employee of non-addressee] informed that Russian counterparties were buying USD/JPY]

02/14/2012 12:43:11 [employee of non-addressee] Says dodge bank on top

02/14/2012 12:43:19 [employee of non-addressee] Says we've stops 28-35
[[Employee of non-addressee] shared the level of his stop orders for the USD/JPY currency pair]

02/14/2012 12:44:04 [employee of Credit Suisse] Says yeh same here"¹⁶⁰
[[employee of Credit Suisse] informed the participating traders that he had got stop orders similar to those of [employee of non-addressee]]

- (184) On 15 February 2012, [employee of Credit Suisse] disclosed information on conditional orders he received in EUR/GBP from several clients. More precisely, he revealed that he had conditional orders in EUR/GBP for customers above the level of 0.8405 for an amount of approximately EUR 70 million and indicated that he suspected that the amount of conditional orders above that level was increasing.

02/15/2012 10:45:51 [employee of Credit Suisse] Says these stops must be getting bigger n bigger above 0.8405 , i,v,e even got approx 70 now various accounts"¹⁶¹
[[employee of Credit Suisse] informed that he had approximately stop orders for EUR 70 million for several customers in EUR/GBP above the indicated level. In view of the large amount of orders he had received, he suspected that this must be a tendency in the market]

- (185) On 6 March 2012, [employee of Credit Suisse], [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] discussed conditional orders in EUR/USD, AUD/USD and GBP/USD. They revealed information on the levels of their stop orders ('below 00', '85', 'below 80').

"03/06/2012 08:41:39 [employee of Credit Suisse] Says how can people put stops below 00, when thats what we did yesterday

03/06/2012 08:42:11 [employee of non-addressee] Says no idea [employee of Credit Suisse]

03/06/2012 08:42:52 [employee of non-addressee] Says i got internal yank¹⁶² eur stops at 85..go fig that [[Employee of non-addressee] expressed his surprise because he had stop orders from his own bank for the EUR/USD currency pair at level 85]

¹⁶⁰ [...].

¹⁶¹ [...].

¹⁶² "Yank" is an abbreviation of "yankee", a term used to refer to Americans. We understand this expression in this context to mean either USD or an order from an American client (in which case, "internal" would stand from "international").

03/06/2012 08:42:58 [employee of non-addressee] Says slag¹⁶³ stops in audusd below 00 too [[Employee of non-addressee] expressed his disappointment for the fact that he received some stop orders for AUD/USD at a specific level]

03/06/2012 08:43:16 [employee of non-addressee] Says i got them in cable below 80 [[Employee of non-addressee]informed the other participating traders that he had got some stop orders in the GBP/USD currency pair, and their level]

03/06/2012 08:43:37 [employee of non-addressee] Says few bids in aud ahead of the 00 [employee of non-addressee]¹⁶⁴ [[Employee of non-addressee] informed [employee of non-addressee] that he had some immediate orders to buy Australian Dollar beyond the level of [employee of non-addressee]’s stop orders for the same currency]

- (186) On 13 March 2012, [employee of Credit Suisse], [employee of non-addressee] and [employee of non-addressee] revealed they had received conditional stop orders in GBP/USD and their levels (‘70-00’, ‘60-10’, ‘65-70’). [Employee of non-addressee] also disclosed he had conditional orders in USD/JPY and their levels (‘Says some stops 70+80 in dorrar’).

“03/13/2012 07:53:53 [employee of non-addressee] Says cable a bit smelly to me...

03/13/2012 07:54:12 [employee of non-addressee] Says i was short, but squared up...few m/e bids around a little lower suggesting they know something [[Employee of non-addressee] indicated that he had closed a short position he had in GBP/USD. [Employee of non-addressee] further noted that counterparties, probably from the Middle East (“m/e”), were buying GBP against USD at a lower value than the market value. He suggested those buyers might have some intelligence on the evolution of GBP]

[...]

03/13/2012 07:54:41 [employee of Credit Suisse] Says stops above 70-00 here [[employee of Credit Suisse] shared with the other participating traders that he had stop orders for GBP/USD, and their level]

03/13/2012 07:54:58 [employee of non-addressee]Says more liekly cable tracks eur back to 1.57 [[Employee of non-addressee] foresaw that the value of the GBP/USD currency pair would decrease to 1.57, the same way EUR decreased against USD]

03/13/2012 07:55:00 [employee of non-addressee] Says yes stops 60-10 top side here [[Employee of non-addressee] confirmed [employee of non-addressee]’s analysis, indicating the level of his stop orders, probably for the GBP/USD currency pair]

03/13/2012 07:55:02 [employee of non-addressee]Says eur done its stops

03/13/2012 07:56:18 [employee of non-addressee] Says yes [employee of non-addressee], not m/e bids but i got a few bids below [[Employee of non-addressee] answered to [employee of non-addressee]’ previous comments, indicating that he

¹⁶³ Slag: a task that is not worth the time or effort of paying attention to it, but none the less draws one in. Used to describe unpleasant situations.

¹⁶⁴ [...].

also had immediate orders for GBP/USD below market value, although not from Middle East counterparties]

03/13/2012 08:03:50 [employee of non-addressee] Says few little stops here 65-70 [[Employee of non-addressee] shared with the other participating traders that he had a small number of stop orders in GBP/USD and their level]

03/13/2012 08:04:04 [employee of non-addressee] Says some stops 70+80 in dorrar¹⁶⁵ [[Employee of non-addressee] informed that he had some stop orders in USD/JPY, and their level]

03/13/2012 08:20:18 [employee of non-addressee] Says those bids i had lower come to market lads [[Employee of non-addressee] updated the other participating traders on the immediate orders for GBP/USD he mentioned at 7:56:18. He said that the bids were then at market level]

03/13/2012 08:20:41 [employee of non-addressee] Says tks''¹⁶⁶

- (187) On 26 March 2012, [employee of non-addressee] informed the other participating traders that he needed to sell GBP/USD and asked them for information about the buying trend in this currency pair. [Employee of non-addressee] and [employee of Credit Suisse] revealed they had conditional stop orders in GBP/USD and disclosed their levels ('15-20' and '1.5920 – 45'). At 13:12:36, [employee of non-addressee] updated the information he had given as the levels of his stop orders had increased compared with what he had previously shared at 12:11:22. At 13:14:18, [employee of Credit Suisse] informed that his GBP/USD stop orders he had mentioned at 12:11:55 had been triggered. The exchange of commercially sensitive information on customers' buy conditional stop orders would have comforted the participating traders in the view that the GBP/USD exchange rate would increase. In this respect, they could have purchased that currency pair and sold it afterwards in order to make a profit. This exchange of information was also suitable to help [employee of non-addressee] to decide on the timing of the sale of his long position in GBP/USD.

"03/26/2012 10:55:12 [employee of non-addressee] Says anyone seieng this cable buying ?

[...]

03/26/2012 12:10:36 [employee of non-addressee] Says we are net sellers small sellers [[Employee of non-addressee] asked the other participating traders about the buying trend in the GBP/USD currency pair. He shared that he was in a selling position]

03/26/2012 12:10:50 [employee of non-addressee] Says they say on friday we had a load of stops

03/26/2012 12:11:18 [employee of non-addressee] Says we have some...

03/26/2012 12:11:22 [employee of non-addressee] Says bulk 15-20 tho [[Employee of non-addressee] answers to [employee of non-addressee] saying that they have some orders in GBP/USD, the majority of which at a level of 15-20]

03/26/2012 12:11:27 [employee of non-addressee] Says tks

¹⁶⁵ "Dorrar" means USD/JPY.

¹⁶⁶ [...]

03/26/2012 12:11:55 [employee of Credit Suisse], Says stops now 1.5920-45 [[employee of Credit Suisse] also informed [employee of non-addressee] about his stop orders in GBP/USD, and their level]

[...]

03/26/2012 13:12:36 [employee of non-addressee] Says stops higher cable now aswell....seeing poeple trying to pick the top [[Employee of non-addressee] informed that the level of his stop orders had increased compared with what he had previously shared at 12:11:22]

[...]

03/26/2012 13:13:56 [employee of non-addressee] Says that took an age to get to 50 [[Employee of non-addressee] noted that the market value of the GBP/USD currency pair is now 50 or above]

03/26/2012 13:14:18 [employee of Credit Suisse], Says all my stops done [[employee of Credit Suisse] informed that he had executed all the GBP/USD stop orders he had mentioned at 12:11:55, once the value market had exceeded the triggering point]

03/26/2012 13:14:27 [employee of non-addressee], Says ur getting gd at that [employee of Credit Suisse] ”¹⁶⁷

- (188) On 27 March 2012, [employee of non-addressee] disclosed that he had difficulties to transform conditional stop orders in the GBP/USD currency pair at a specified level (*‘tuff to get doen stops here in cable at 90’*). [Employee of Credit Suisse] and [employee of non-addressee] revealed the levels of their conditional stop orders for the same currency pair (*‘1.6000-20’* and *‘circa 0005’*).

“ 03/27/2012 08:17:11 [employee of non-addressee] Says anyone got cable offers near here?

03/27/2012 08:17:21 [employee of non-addressee] Says got ntg much in my book [[Employee of non-addressee] asked the other participating traders about their position in the GBP/USD currency pair, himself having not much in his book]

03/27/2012 08:17:38 [employee of non-addressee] Says tuff to get doen stops here in cable at 90 [[Employee of non-addressee] indicated that he was having difficulties to transform stop orders in the GBP/USD currency pair at the indicated level]

03/27/2012 08:17:58 [employee of non-addressee] Says ta [employee of non-addressee]

03/27/2012 08:19:09 [employee of Credit Suisse] Says 1.6000-20 here [[employee of Credit Suisse] shared the level of his stop orders for the GBP/USD currency pair]

03/27/2012 08:20:46 [employee of non-addressee] Says tiny here circa 0005 [[Employee of non-addressee] also shared the level of his stop orders for the GBP/USD currency pair]

03/27/2012 08:21:15 [employee of non-addressee] Says apprec... ”¹⁶⁸ [appreciate]

¹⁶⁷ [...]
¹⁶⁸ [...].

- (189) On 10 April 2012, [employee of Credit Suisse] and [employee of non-addressee] shared information on their conditional stop orders for the EUR/GBP currency pair. [Employee of Credit Suisse] disclosed that he had some small stop orders at the level of “0.8280”. [Employee of non-addressee] revealed that he had received a few stop orders at the level of “7080” [i.e. 0.8270 to 0.8280] and more orders above the level of “00” [i.e. 0.8300]. [Employee of Credit Suisse] specified that he did not have any stop orders at the levels mentioned by [employee of non-addressee] and that he thought that those levels would not be easily reached.

“04/10/2012 09:50:08 [employee of Credit Suisse] Says small stops start 0.8280
[[employee of Credit Suisse] shared information on his stop orders for the EUR/GBP currency pair]

[...]

04/10/2012 09:50:37 [employee of non-addressee] Says yes we got a few 7080

04/10/2012 09:50:44 [employee of non-addressee] Says more above the 00 [In this line and the previous one, [employee of non-addressee] shared information on his own stop orders for the same currency pair as [employee of Credit Suisse]]

04/10/2012 09:51:00 [employee of Credit Suisse] Says nix there but that would be the pain level”¹⁶⁹ [[employee of Credit Suisse] did not have any stop order but thought that the level mentioned by [employee of non-addressee] was one from which it would be difficult to execute the orders]

- (190) On 13 April 2012, [employee of non-addressee] revealed that he had received a sell conditional stop order for the GBP/USD currency pair below the market value and specified its level (*‘right amongst your bids’*). He kept updating the other participating traders. At 08:30:44, he informed them that all his stop orders had been triggered. At 08:32:21, he disclosed that he had again conditional stop orders in GBP/USD, but less than previously. [...] ¹⁷⁰ (see recitals (178) (181)). The knowledge of sell stop loss orders is relevant for the participating traders’ efforts to anticipate a decrease in the exchange rate in question. They could have taken advantage of this information by selling this currency pair and buying it afterwards.

“04/13/2012 06:44:15 [employee of non-addressee] Says few bids below at 05+15 in betty”¹⁷¹ [[Employee of non-addressee] shared information on immediate orders he had received for the GBP/USD currency pair, and their level, which was below the market value]

[...]

04/13/2012 08:09:43 [employee of non-addressee] Says just been given a stop in cable below

04/13/2012 08:09:51 [employee of non-addressee] Says right amongst your bids

04/13/2012 08:09:59 [employee of non-addressee] Says [employee of non-addressee] [In this line and the two previous ones, [employee of non-addressee] informed that he had received a stop order in GBP/USD, also below the market

¹⁶⁹ [...].

¹⁷⁰ [...].

¹⁷¹ “Betty” is a synonym of “cable”, meaning GBP/USD currency pair.

value. He specified that the level was similar to the one previously indicated by [employee of non-addressee]]

04/13/2012 08:10:02 [employee of non-addressee] Says for much [employee of non-addressee]

[...]

04/13/2012 08:30:44 [employee of non-addressee] Says stopped pulled [[Employee of non-addressee] informed the other participating traders all his stop orders had been triggered]

04/13/2012 08:31:30 [employee of Credit Suisse] Says nice

04/13/2012 08:32:16 [employee of non-addressee] Says back in now

04/13/2012 08:32:21 [employee of non-addressee] Says only for half [In this line and the previous one, [employee of non-addressee] informed the other participating traders that he had again stop orders in GBP/USD, but less than previously]

04/13/2012 08:39:00 [employee of non-addressee] Says ok”¹⁷²

- (191) On 25 April 2012, [employee of non-addressee] revealed that he had conditional stop loss orders for the GBP/AUD currency pair and their level. Later, [employee of non-addressee] indicated that he had stop orders for the EUR/GBP currency pair, and their level. [employee of Credit Suisse] disclosed that he did not observe many transactions in the cross currency pair in question.

“04/25/2012 08:49:35 [employee of non-addressee] Says picking up stgoz stops below 1.5500 [[Employee of non-addressee] indicated that he has stop orders in GBP/AUD¹⁷³, and their level]

[...]

04/25/2012 08:56:16 [employee of non-addressee] Says Russia gives me pounds [[Employee of non-addressee] indicated that a Russian client had asked him to sell to him an undetermined currency in exchange of GBP]

04/25/2012 08:57:51 [employee of non-addressee] Says Stops thru 20 x¹⁷⁴ [[Employee of non-addressee] indicates he had stop orders for the EUR/GBP currency pair, and their level]

04/25/2012 08:58:03 [employee of non-addressee] Says ta

04/25/2012 09:10:47 [employee of Credit Suisse] Says dont seem to be that much up here in the xxx [[employee of Credit Suisse] noted that he did not observe many transactions in the cross currency discussed]

04/25/2012 09:10:54 [employee of Credit Suisse] Says either way”¹⁷⁵

¹⁷² [...].

¹⁷³ The participating traders used the terms “ozwaldo” or “ozzie” to refer to the AUD/USD currency pair. However, in this example, the reference to “stgoz” together with the rate of 1.5500 suggests [employee of non-addressee] is talking about GBP/AUD.

¹⁷⁴ “x” means “cross currency”: a cross currency transaction is one that consists of a pair of currencies traded in Forex that does not include the U.S. dollar. One foreign currency is traded for another without having first to exchange the currencies into U.S. dollars. The most commonly traded cross currency is EUR/GBP. In many occasions, the participating traders use “x” or “xx” to refer to the EUR/GBP currency pair.

- (192) On 30 May 2012, [employee of Credit Suisse] asked the other participating traders whether they had conditional stop loss orders triggered at a specified level for an unspecified currency. [Employee of non-addressee] replied to him by disclosing the level of his conditional stop loss orders. [Employee of Credit Suisse] thanked him for the information.

“05/30/2012 11:03:58 [employee of Credit Suisse] Says stops got done at 04 there ?? [[employee of Credit Suisse] asked the other participating traders the level at which they executed their stop orders]

05/30/2012 11:04:28 [employee of non-addressee] Says ours was at 03

[...]

05/30/2012 11:04:42 [employee of Credit Suisse] Says ta”¹⁷⁶

- (193) On 10 July 2012, [employee of non-addressee] asked the other participating traders whether they had conditional stop orders in EUR below the market value. [Employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] answered negatively. [Employee of non-addressee] also disclosed that he did not have such orders. The knowledge that the participating traders did not have any sell conditional stop orders in the currency in question could have helped to increase their degree of confidence that the market price for this currency would not tend to decrease. These exchanges of information were suitable to inform their subsequent trading behaviour. For instance, they would have waited before opening a short position in the currency discussed.

“07/10/2012 14:11:22 [employee of non-addressee] Says anyone with stops lower eur? [[Employee of non-addressee] asked the other participating traders whether they had stop orders in EUR below the market value]

07/10/2012 14:12:14 [employee of non-addressee] Says ntg mate

07/10/2012 14:12:20 [employee of non-addressee] Says empty

07/10/2012 14:12:34 [employee of non-addressee] Says ntg here either

07/10/2012 14:12:51 [employee of Credit Suisse] Says nope , no bids either”¹⁷⁷
[[Employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] answered negatively. [employee of Credit Suisse] added that he did not have any immediate order with those characteristics either]

- (194) On 11 July 2012, [employee of Credit Suisse] disclosed that all the conditional stop orders he had in his book for the GBP/USD currency pair were triggered. [Employee of non-addressee] revealed that he had received some conditional stop orders in GBP/USD above a certain level. [Employee of non-addressee] and [employee of non-addressee] informed the other participating traders when their conditional stop orders were executed.

“07/11/2012 09:21:38 [employee of Credit Suisse] Says all my cable stops done
[[employee of Credit Suisse] informed the other participating traders that all the stop orders he had in his book for the GBP/USD currency pair were executed]

¹⁷⁵ [...].
¹⁷⁶ [...].
¹⁷⁷ [...].

07/11/2012 09:21:52 [employee of non-addressee] Says i got more above the fig¹⁷⁸
[[Employee of non-addressee] indicated that he had still some stop orders for the GBP/USD currency pair above a certain level]

07/11/2012 09:22:00 [employee of Credit Suisse] Says show off

07/11/2012 09:22:10 [employee of non-addressee] Says all mine dun aswell
[[Employee of non-addressee] informs that all his stop orders for the currency pair discussed were also executed]

07/11/2012 09:22:10 [employee of non-addressee] Says haha..never

07/11/2012 09:25:02 [employee of non-addressee] Says we are donw with betty stops too and we had a few audusd ... back to sleep now¹⁷⁹ [[Employee of non-addressee] informed that all his GBP/USD and AUD/USD stop orders were triggered]

(195) On other occasions, [employee of Credit Suisse], while trading on behalf of Credit Suisse, did not directly engage in the exchanges about conditional orders; however, he was present in the chatroom at the time they happened or he logged in later on that day, and therefore had access to these exchanges. The disclosures on conditional orders were suitable to increase [employee of Credit Suisse]’s level of confidence about the potential evolution of the market price for the currency pairs in question and thereby to enable him to make better informed decisions on his trading strategy:

- on 07/02/2012, from 13:41:47 to 13:44:00, the participating traders exchange of information on pending stop orders and their respective trigger levels in EUR/JPY.¹⁸⁰
- on 27/02/2012, from 14:09:45 to 14:11:19 (exchange of information on pending stop orders and their respective trigger levels in USD/JPY following a decrease in this Forex rate)¹⁸¹;
- on 12/03/2012, from 9:27:26 to 11:52:50 (exchange of information on triggered and pending stop orders in GBP/USD)¹⁸²;
- on 19/03/2012, from 14:46:59 to 15:42:21 (exchange of information on pending stop orders and their respective trigger levels in EUR/GBP and EUR/JPY)¹⁸³;
- on 20/03/2012, from 8:17:47 to 8:18:23 and from 14:24:13 to 14:24:51 (exchange of information on triggered and pending stop orders and their respective trigger levels in GBP/USD and EUR/USD)¹⁸⁴;
- on 11/04/2012, from 8:45:39 to 11:17:49 (exchange of information on pending stop orders and their respective trigger levels in GBP/USD and EUR/GBP)¹⁸⁵;

178 First two digits in a four-decimal price are often called “big fig” and the latter two digits the “little fig”.

179 [...]

180 [...].

181 [...]

182 [...]

183 [...]

184 [...].

185 [...].

- on 12/04/2012, from 12:47:56 to 14:09:42 (exchange of information on pending stop orders and their respective trigger levels (currency pair not explicitly mentioned))¹⁸⁶;
- on 25/04/2012, from 7:43:33 to 8:42:58 (exchange of information on pending stop orders and their respective trigger levels in GBP/AUD and GBP/NZD)¹⁸⁷;
- on 26/04/2012, from 10:47:19 to 10:47:26 (exchange of information on pending stop orders and their respective trigger levels in a currency pair involving JPY)¹⁸⁸;
- on 16/05/2012, from 10:26:14 to 12:39:09 (exchange of information on pending stop orders and their respective trigger levels in USD/JPY and EUR/GBP)¹⁸⁹.

– (a.2) *Exchange of information on WMR or ECB fix positions*

- (196) Traders usually engaged in these exchanges in the hour preceding the relevant fix. They shared commercially sensitive information on their fix positions (such as the size or direction of the orders) not only to explore trading opportunities as potential counterparties or as potential customers but also to identify occasions to coordinate trading at or around the fix. Current or forward-looking information on customers' orders executable at the fix remains relevant information until the relevant fix.
- (197) Revealing current or forward-looking information on the size of customers' orders executable at the WMR or the ECB fixes to competing traders was premature for exploring whether the other traders would be in the position to match¹⁹⁰ the trade and shows that the objective of disclosure was to share commercially sensitive information that would not normally be exchanged with competing traders. For the purpose of identifying a counterparty to that trade, it was sufficient to disclose the direction and currencies of customers' orders executable at the WMR or the ECB fixes. Revealing the size of the order was only necessary once the traders would have identified which other traders were in the opposite direction for the relevant currency pair and, therefore, willing to match the trade.
- (198) The participating traders did not only reveal the size to traders with whom no matching possibility existed, but often kept updating each other on the evolution of their positions heading to the fix, even when the traders who disclosed their fix positions had realised they had the same risk exposure for the upcoming fix (that is being long or short in a specific currency) and thus they would not trade with each other to offset their risk.
- (199) The exchanges of information show that the participating traders did not disclose their net positions for the fix with the sole objective to match them in advance of the fix. In particular, some of the exchanges show that the participating traders did not necessarily seek to net off their risk with each other when they had opposite positions; and other exchanges reveal that they kept each other updated about the

¹⁸⁶ [...]

¹⁸⁷ [...]

¹⁸⁸ [...]

¹⁸⁹ [...]

¹⁹⁰ If one trader wants to buy an amount of a specific currency and another one wants to sell the same amount of the same currency at the same price, their orders match and a transaction is made.

evolution of their position even though they did not need to net off their respective risk positions with each other when holding opposite positions so that their net client order positions could be aligned (see recital (203)).

- (200) The traders who revealed information on their fix positions were then exposed to the risk of market opportunism by the information recipients, without the opportunity of trading with each other. By exchanging information on customers' orders for fixes a trader runs the risk that the other participating traders would use that information to trade against him.
- (201) The disclosures of customers' orders for fixes in the chatroom provided the participating traders with an insight into the potential hedging conduct of the provider of the information. By disclosing those orders a trader was exposed to the risk that the other traders would carry out trades on the interdealer market to take advantage of the anticipated impact on the currency value of his hedging transaction, to his/her detriment (see recitals (204) to (213)). In this case, such risk exposure was compounded by the fact that the traders revealed such information recurrently and to several participating traders that worked at several competing trading desks at once.
- (202) The transcripts of the exchanges taking place in the STG Lads chatroom indicate that the participating traders were provided with more information than they would otherwise have had about competitor positions which enabled them to predict with a greater degree of confidence the direction in which the market may move at the time of the fix. In this respect, [...] ¹⁹¹ [...] ¹⁹² (for example, by trading at or in advance of the fix in order to hedge their net client orders, by choosing not to net off or by refraining from trading), thereby attempting to boost their profits at the expense of other traders and counterparties who did not have access to the information.
- (203) The Commission provides below in chronological order some instances of exchanges of information on fix positions that occurred in the STG Lads chatroom while [employee of Credit Suisse] was trading on behalf of Credit Suisse:
- (204) On 7 February 2012, the participating traders, including [employee of Credit Suisse] (the day he re-joined the chatroom, [...] after becoming Credit Suisse's employee), exchanged information on their respective positions leading up to the fix, without any link with an approach for a potential transaction that could explain the need for this exchange of non-aggregated, commercially sensitive information on current and intended trading.
- (205) During this exchange, the participating traders revealed that they had orders to sell GBP to customers at the upcoming fix. Even though their net client orders were aligned and they could not match their positions, the participating traders kept each other updated about the evolution of their positions for the fix. For instance, at 15:50:50, [employee of non-addressee] updated the information he shared at 15:29:34 by revealing that the amount he needed to sell to clients at the upcoming fix then reached 200 million GBP.
- (206) The information exchanges on fix positions provided the participating traders with more information than they would otherwise have had about competitor positions and enabled them to predict with a greater degree of confidence the direction in

¹⁹¹ [...]
¹⁹² [...]

which the market would move at the time of the fix. As the disclosing traders had GBP buy orders from customers, they would typically manage their risk by buying the currency in question. Purchases of large GBP amounts during or before the fix could potentially prompt an increase in the currency price, depending on supply and demand at that time. As a result, [...] ¹⁹³, for example, by trading in the market at or in advance of the fix. They would make a profit if the price at which they had bought the currency in question in the market before or during the fix would be lower than the fix rate at which they would sell it to their customers.

“02/07/2012 15:28:19 [employee of non-addressee] Says lose some quid at fix

02/07/2012 15:28:25 [employee of non-addressee] Says get eur [[employee of non-addressee] had orders to sell an undetermined amount of GBP against EUR to customers at the upcoming fix rate and needed to buy GBP in the interdealer market to offset this exposure]

[...]

02/07/2012 15:28:55 [employee of non-addressee] Says same Ihs eurGBP [[employee of non-addressee] was trading in the same direction as [employee of non-addressee]]

02/07/2012 15:29:09 [employee of non-addressee] Says nothing here so far

02/07/2012 15:29:34 [employee of non-addressee] Says yep we lose betty also [[Employee of non-addressee] indicated that he would also be selling GBP to clients at the upcoming fix rate]

02/07/2012 15:41:42 [employee of non-addressee] Says rhs in acle at the fix [[employee of non-addressee] had orders to sell GBP against USD to clients at the fix rate]

02/07/2012 15:50:27 [employee of Credit Suisse] Says smalls here also [[employee of Credit Suisse] also had orders to sell GBP against USD to clients at the fix rate for a small amount]

02/07/2012 15:50:50 [employee of non-addressee] Says a deuce¹⁹⁴ now betty [[employee of non-addressee] indicated the amount he needed to sell to clients at the fix rate then reached 200 million GBP]

02/07/2012 15:52:04 [employee of non-addressee] Says lost deuce eur¹⁹⁵ [[employee of non-addressee] indicated he received orders to sell 200 million EUR to customers at the fix rate]

- (207) On 27 March 2012, [employee of Credit Suisse] logged into the chatroom at 6:17:36 and was present during a conversation heading to the 4pm fix where the participating traders shared their positions in USD/JPY and GBP/USD in the minutes heading to the fix, with none of them expressing any interest to match, and providing for the rest of competitors specific, non-aggregated commercially sensitive information. [Employee of non-addressee] asked [employee of non-addressee] and [employee of non-addressee] to share their position in USD/JPY ahead of the fix, probably to allow him to adjust his trading strategy for the fix. [Employee of non-addressee]

¹⁹³ [...]

¹⁹⁴ “Deuce” means 200 million in a given currency.

¹⁹⁵ [...]

disclosed he had orders to buy USD 200 million against JPY from clients at the upcoming fix rate. [Employee of non-addressee] revealed he had no positions for that currency pair. At the request of [employee of non-addressee], [employee of non-addressee] also disclosed that he had no position in GBP/USD for the upcoming fix (*'Nothing here'*). Some minutes after the fix, some of the participating traders commented on the results of the fix.

03/27/2012 14:16:34 [employee of non-addressee] Says [employee of non-addressee] any usdjpy at fix then? [[employee of non-addressee] asked [employee of non-addressee] whether he had a position for the USD/JPY currency pair at the fix]

03/27/2012 14:16:41 [employee of non-addressee] Says Ihs 2 ton [[employee of non-addressee] replied that he had orders to buy USD 200 million against JPY from clients at the upcoming fix rate]

03/27/2012 14:16:48 [employee of non-addressee] Says now u tell me

03/27/2012 14:16:50 [employee of non-addressee] Says hahaha

03/27/2012 14:17:04 [employee of non-addressee] Says haha., wmr not 3 oclock [[employee of non-addressee] indicated that his position was for the WMR fix (at 4pm) not the one at 3pm]

[...]

03/27/2012 14:18:23 [employee of non-addressee] Says [employee of non-addressee] keeping quiet [[employee of non-addressee] noted that [employee of non-addressee] had not exchanged his position]

03/27/2012 14:18:39 [employee of non-addressee] Says nothing here [[employee of non-addressee] replied that he had none]

[...]

03/27/2012 14:53:21 [employee of non-addressee] Says anything in betty ? [[Employee of non-addressee] asked the other participating traders whether they had a position in GBP/USD at the fix]

03/27/2012 14:53:26 [employee of non-addressee] Says nothing here

03/27/2012 14:53:55 [employee of non-addressee] Says suppose i should ask [...] ! [[Employee of non-addressee] joked that he should inquire after [...], an American bank, on the GBP/USD currency pair]

[...]

03/27/2012 14:54:43 [employee of non-addressee] Says thx mate

[...]

03/27/2012 14:55:03 [employee of non-addressee] Says hahaha

03/27/2012 15:08:56 [employee of non-addressee] Says 14 the usdjpy [[employee of non-addressee] commented on the fix results for the USD/JPY currency pair]

03/27/2012 15:08:58 [employee of non-addressee] Says thats rude

03/27/2012 15:09:08 [employee of non-addressee] Says i know...

03/27/2012 15:09:20 [employee of non-addressee] Says unless [...] is doing it..never seems to fix my favour”¹⁹⁶

- (208) On 10 May 2012, [employee of Credit Suisse] resorted to the chatroom to inquire on the fix tendency of the yen currency (JPY). He shared his own direction and asked for another participating traders’ position, expressly indicating that his intention is not to seek for matching opportunities, without the context of a discussion on a possible transaction (“*whats ways this rice fix*”). [employee of non-addressee] replied that he had no idea on the likely direction of the USD/JPY value at the fix. [Employee of non-addressee] revealed that he had no position in that currency pair anymore.

“05/10/2012 14:35:12 [employee of Credit Suisse] Says whats ways this rice fix , keep getting given here [[employee of Credit Suisse] inquires on the possible direction of the value of the USD/JPY at the fix, as he is receiving orders related to that currency pair]

05/10/2012 14:35:52 [employee of non-addressee] Says no clue

05/10/2012 14:36:05 [employee of non-addressee] Says i was losing 200..

05/10/2012 14:36:12 [employee of non-addressee] Says all out now [[employee of non-addressee] indicated that he had had an order to sell 200 million USD against JPY, but he had already executed that order]

05/10/2012 14:36:35 [employee of Credit Suisse] Says ta mate

05/10/2012 14:36:54 [employee of non-addressee] Says not [...]’s..

05/10/2012 14:36:58 [employee of non-addressee] Says this was genuine.

05/10/2012 14:37:11 [employee of non-addressee] Says i just give up with yen fixes.... [[employee of non-addressee] indicated that the order did not come from [...] (which [employee of non-addressee] seemed to distrust). He did not want to trade JPY at the fix anymore]”¹⁹⁷.

- (209) On 14 May 2012, [employee of Credit Suisse] was present in an exchange with other participating traders on the minutes leading to the WMR fix. Before the fixing time, at 14:50:48, they started to exchange information on their orders for the fix. The discussion revealed that [employee of Credit Suisse]’s and another participating trader’s positions were complementary, but they did not seek to match and the conversation is completed by another participating trader speculating on the level of the GBP/USD currency pair and indicating he had no position, meaning that the discussion was not linked to an approach for a potential trade.

“05/14/2012 14:50:48 [employee of Credit Suisse] Says rhs lights [[employee of Credit Suisse] indicated that he had small buying orders of an undetermined currency pair]

05/14/2012 14:51:41 [employee of non-addressee] Says zip here fellas [Nothing here]

¹⁹⁶ [...]
¹⁹⁷ [...].

05/14/2012 14:52:57 [employee of non-addressee] Says Cable?? [[employee of non-addressee] asked [employee of Credit Suisse] whether he referred to the GBP/USD currency pair]

05/14/2012 14:54:30 [employee of non-addressee] Says feels like its just being put higher wswith soft eur/gbp and eur/usd running into some bids.. [employee of non-addressee] thought that the value of the GBP/USD currency pair was rising due to the weakness of the EUR/GBP and EUR/USD currency pairs]

05/14/2012 14:54:34 [employee of non-addressee] Says but seeing NTG here [[Employee of non-addressee] had no orders related to the GBP/USD currency pair]

05/14/2012 14:54:38 [employee of non-addressee] Says [employee of Credit Suisse] lite rhs – powerful [[employee of non-addressee] joked about [employee of Credit Suisse]’s position]

05/14/2012 14:55:51 [employee of non-addressee] Says LHS samlls cable”¹⁹⁸ [[employee of non-addressee] shares that he had small selling orders for the GBP/USD currency pair].

- (210) On 3 July 2012, [employee of Credit Suisse] participated in an exchange with the participating trader of [non-addressee] in the minutes leading to the WMR fix. Both traders indicated that they are in similar positions heading to the fix, and therefore they cannot match their positions. Despite this, the two traders kept each other updated about the evolution of their respective position. In particular, at 14:56:08, [employee of Credit Suisse] updated the information he gave to the other participating traders at 14:53:43 (less than 3 minutes earlier) on his position for the fix in the GBPUSD currency pair.

“07/03/2012 14:53:43 [employee of Credit Suisse] Says lhs cable [[employee of Credit Suisse] indicated that he had orders to buy GBP/USD from his customers at the upcoming fix rate and needed to sell GBP/USD in the market to offset this exposure]

07/03/2012 14:54:29 [employee of Credit Suisse] Says 50 odd [for approximately 50 mio GBP]

07/03/2012 14:55:24 [employee of non-addressee] Says similar [employee of Credit Suisse] [[Employee of non-addressee] replied that he had a similar position]

07/03/2012 14:56:08 [employee of Credit Suisse] Says all sq¹⁹⁹ now [[employee of Credit Suisse] indicated that he had closed his net risk position for the fix]

07/03/2012 14:56:19 [employee of non-addressee] Says me too..magic”²⁰⁰ [[Employee of non-addressee] had no net position either]

- (211) On 5 July 2012, [employee of Credit Suisse] participated in an exchange with other participating traders in the minutes leading to the WMR fix. Even though they all had the same exposure for the fix and thus could not match, they kept updating each

¹⁹⁸ [...]

¹⁹⁹ “Sq” stands for “square”: To be square at the fix means that the trader has no net position at the fix. On days when the trader has a customer order at the fix, the trader can become square by entering into an offsetting transaction with other financial institutions. A trader can also square a short or long position by, respectively, buying or selling currency before the fix at the then-prevailing market price.

²⁰⁰ [...]

other on the evolution of their positions heading to the fix, disclosing to competitors non-aggregated, commercially sensitive information on current or intended trading. For instance, At 14:50:01, [employee of non-addressee] updated the information he gave to the other participating traders at 14:45:50 (less than 5 minutes before) on his position for the fix in the GBP/USD currency pair.

- (212) The exchanges of information on fix positions provided the participating traders with more information than they would otherwise have had about competitor positions and helped them to predict with a greater degree of confidence the direction in which the market might move at the time of the fix. The traders who revealed their positions had buy orders for the GBP/USD currency pair.²⁰¹ They would typically manage their risk (that is to hedge their short position in GBP) by buying GBP against USD in the interdealer market. A purchase of a GBP/USD large amount during or before the fix could potentially prompt an increase in the currency price, depending on supply and demand at that time.
- (213) The participating traders could benefit from the information shared in the chatroom to devise their own trading strategy. [...] ²⁰² for example, by trading at or in advance of the fix. They would make a profit if the price at which they would have bought the currency pair in question in the market before or during the fix would be lower than the fix rate at which they would have sold it to their customers.

“07/05/2012 14:34:47 [employee of non-addressee] Says lose a ton betts [[Employee of non-addressee] informed he needed to sell 100 million GBP against USD to clients at the upcoming fix rate and needed to buy GBP/USD to offset this exposure]

07/05/2012 14:34:49 [employee of non-addressee] Says real money [[Employee of non-addressee] specified that the orders came from a “real money” (non-leveraged) client]

07/05/2012 14:45:50 [employee of non-addressee] Says rhs cable not loads., just shy of 50 [[employee of non-addressee] informed he had orders to sell slightly under 50 million GBP against USD to clients at the fix rate and needed to buy GPB/USD to cover this position]

07/05/2012 14:49:42 [employee of Credit Suisse] Says same but smaller [[employee of Credit Suisse] also had orders to sell GBP against USD to clients at the fix rate and thus also needed to buy GBP/USD to hedge his exposure, but for a smaller amount than [employee of non-addressee]]

07/05/2012 14:50:01 [employee of non-addressee] Says mine is reducing [[employee of non-addressee] informed that his fix position was reducing]

*07/05/2012 14:51:06 [employee of non-addressee] Says tiny here betty”*²⁰³ [[Employee of non-addressee] noted that the amount of GBP he needed to trade against USD was very small (direction not specified)]

– (a.3) *Exchange of information on customers’ immediate orders*

²⁰¹ The customers buy GBP against USD. The traders will therefore sell GBP to and buy USD from their customers, and might find themselves with a short position in GBP.

²⁰² [...]

²⁰³ [...]

- (214) The Commission considers that the sharing of current or forward-looking commercially sensitive information on customers' immediate orders in the STG Lads chatroom, given its nature and time sensitivity, provided the participating traders with privileged information that was not otherwise available and was relevant to the participating traders' decision-making as it informed their future trading strategies to their own advantage.
- (215) In particular, the exchange of current or forward-looking commercially sensitive information related to customers' immediate orders (such as the size or the direction of specific, non-aggregated orders or the type²⁰⁴ or name of customers) removed some of the uncertainties that are inherent to Forex trading and increased the level of transparency about the evolution of the involved exchange rates for the participating traders. [...] For instance, if a trader is informed that a large client order has been placed with another bank, he or she may buy before this order is filled and then sell after, taking advantage of the market movement driven by the filling of the client order²⁰⁵.
- (216) Revealing such sensitive information to several competing traders at once cannot be justified as being necessary for the purpose of trading with each other. As a matter of fact, in order to trade with each other, the concerned traders only need to know the terms of the envisaged transaction, such as the size, the trade direction and the currencies involved.
- (217) Accordingly, there is no need to disclose whether the transaction responds to an immediate order at all or to reveal confidential details of customers' immediate orders to competitors, such as the type or identity of customers (see recitals (225), (226) and (227)).
- (218) Such disclosures of customers' immediate orders provided the participating traders with an insight into the potential hedging conduct of the trader who disclosed the information. In principle, by disclosing their immediate orders, a trader runs the risk that the other participating traders would trade against him, for instance by carrying out a transaction on the interdealer market before him to take advantage of the anticipated impact of his hedging trade on the currency value and thereby making a profit, to the trader's detriment (see recitals (223) to (228)). In this case, such risk exposure was compounded by the fact that the traders revealed such information recurrently and to several competing traders at several trading desks at once.
- (219) Moreover, the contacts below show that the participating traders constantly updated the others on the trades they were executing or had just executed, without exploring trade opportunities with each other (see recitals (223) to (228)).
- (220) The participating traders regularly disclosed information on their clients' identities when discussing details of their customers' immediate orders (see recitals (223) to (228)). The clients identified were mostly significant market participants, such as financial institutions whose trading activity was typically informative (see recital

²⁰⁴ It is worth noting that even if the exact identity of an end-customer is not revealed, communicating the type of customer (for example, a central bank) in such a way that market participants know whether or not a trade was 'informed' (see recital (18) and (40)) is clearly not 'a view shared by market participants on the general state of, and trends in the market' and hence goes beyond the concept of Market Colour, as defined by the Bank of International Settlements (see [...]).

²⁰⁵ [...]

(40)). Financial institutions typically trade large amounts of currencies, hold FX positions for long and use currencies primarily as a store of value. Therefore, financial institutions have both the ability and the incentive to acquire information and consequently could be better informed than other end-users. Their trades may anticipate short-term FX movements and so are considered ‘informative’ (see Section 2.2). Hence, the disclosure of details on immediate customers’ orders was likely to increase the level of transparency about which way (up or down) currency prices were likely to move.

- (221) The participating traders were able to adapt their trading strategies to take advantage of the information exchanged about customers’ immediate orders and of the resulting increase of market transparency. With the benefit of such information, traders could feel more confident trading more aggressively if the customer is informed (see recital (50)). For instance, if a central bank places an order to buy a large amount of a currency, this might indicate that the currency in question would appreciate. On the basis of that information, the traders could buy that currency in order to benefit from the anticipated price increase and potentially make a profit.
- (222) The following examples illustrate that the participating traders exchanged specific, non-aggregated current or forward-looking commercially sensitive information on customers’ immediate orders. [Employee of Credit Suisse], trading on behalf of Credit Suisse, participated in some of these exchanges directly:
- (223) On 11 April 2012, [employee of non-addressee] revealed he sold some EUR against GBP to a counterparty known by the participating traders. This exchange of information on a specific customer’s immediate order and on the identity of the client in question removed some of the market uncertainties that are inherent to Forex spot trading. In this respect, the disclosure of this information allowed the participating traders to better anticipate market movements. The participating traders were able to adapt their trading strategies to take advantage of the disclosed information and of the resulting increase of market transparency.
- “04/11/2012 06:50:23 [employee of non-addressee] Says lost some X [[Employee of non-addressee] sold some EUR against GBP]*
- 04/11/2012 06:50:29 [employee of non-addressee] Says usual geezer who does the rounds [[Employee of non-addressee] specified that the transaction had been done with a counterparty known by the participating traders who usually went from one trader to the other]*
- 04/11/2012 06:50:35 [employee of non-addressee] Says thx mate*
- 04/11/2012 06:51:25 [employee of Credit Suisse] Says ta”²⁰⁶*
- (224) On 13 April 2012, [employee of Credit Suisse] disclosed he was selling at that time around 40 million GBP/USD to a large corporation. The exchange of current or forward-looking commercially sensitive information related to customers’ immediate orders (such as the size or the direction of specific, non-aggregated orders or the type of customer) removed some of the uncertainties that are inherent to Forex trading and increased the level of transparency about the evolution of the involved exchange rates. This information exchange resulted in an asymmetry of information between

²⁰⁶ [...]

the participating and the non-participating traders, to the advantage of the former, increasing the likelihood that they would be the ones making a profit from it.

“04/13/2012 09:56:42 [employee of Credit Suisse] Says lose more cable 40 odd corp²⁰⁷ [[employee of Credit Suisse] announced that he was selling around 40 million GBP against USD to a large corporation]

04/13/2012 09:56:49 [employee of non-addressee] Says tks [employee of Credit Suisse]”²⁰⁸

- (225) On 25 April 2012, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] discussed the sale of the EUR/GBP currency pair by JP Morgan Chase. The client identified in the discussion was a significant market participant whose trading activity was potentially informative. Financial institutions typically trade large amounts of currencies, hold FX positions for long and use currencies primarily as a store of value. Therefore, they have strong incentives to acquire information and consequently tend to be better informed than other end-users. Their trades may anticipate short-term FX movements and so are considered ‘informative’ (see recital (40)). Therefore, the disclosure of immediate customers’ orders for this type of client was likely to increase the level of transparency about which way (up or down) the price of the currency pair in question was likely to move (see recitals (49) and (50)). The participating traders could have adapted their trading strategies to take advantage of the resulting increase of market transparency between them. This information exchange entailed an asymmetry of information between the participating and the non-participating traders, to the advantage of the former, increasing the likelihood that they would be the ones making a profit from it.

“04/25/2012 11:57:32 [employee of non-addressee] Says Sterling? See anything? [[employee of non-addressee] asks if other participating traders had any transactions concerning GBP]

04/25/2012 11:57:40 [employee of non-addressee] Says [...]”²⁰⁹ selling the cross [[employee of non-addressee] said that [...] was selling the EUR/GBP currency pair]

04/25/2012 11:57:46 [employee of non-addressee] Says thx mate

04/25/2012 11:58:09 [employee of non-addressee] Says everyone selling the x

04/25/2012 11:58:32 [employee of non-addressee] Says dont really get it...cant fight it [[Employee of non-addressee] confirmed that he had information on many actors in the market trading the same currency pair]

04/25/2012 12:15:46 [employee of non-addressee] Says [...] still going in x

04/25/2012 12:15:57 [employee of non-addressee] Says thgt it might be fixy [[employee of non-addressee] confirmed that [...] was still trading on the same currency pair. He thought that maybe this counterparty was trying to prepare a specific position in view of the fix]

04/25/2012 12:16:09 [employee of non-addressee] Says fooker

²⁰⁷ “Corp” refers to large corporations that transacts in the market.

²⁰⁸ [...].

²⁰⁹ “[...]” stands for [...]. See [...].

04/25/2012 12:16:31 [employee of non-addressee] Says nah he isnt fix but he should be almost done [[employee of non-addressee] specified that in his view the [...] trader was not seeking to build a position for the fix and that he might be finishing his trading in EUR/GBP]

04/25/2012 12:19:08 [employee of non-addressee] Says thx

04/25/2012 12:27:53 [employee of Credit Suisse] Says who was seller of xx there [[employee of Credit Suisse] asked the other participating traders who the seller of the EUR/GBP currency pair was]

04/25/2012 12:29:22 [employee of non-addressee] Says [...] [[employee of non-addressee] told [employee of Credit Suisse] that it was [...]]

[...]

04/25/2012 12:30:44 [employee of Credit Suisse] Says ta”²¹⁰

- (226) On 10 May 2012, [employee of non-addressee] and [employee of Credit Suisse] discussed their customers’ orders to sell the EUR/GBP currency pair. [employee of Credit Suisse] disclosed that he had sold EUR 75 million against GBP to [...] so far. As the client was a significant market participant, this trade can be considered as ‘informative’ (see recital (40)). This exchange of commercially sensitive information related to customers’ immediate orders (such as the size or the direction of specific, non-aggregated orders or name of the customer) removed some of the uncertainties that are inherent to Forex trading and increased the level of transparency about the potential evolution of the involved exchange rate. The participating traders could have adapted their trading strategies to take advantage of the disclosed information and of the resulting increase of market transparency. This information exchange entailed an asymmetry of information between the participating and the non-participating traders, to the advantage of the former, increasing the likelihood that they would be the ones making a profit from it.

“05/10/2012 11:04:24 [employee of non-addressee] Says eurgbp

05/10/2012 11:04:27 [employee of non-addressee] Says oooo

05/10/2012 11:05:00 [employee of Credit Suisse] Says yeh bids 00 -05 [[employee of Credit Suisse] informed [employee of non-addressee] that he had some bids to sell in EUR/GBP, and their level]

05/10/2012 11:05:12 [employee of Credit Suisse] Says just a matter of time I think

05/10/2012 11:16:17 [employee of Credit Suisse] Says [...] the bid xx

05/10/2012 11:16:26 [employee of Credit Suisse] Says given him 75 so far [[employee of Credit Suisse] added that the client buying EUR against GBP is [...], [employee of Credit Suisse] had sold 75 million to that client so far]

05/10/2012 11:16:44 [employee of non-addressee] Says yep”²¹¹

- (227) On 21 June 2012, [employee of non-addressee] revealed he was buying the EUR/GBP currency pair from a counterparty in view of the fix. [Employee of Credit Suisse] disclosed he had received an offer to sell GBP against USD to [...]. As the

²¹⁰ [...].

²¹¹ [...].

client was a significant market participant, this trade can be considered as ‘informative’. This exchange of commercially sensitive information related to customers’ immediate orders (such as the size or the direction of specific, non-aggregated orders or name of the customer) removed some of the uncertainties that are inherent to Forex trading and increased the level of transparency about the potential evolution of the involved exchange rate. The participating traders could have adapted their trading strategies to take advantage of the disclosed information and of the resulting increase of market transparency. This information exchange entailed an asymmetry of information between the participating and the non-participating traders, to the advantage of the former, increasing the likelihood that they would be the ones making a profit from it.

“06/21/2012 14:10:48 [employee of non-addressee] Says get eurgbp from a guy that fix type [[employee of non-addressee] informed the other participating traders that he was buying EUR against GBP from a counterparty in view of the fix]

06/21/2012 14:11:03 [employee of Credit Suisse] Says ta

06/21/2012 14:25:18 [employee of Credit Suisse] Says [...] bid here in cable [[employee of Credit Suisse] had received an offer to sell GBP against USD to [...]]

06/21/2012 14:25:29 [employee of non-addressee] Says who the fook are they [[employee of non-addressee] is asking who are the traders at [...]]

06/21/2012 14:25:30 [employee of non-addressee] Says ta [employee of Credit Suisse]

06/21/2012 14:25:31 [employee of non-addressee] Says not loads mate

06/21/2012 14:25:38 [employee of Credit Suisse] Says ok ta

06/21/2012 14:25:44 [employee of non-addressee] Says [employee of non-addressee] gone there [[employee of non-addressee] indicated that another trader, [employee of non-addressee], moved to [...]]

06/21/2012 14:25:51 [employee of Credit Suisse] Says ok got u”²¹²

(228) In some other occasions, exchanges on customer’s immediate orders took place when [employee of Credit Suisse] was logged in the chatroom. Though he did not intervene directly in the discussions, he had access to them. Such disclosures on customers’ immediate orders removed uncertainty and were suitable to increase [employee of Credit Suisse]’s level of confidence about the potential direction of the market price of the discussed currency pairs and thereby to enable him to make better informed decisions on his future trading strategy:

- On 10/02/2012, from 10:10:12 to 10:17:56 (exchange of information regarding [...] getting a specific trade and still trying to sell)²¹³;
- On 20/02/2012, from 8:01:38 to 13:28:22 (exchange of information on immediate client orders in various currency pairs: EUR/JPY, USD/JPY, EUR/GBP, USD/CHF)²¹⁴;

²¹² [...].
²¹³ [...].
²¹⁴ [...].

- On 10/05/2012, from 14:19:25 to 14:23:44 (exchange of information on an attempt by [...] to buy 200 million USD/JPY from [non-addressee] through a broker)²¹⁵.

(b) Exchange of information on open risk positions of the participating traders

- (229) The exchange of information on open risk positions (as defined in recital (34))²¹⁶ consisted in the recurrent sharing of certain current or forward-looking commercially sensitive information on open risk positions with competitors (i.e. the direction of the position - either “short” or “long”-, and, at times, the size of the position or an indication of it). The exchange of such information could provide the participating traders with an insight into each other’s potential hedging conduct, thereby reducing uncertainty and giving them a competitive advantage over the non-participating traders.
- (230) Traders do not typically disclose their open risk position to their competitors because of the risk that other traders could use that information to attempt to move the market against them. Despite the risk of market opportunism by the information recipients, the participating traders in the chatroom disclosed their open risk position to their competitors without fearing that they could use the information against the disclosing trader. [...].²¹⁷ Against this background, the Commission considers that sharing such information in the STG Lads chatroom, given its nature and time sensitivity, was relevant to the traders’ decision-making and informed their future trading strategies, availing the participating traders of reciprocally shared privileged information not otherwise available.
- (231) The recurrent disclosure of such open risk positions of major competitors provided the participating traders with information which could be, for a window of minutes or until new information superseded it, relevant to their subsequent trading decisions.
- (232) When such disclosures revealed that one of the participating traders was at risk that the price of the involved currency pair would move in a direction adverse to him, this would enable the other participating traders to decide whether to coordinate their behaviour, in particular, by refraining from trading by withholding bids or offers, so that the price of the involved currency pair would not move in a direction adverse to the trader with the open risk position. For instance, in the contact below in recital (234), when [employee of non-addressee] disclosed a long open risk position in GBP, the other participating traders could have refrained from selling this currency so that the GBP price would not have moved in a direction adverse to him.

²¹⁵ [...].

²¹⁶ See, for instance, chats described in recitals (234) to (238) and chats of 25 May 2011 ([...]), 31 May 2011 ([...]), 7 June 2011 ([...]), 13 June 2011 ([...]), 27 June 2011 ([...]), 4 July 2011 ([...]), 20 July 2011 ([...]), 27 July 2011 ([...]), 5 August 2011 ([...]), 7 August 2011 ([...]), 17 August 2011 ([...]), 12 September 2011 ([...]), 21 September 2011 ([...]), 3 October 2011 ([...]), 17 October 2011 ([...]), 19 October 2011 ([...]), 27 October 2011 ([...]), 2 November 2011 ([...]), 1 December 2011 ([...]), 14 December 2011 ([...]), 5 January 2012 ([...]), 25 January 2012 ([...]), 13 February 2012 ([...]), 8 March 2012 ([...]), 14 March 2012 ([...]), 22 March 2012 ([...]), 23 April 2012 ([...]), 18 May 2012 ([...]), 18 June 2012 ([...]), 27 June 2012 ([...]) and 12 July 2012 ([...]). Some of the examples in this list also happened to take place within the proximity of one fix.

²¹⁷ [...].

(233) The Commission provides below in chronological order some instances of such exchange of information in the STG Lads chatroom relating to the period while [employee of Credit Suisse] was trading on behalf of Credit Suisse:

(234) On 2 March 2012, [employee of Credit Suisse] logged in the chatroom at 07:12:31, and was still logged in when one of the other participating traders posted information on his own open risk position (both current and intended). [employee of non-addressee] indicated that he was “*getting quid*” that is, he was receiving GBP against other currencies, which placed him as a GBP seller. Also, he announced that he would not be selling those GBP immediately, but that he intended to hold them in his book for the moment. This exchange of information provided the participating traders with a valuable insight into [employee of non-addressee]’s trading strategy, which was not available to other competitors but informed their subsequent actions on the market.

“03/02/2012 15:14:23 [employee of non-addressee] Says keep getting quid

*03/02/2012 15:14:27 [employee of non-addressee] Says but holding for mom”*²¹⁸ [[employee of non-addressee] indicated that he was buying GBP and that he would keep this long GBP position for the moment]

(235) On 18 April 2012, [employee of Credit Suisse] logged in the chatroom at 07:49:55, and was still logged in when two other participating traders (of [non-addressee] and [non-addressee]) exchanged information on their respective trading positions with respect to GBP. [employee of non-addressee] indicated that he had a long position in GBP (“*im long pounds mate*”) (after having bought the currency from a customer) but that he had failed to sell it. [Employee of non-addressee] revealed that he was short in that currency (after having sold the currency to a customer). Those disclosures of information on open risk positions provided the participating traders with an insight into each other’s trading strategy, thereby reducing uncertainty and giving them a competitive advantage over the non-participating traders.

“04/18/2012 13:27:51 [employee of non-addressee] Says im long pounds mate.

04/18/2012 13:28:04 [employee of non-addressee] Says seen buyers..and the selling i did, ran into a brick wall [[employee of non-addressee] indicated he had a selling position of GBP, but that he had failed to sell it to potential buyers]

04/18/2012 13:29:18 [employee of non-addressee] Says im only seeing sellers of pounds

04/18/2012 13:29:48 [employee of non-addressee] Says ...and im short [[Employee of non-addressee] confirmed that other traders were buying GBP, and he was also in a buying position]

04/18/2012 13:29:59 [employee of non-addressee] Says we’ll prob both get bored out of it [[Employee of non-addressee] foresaw that neither himself nor [employee of non-addressee] would make interesting transactions in GBP]

04/18/2012 13:30:21 [employee of non-addressee] Says i got x bids a bit lower [[Employee of non-addressee] indicated that he had offers to buy EUR/GBP at a level slightly lower than the market one]

²¹⁸ [...].

04/18/2012 13:35:03 [employee of non-addressee] Says fixing type...buyer of cble
[[employee of non-addressee] shared that a market participant who usually traded during the fix was trying to buy GBP against USD]

04/18/2012 13:35:14 [employee of non-addressee] Says ta”²¹⁹

- (236) On 23 April 2012, [employee of Credit Suisse] logged in the chatroom at 06:14:46, and was logged in when [employee of non-addressee] shared information on his trading intentions with respect to the AUD/NZD currency cross. This trader indicated that he intended to keep a long position in that currency pair (“*a bit scared to play it any other way but long aud/nzd*”). The other participating traders decided on their own trading strategy with the benefit of this information, which was not available to other competitors.

“04/23/2012 10:09:45 [employee of non-addressee] Says a bit scared to play it any other way but long aud/nzd”²²⁰

- (237) On 22 May 2012, [employee of Credit Suisse] logged in the STG Lads chatroom at 06:24:57, and he was still logged in when [employee of non-addressee] shared information about his position and his trading strategy with respect to the GBP/USD currency pair. This trader disclosed that he was short in that currency (after having sold the currency to a customer) and that he would not buy GBP against USD before the exchange rate would fall to 1.5760 (“*I gotta stay small short... will add thru 1.5760..*”). This disclosure of information provided the participating traders with relevant insights into [employee of non-addressee]’s trading strategy, thereby reducing uncertainty and giving them a competitive advantage over the non-participating traders.

“05/22/2012 09:00:27 [employee of non-addressee] Says imf calling gbp lower
[[employee of non-addressee] informed the other participating traders that the IMF had issued a report arguing for or foreseeing a depreciation of the GBP]

05/22/2012 09:05:19 [employee of non-addressee] Says A few stops triggered there in Cable on the IMF comments - seeing good Retail demand down here though for the time being. [[employee of non-addressee] indicated that the announcement of the IMF had produced some effects on the value of the GBP, but that retail investors were still buying GBP]

[...]

05/22/2012 09:29:08 [employee of non-addressee] Says retail usually quite tasty...but i gotta stay small short..will add thru 1.5760..”²²¹ [[employee of non-addressee] indicated that retails investors were quick to buy when value dropped, but that he would not buy GBP against USD before the rate would fall to 1.5760]

- (238) On 22 June 2012, [employee of Credit Suisse] logged in the chatroom at 06:31:46, and was still logged in when the participating traders of [employee of non-addressee] and [employee of non-addressee] exchanged information on their own positions with respect to the EUR/GBP currency pair. Those traders disclosed their short risk position in the chatroom (“*i’m short and happy to stick with it*”, “*ive been short for a*

219 [...].
220 [...].
221 [...].

while'). The other participating traders decided on their own trading strategy with the benefit of this information, which was not available to other competitors.

06/22/2012 06:43:07 [employee of non-addressee] Says [employee of non-addressee]... do you think eurgbp can hold here or do we finally drift ... it's been lagging again [[Employee of non-addressee] asked [employee of non-addressee] whether he thought that the value of EUR against GBP would remain as it was or that it would adjust to the (presumably downwards) trend seen in other currency pairs]

06/22/2012 06:44:38 [employee of non-addressee] Says got ok bids, but been filled in for half on that euro move lower, guess bids all the way down to .80, stops below, i'm short and happy to stick with it, as you say it needs to play catch up [[employee of non-addressee] had been selling EUR against GBP but the level was by then very low and he intended not to close his short position at that moment, because he thought the value of the EUR could decrease further]

06/22/2012 06:45:14 [employee of non-addressee] Says ive been short for a while

06/22/2012 06:45:19 [employee of non-addressee] Says driving me nuts

06/22/2012 06:45:28 [employee of non-addressee] Says but it's a posi²²² for the bottom drawer

06/22/2012 06:45:34 [employee of non-addressee] Says cant really micro mange it [[Employee of non-addressee] also had a buying position in EUR/GBP, but did not intend to give a lot of attention to it]

06/22/2012 06:45:42 [employee of non-addressee] Says tks chief"²²³

(c) Exchange of information on bid-ask spreads

- (239) Bid-ask spreads quoted by traders refer to specific currency pairs for certain trade sizes. They are an essential competition parameter in FX spot trading activity of G10 currencies. Spreads affect the overall price paid by customers for trading currencies. The potential revenue earned by a trader is also affected by the spread. When quoting both bid and ask price to a client, the traders would generally apply a spread to a given market mid-point²²⁴ (whether in even amounts from that mid-point or otherwise) as part of this calculation.
- (240) Traders quote bid-ask spreads by reference to specific factors including currency pairs, trade sizes, client types and market conditions. Traders may therefore quote a different spread depending on the circumstances, for example for different volumes of the same currency pairs or for an identical trade at a different time. These spreads for specific trades are not publicly available. Moreover, the spread applied by traders on the mid-price²²⁵ to provide their quote to clients is subject to competitive pressure as a customer may contact several banks to obtain a number of quotes for the same

²²² "Posi" means "position".

²²³ [...].

²²⁴ For a certain currency pair, the mid-point is equal to the average (in fact, the point in the middle) of the bid price and the ask price. For example, in the EUR/USD currency pair, if the bid price is 1.1560 and the ask price is 1.1580, then the bid-ask spread is 0.0020 and the mid-point is 1.1570. In perfect markets with costless Forex transactions, the bid-ask spread would be zero and both the bid price and the ask price (and hence the mid-point) would be the same.

²²⁵ The mid-price is also referred to as 'mid-point' (see footnote 224 above).

trade. The exchange of information on bid-ask spreads could also enable alignment of the spreads they quote to the market generally, or to any specific customer who may contact the sales desks of more than one of the participating banks.

- (241) The exchange of information on bid-ask spreads concerned the instances in which the participating traders occasionally discussed existing or intended bid-ask spreads quotes of specific currency pairs for certain trade sizes.²²⁶ The knowledge of existing or intended bid-ask spreads quotes of specific currency pairs for certain trade sizes, where there is a specific live trade (for a given client), may remain, for a window of up to a few hours depending on the market's volatility at the time, useful for the other traders and could enable alignment of the spreads they quote to the market generally, or to any specific customer who may contact the sales desks of more than one of the participating banks.
- (242) Therefore, providing advice on bid-ask spreads levels to competing traders upon request was not related to any transaction between traders. In the ordinary course of business, traders would only have needed to disclose whether the transaction was a purchase or a sale to allow them to explore trading opportunities. By providing on bid-ask spreads levels a trader runs the risk that the other participating traders could use that information against him by offering a better price than the disclosing trader to the customer. Typically the same customer would contact several participating traders around the same time to get a price for the same transaction and the information provided on bid-ask spreads would remain relevant for transactions of similar characteristics around that time (see recitals (245) to (251)). In this case, such risk exposure was compounded by the fact that the traders revealed such information recurrently and to several participating traders that worked at several competing trading desks at once. Hence, revealing information on bid-ask spreads, as defined in recital (32), to several competing traders at once was unnecessary for the purpose of trading with each other.
- (243) The exchanges of bid-ask spreads contributed to remove the natural degree of uncertainty in the market regarding prices, informed the participating traders pricing behaviour and hence could have influenced the prices offered by the participating traders to customers. [...] ²²⁷, as shown by the exchanges detailed in recitals (245) to (251) (see, in particular, recital (249)). Those exchanges enabled the participating traders to obtain greater certainty on the prices they were quoting and informed their subsequent pricing behaviour. These information exchanges could also enable them to align their spreads for particular transactions and thereby their all-in price offered to a specific client who may have contacted more than one of the traders for a particular transaction. A customer who is not aware of such exchanges of non-publicly available information on spreads and may have contacted more than one of the participating traders to get a price on a specific trade would have received quotes influenced by the exchange among competitors. [...]. ²²⁸

²²⁶ See, for instance, chats described in recitals (245) to (251) and chats of 1 June 2011 ([...]), 23 June 2011 ([...]), 29 June 2011 ([...]), 7 July 2011 ([...]), 11 July 2011 ([...]), 9 August 2011 ([...]), 15 August 2011 ([...]), 12 September 2011 ([...]), 21 October 2011 ([...]), 31 October 2011 ([...]), 16 November 2011 ([...]), 5 January 2012 ([...]), 11 January 2012 ([...]), 31 January 2012 ([...]).

²²⁷ [...].

²²⁸ [...].

(244) During his participation in the chatroom trading on behalf of Credit Suisse, [employee of Credit Suisse] participated directly in these kind of exchanges:

(245) On 17 February 2012, [employee of Credit Suisse] asked the other participating traders for the spread level for 50 million of an unspecified currency. He received answers with precise levels from [employee of non-addressee]. This shows that the participating traders who were competitors in the market advised each other on strategies of pricing. This sharing of information on bid-ask spreads enabled the participating traders to obtain greater certainty on the prices they were quoting to customers and informed their subsequent pricing behaviour. This extract also shows that the intention of the participating traders with this exchange was to be able to offer the widest (most expensive) spread possible to the clients, given the market circumstances. The disclosure of information on bid-ask spreads in the chatroom informed their subsequent pricing behaviour and could enable the participating traders to align their spreads for the transaction in question and thereby their all-in price offered to a specific client for this transaction.

“02/17/2012 09:20:41 [employee of Credit Suisse] Says whats spread in 50 these days

02/17/2012 09:20:43 [employee of non-addressee] Says nada here., i got a score on the tool on the way up

02/17/2012 09:20:48 [employee of non-addressee] Says 5 unfortunately

02/17/2012 09:20:55 [employee of Credit Suisse] Says yeh thats what i thought

02/17/2012 09:20:55 [employee of non-addressee] Says 6 if you are lucky”²²⁹

(246) On 17 February 2012, [employee of Credit Suisse] also asked the other participating traders if 10 was a good spread level for 100 million GBP against USD, and [employee of non-addressee] confirmed it. The participating traders subsequently traded in the knowledge of the disclosed information on bid-ask spreads, which informed their subsequent pricing behaviour and hence could have affected the prices offered by the participating traders to customers.

“02/17/2012 10:03:11 [employee of Credit Suisse] Says so whats cable in 100 these days 10?

02/17/2012 10:03:18 [employee of non-addressee] Says yeah

02/17/2012 10:03:36 [employee of Credit Suisse] Says ta mate 1 pip a tenner nice and easy to remember”²³⁰

(247) On 19 April 2012, [employee of non-addressee] asked the other participating traders about the spread level they have been offering for 50 million GBP/USD. [Employee of Credit Suisse] gave an indication and said it depended on the client, [employee of non-addressee] also replied clarifying [employee of Credit Suisse]’s answer. [employee of non-addressee] sought advice from competitors on the appropriate spread for a specific deal and therefore sought to obtain greater certainty about the prices the other participating traders were offering for the same type of transaction. The disclosure of information on bid-ask spreads in the chatroom informed their

²²⁹ [...].

²³⁰ [...].

subsequent pricing behaviour and could enable the participating traders to align their spreads for the transaction in question and thereby their all-in price offered to a specific client for this transaction.

"04/19/2012 08:30:14 [employee of non-addressee] Says what you lads show in 50 cable?"

04/19/2012 08:30:49 [employee of Credit Suisse] Says dunno 5-7 depends who it is

04/19/2012 08:35:41 [employee of non-addressee] Says 5 mostly"²³¹

- (248) On 19 June 2012, [employee of Credit Suisse] asked the other participating traders for the spread level for 50 million EUR/GBP. [employee of non-addressee] gave a very precise answer. It shows that the participating traders who were competitors in the market advised each other on strategies of pricing. This sharing of information on bid-ask spreads enabled the participating traders to obtain greater certainty on the prices they were offering to customers, informed their subsequent pricing behaviour and hence could have influenced the prices offered by the participating traders to customers.

"06/19/2012 10:40:33 [employee of Credit Suisse] Says whats spread 50 x these days

06/19/2012 10:40:56 [employee of non-addressee] Says 3

06/19/2012 10:41:05 [employee of Credit Suisse] Says yeh thats what i thought

06/19/2012 10:41:38 [employee of Credit Suisse] Says ta mate"²³²

- (249) On 22 June 2012, [employee of non-addressee] asked the other participating traders about the spread level they had been offering for 100 million EUR/GBP. [employee of Credit Suisse] and [employee of non-addressee] both confirmed that the level was 7 but [employee of non-addressee] could risk to offer 6. This exchange of information on bid-ask spread for a specific transaction served to increase transparency among the participating traders and reduce market uncertainties.²³³ The disclosure of information on bid-ask spreads informed their subsequent pricing behaviour and hence could have influenced the prices offered by the participating traders to customers.

"06/22/2012 08:50:14 [employee of non-addressee] Says whats eur/gbp in 100 these days lads?"

06/22/2012 08:50:28 [employee of non-addressee] Says 6 i guess

06/22/2012 08:50:52 [employee of Credit Suisse] Says yeh 7 u make 5 u dont

06/22/2012 08:54:15 [employee of non-addressee] Says no, we don't make 5

06/22/2012 08:54:22 [employee of non-addressee] Says 6-7 sounds right

06/22/2012 08:54:30 [employee of non-addressee] Says prob pushed on 6"²³⁴

231 [...].
232 [...].
233 [...].
234 [...]

(250) On 2 July 2012, [employee of Credit Suisse] asked the other participating traders for the spread level for 200 million EUR/GBP. [employee of non-addressee] answered with a very precise figure. It shows that the participating traders who were competitors in the market advised each other on strategies of pricing. This sharing of information on bid-ask spreads enabled the participating traders to obtain greater certainty on the prices they were quoting to customers, informed their subsequent pricing behaviour and hence could have influenced the prices offered by the participating traders to customers.

“07/02/2012 08:07:07 [employee of Credit Suisse] Says whats eur gbp in 200 these days if u had to quote

07/02/2012 08:07:35 [employee of non-addressee] Says 10 i reckon

07/02/2012 08:07:46 [employee of Credit Suisse] Says cool ta”²³⁵

(251) Some other instances of exchanges of information on bid-ask spreads took place when [employee of Credit Suisse] was logged in the chatroom, although he did not participate directly in the discussions. Those exchanges enabled [employee of Credit Suisse] to obtain greater certainty on the prices he was quoting and informed his subsequent pricing behaviour. In this respect, the exchanges were suitable to influence the prices he offered to customers:

- On 22/05/2012, from 7:53:26 to 7:55:56 (one trader asked for an indicative spread level for a certain cross currency (i.e. not including USD) rate. Three other traders replied and disclosed their spread)²³⁶;
- On 19/06/2012, from 09:11:12 to 9:15:55 (one trader asked about the spread another trader showed for an AUD/JPY deal. He and a third trader replied. The three traders then discussed the appropriate spread level for this currency pair)²³⁷.

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

(252) The participating traders frequently revealed and exchanged certain current or forward-looking commercially sensitive information on multiple aspects of their current or planned trading activities such as the levels of customers’ conditional orders or the clients’ type or identity, or a combination of the topics described above (customer orders and/or open risk position).²³⁸

(253) The cumulative disclosure of this type of information removed some of the uncertainties that are inherent to Forex trading and increased the level of market transparency. This information exchange entailed an asymmetry of information between the participating and the non-participating traders, to the advantage of the

²³⁵ [...]

²³⁶ [...]

²³⁷ [...]

²³⁸ See, for instance, chats described in recitals (258) to (285) and chats of 25 May 2011 ([...]), 31 May 2011 ([...]), 20 July 2011 ([...]), 25 July 2011 ([...]), 8 August 2011 ([...]), 24 August 2011 ([...]), 12 September 2011 ([...]), 21 September 2011 ([...]), 27 September 2011 ([...]), 18 October 2011 ([...]), 16 November 2011 ([...]), 21 November 2011 ([...]), 29 November 2011 ([...]), 3 January 2012 ([...]), 12 January 2012 ([...]), 26 January 2012 ([...]).

former, increasing the likelihood that they would make a profit from it (see recital (171)).

- (254) Revealing forward-looking information to competing traders combining various categories in a short period of time, cumulating information on different aspects of their current or planned trading activities such as the levels of customers' conditional orders, the clients' type or identity to competing traders, or the size of orders for the fix keeping updated other traders in the knowledge that they were not in the position to match, was unnecessary for the purpose of trading with each other.
- (255) Moreover, such disclosure entailed a risk (see recitals (258) to (285)) that the other participating traders would use the information against its provider. In this case, such risk exposure was compounded by the fact that the traders revealed such information recurrently and to several competing market making traders at several trading desks at once.
- (256) In general, traders only need to know the terms of an envisaged transaction, such as the size, the trade direction and the currencies involved. However, the competing traders do not need to know whether the transaction responds to a conditional or an immediate order at all or details such as the level of conditional orders or the type or identity of customers. For orders at the fix, revealing the size of the order was only necessary once the trader revealing the information would have identified which other traders were in the opposite direction for the relevant currency pair and, therefore, willing to match the trade (see recital (197)).
- (257) There are chats which attest to a combination of several of the previously mentioned information exchanges. The participating traders engaged in multiple exchanges of commercially sensitive information relating to their current and intended trading activity. This type of exchanges happened nearly daily throughout the duration of the infringement. The instances of such exchanges of information during the period while [employee of Credit Suisse] was trading on behalf of Credit Suisse, are reproduced below in chronological order:
- (258) On 9 February 2012, between 08:39:22 and 12:24:16, [employee of non-addressee] and [employee of Credit Suisse] started by exchanging information about customer orders in GBP/USD (a customer offering [employee of non-addressee] to buy GBP against USD at a price higher than the market value). [Employee of non-addressee] then requested information on potentially executed trades in EUR/SEK, to which [employee of non-addressee] replied. Later [employee of non-addressee] and [employee of non-addressee] shared commercially sensitive information on recently executed trades in GBP disclosing specific details regarding trade size and type of customer. Finally, [employee of Credit Suisse] and [employee of non-addressee] shared sensitive information about upcoming stop orders including their value. By sharing commercially sensitive information about anticipated, recently executed or potentially executed trades, participating the traders gained a competitive advantage vis-à-vis other market participants as they were better able to anticipate market movements, potentially increasing their profits, or better hedging against losses. The participating traders could take this cumulative information into account in their future trading behaviour and end up trading in a manner differently to how they would have traded absent the information.

"02/09/2012 08:39:22 [employee of non-addressee] Says Got a few small offers above in cable - guys can be sticky with their lvls [[employee of non-addressee]

indicated that market participants were offering him to buy GBP against USD at a price higher than the market value]

02/09/2012 08:39:46 [employee of Credit Suisse] Says yeh same here [[employee of Credit Suisse] had received the same kind of offers as [employee of non-addressee]]

02/09/2012 10:39:35 [employee of non-addressee] Says [employee of Credit Suisse] hitting eur/sek?? [[employee of non-addressee] asked [employee of Credit Suisse]²³⁹ whether he was trading the EUR/SEK currency pair]

02/09/2012 10:41:01 [employee of non-addressee] Says we sold some all done [[employee of non-addressee] indicated that he had some orders to sell EUR against SEK, and he had filled them all]

[...]

02/09/2012 12:14:38 [employee of non-addressee] Says lost 75 betts

02/09/2012 12:14:40 [employee of non-addressee] Says corp [[Employee of non-addressee] informed that he had sold 75 million GBP against USD to a big corporate customer]

02/09/2012 12:14:48 [employee of non-addressee] Says lost 50 lev type [[employee of non-addressee] indicated that he had sold 50 million (also GBP) to a leveraged fund]

[...]

02/09/2012 12:23:41 [employee of Credit Suisse] Says got some stops building 0.8320 ish [[employee of Credit Suisse] indicated that he was receiving stop orders, in EUR/GBP and their value]

02/09/2012 12:24:16 [employee of non-addressee] Says smalls here too²⁴⁰ [[employee of non-addressee] indicates he was also receiving some stops for the same currency pair]

- (259) On 14 February 2012, between 09:32:34 and 14:01:18, [employee of Credit Suisse] started by seeking advice on how to trade in GBP/USD, most probably after the publication of macro-economic numbers that may influence or may already have impacted the FX rate. [Employee of non-addressee] replied by sharing its trading position, for which [employee of Credit Suisse] thanked him. This sharing of information could have prompted [employee of Credit Suisse] to adjust his price level and his strategy, taking the trading position of a competitor into account. Later, [employee of non-addressee] and [employee of Credit Suisse] exchanged competitively sensitive information on recently executed trades disclosing specific details about client types ('real money', 'ntcl'). [Employee of non-addressee] then added some valuable information about the completion of conditional stop orders in EUR. This type of contact enabled the participating traders to reduce their uncertainty and thus potentially placed them at a competitive advantage vis-à-vis other traders. Finally, following the sharing by [employee of Credit Suisse] of sensitive information about a trade executed in GBP/USD, [employee of non-addressee] asked [employee of Credit Suisse] about his trading strategy in that same

²³⁹ “[...]” is short for “[...]”, [employee of Credit Suisse].

²⁴⁰ [...].

currency pair, to which [employee of Credit Suisse] replied. In the ordinary course of business, traders have no reason or means of knowing each other's trading strategies.

“02/14/2012 09:32:34 [employee of Credit Suisse] Says sell cable on that print ??
[[employee of Credit Suisse] asks [employee of non-addressee] whether he had a selling position in, or whether he intended to sell GBP against USD]

02/14/2012 09:32:59 [employee of non-addressee] Says ye prob [employee of Credit Suisse] [[Employee of non-addressee] confirmed]

02/14/2012 09:33:12 [employee of non-addressee] Says we just + 200 betty B4 number [[Employee of non-addressee] indicated his open risk position before the release of (probably macro-economic) numbers]

02/14/2012 09:33:24 [employee of non-addressee] Says sing did it hence the 40+++

02/14/2012 09:33:26 [employee of Credit Suisse] Says ok ta

[...]

02/14/2012 09:42:25 [employee of non-addressee] Says sold 50 quid for real money
[[employee of non-addressee] informed he sold 50 million GBP to a real-money (non-leveraged) fund]

02/14/2012 09:42:54 [employee of non-addressee] Says ta mate

[...]

02/14/2012 11:00:16 [employee of Credit Suisse] Says [...] selling some cable
[[employee of Credit Suisse] informed that a market participant was selling GBP against USD]

02/14/2012 11:24:30 [employee of non-addressee] Says just bout all my stops done euro
[[Employee of non-addressee] indicated that his stops orders in EUR had been executed]

[...]

02/14/2012 13:59:06 [employee of Credit Suisse] Says sold 100 cable right here very easy
[[employee of Credit Suisse] informed that he had sold 100 million GBP against USD very easily]

02/14/2012 13:59:33 [employee of non-addressee] Says you fecker [[employee of non-addressee] showed disappointment at [employee of Credit Suisse]'s comment]

02/14/2012 14:00:51 [employee of Credit Suisse] Says why that u trying to sell puuting the offers in for 20
[[employee of Credit Suisse] asked [employee of non-addressee] if he was the trader trying to sell GBP against USD]

02/14/2012 14:01:03 [employee of non-addressee] Says no

02/14/2012 14:01:05 [employee of non-addressee] Says i wish

02/14/2012 14:01:11 [employee of non-addressee] Says i'm long [[employee of non-addressee] answered to [employee of Credit Suisse] that he was not trying to sell GBP against USD, but that he wished, as he actually had a 'long' (or selling) open risk position in GBP against USD]

02/14/2012 14:01:13 [employee of Credit Suisse] Says ok someone else is

02/14/2012 14:01:18 [employee of non-addressee] Says probably a fix”²⁴¹
[[employee of Credit Suisse] and [employee of non-addressee] speculate on the identity of the seller]

- (260) On 15 February 2012, between 09:27:11 and 12:42:45, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] all exchanged commercially sensitive information about recently executed trades including details on the currency pair, the traded amount, the trading conditions (*‘small struggle then ok’, ‘as it looked like iot was gonna pop’, ‘got easy’*) and the type of client (*‘option guys’, ‘ecomm’, ‘lev guys’*). Those pieces of sensitive information shared among the traders informed their future trading strategies. In particular, the information they disclose on the customer type could serve to identify whether the client was a significant market player, whose trading activity was informative. In this respect, the disclosure of details on customer trades increased the level of transparency about which way (up or down) currency prices were likely to move (see recitals (220) and (221)). For instance, the information revealed by [employee of non-addressee] that leveraged funds are selling the EUR/USD currency pair served to help the participating traders to anticipate a fall in that currency pair price. Besides, the disclosure by [employee of Credit Suisse] of the level at which he bought GBP/USD was suitable to influence the participating traders’ pricing strategy. Finally, [employee of non-addressee] shared commercially sensitive information on upcoming conditional orders. The exchange of information on customers’ conditional orders increased transparency between the participating traders as regard the likely direction of the market (see recitals (178), (180) and (181)).

“02/15/2012 09:27:11 [employee of non-addressee] Says lost ton eur

02/15/2012 09:27:15 [employee of non-addressee] Says smalls struggle then ok
[[employee of non-addressee] sold 100 million EUR after some struggle]

02/15/2012 09:34:21 [employee of non-addressee] Says option guys sell eurgbp
[[employee of non-addressee] informed that a market participant who usually trades with options is selling EUR against GBP]

02/15/2012 09:36:44 [employee of non-addressee] Says yeah and here.. [[employee of non-addressee] was in a similar transaction as [employee of non-addressee]]

02/15/2012 09:36:51 [employee of non-addressee] Says just as it looked like iot was gonna pop

[...]

02/15/2012 11:04:05 [employee of non-addressee] Says lost a bully cble...ecomm cust...cudnt buy them [[employee of non-addressee] informed that he had sold 50 million GBP against USD to a client that normally traded though e-commerce, but who could not buy the indicated amount in e-commerce at this occasion]

02/15/2012 11:08:45 [employee of non-addressee] Says couple of lev guys selling eurUSD here [[employee of non-addressee] informed that he saw two leveraged funds selling EUR against USD]

²⁴¹ [...]

02/15/2012 12:19:05 [employee of non-addressee] Says ose 2 clips of aud in quick succession [[employee of non-addressee] had just sold two undetermined amounts of AUD in quick succession]

02/15/2012 12:29:07 [employee of Credit Suisse] Says bot 100 cable 15-20 got easy [[employee of Credit Suisse] indicated that he had bought 100 million GBP against USD, and the traded level]

[...]

02/15/2012 12:42:44 [employee of non-addressee] Says some stops 35-30 now

02/15/2012 12:42:45 [employee of non-addressee] Says eur²⁴² [[employee of non-addressee] informed that he had stop orders in EUR, and the level]

- (261) On 16 February 2012, between 07:31:51 and 16:40:24, [employee of non-addressee], [employee of Credit Suisse], [employee of non-addressee] exchanged commercially sensitive information about recently executed trades including details on the currency pair, the traded amount, the trading conditions (*'not volume but a few names'*) and the type of client (*'lev'*). Again, those pieces of sensitive information shared informed their future trading strategies. Later, [employee of non-addressee] disclosed sensitive information on upcoming conditional orders. [employee of Credit Suisse] then requested information on potential transactions in USD/JPY, to which [employee of non-addressee] replied. This piece of valuable information might have been taken into account by [employee of Credit Suisse] in his future trading activity in that currency pair. The conversation went further with [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] again sharing commercially sensitive information on recently executed trades. Finally, [employee of non-addressee] shared commercially sensitive information on fix positions that other participating traders could take into account as the time of the fix neared.

“02/16/2012 07:31:51 [employee of non-addressee] Says mrng, lev taking back eurUSD shorts 1.3010 [[employee of non-addressee] informed the other participating traders that a leverage fund was closing a short position and hence buying EUR against USD]

02/16/2012 07:57:18 [employee of Credit Suisse] Says morning got bids into 1.5640-60 not volume but a few names [[employee of Credit Suisse] indicated he had orders to buy GBP against USD for some different clients, and the level]

[...]

02/16/2012 08:07:17 [employee of non-addressee] Says lost a monkey usdjpy [[Employee of non-addressee] sold 500 million USD against JPY]

02/16/2012 08:07:48 [employee of non-addressee] Says thx

02/16/2012 09:04:10 [employee of non-addressee] has joined the room

02/16/2012 09:28:39 [employee of non-addressee] Says some stops now at 80 eur [[employee of non-addressee] had some stop orders for the EUR/USD currency pair, and indicated the level]

²⁴² [...]

02/16/2012 09:28:48 [employee of non-addressee] Says cheers [employee of non-addressee]

02/16/2012 09:29:03 [employee of Credit Suisse] Says any exporters above in rice²⁴³ [[employee of Credit Suisse] inquired on potential transactions in USD/JPY]

02/16/2012 09:29:27 [employee of non-addressee] Says none”

[...]

“02/16/2012 14:38:48 [employee of non-addressee] Says Get paid for 50 quid - dodge ball [[employee of non-addressee] indicated that he had sold 50 million GBP]

02/16/2012 15:05:38 [employee of non-addressee] Says cable a bit stoppy above 30 [[employee of non-addressee] indicated he had stops in GBP/USD, and the level]

02/16/2012 15:07:01 [employee of non-addressee] Says lose some stgjpy fixer type guy [[employee of non-addressee] indicated he had sold GBP against JPY to a customer that normally traded during the fix]

02/16/2012 15:07:11 [employee of non-addressee] Says thx

02/16/2012 15:19:02 [employee of non-addressee] Says stst selling cble up here [[employee of non-addressee] reported on a market participant selling GBP against USD]

02/16/2012 15:30:19 [employee of Credit Suisse] Says not enough though

02/16/2012 15:32:14 [employee of non-addressee] Says look me

02/16/2012 15:32:21 [employee of non-addressee] Says all fixie guy [employee of non-addressee]?? [[employee of non-addressee] followed up on [employee of non-addressee]’s information of 15:07:01]

02/16/2012 15:32:25 [employee of Credit Suisse] Says some neg gamma buying going through here that all im seeing [[employee of Credit Suisse] indicated that he was only seeing option-related activity]

02/16/2012 15:33:19 [employee of non-addressee] Says same [employee of non-addressee] [[employee of non-addressee] replied to [employee of non-addressee]’s question of 15:32:21]

02/16/2012 15:47:03 [employee of non-addressee] Says no gbp fixes here.... small lhs aussie, and rhs usdchf [[employee of non-addressee] indicated that he had no orders to execute at the fix in GBP and shared his positions in AUD/USD and USD/CHF]

02/16/2012 16:39:30 [employee of non-addressee] Says sold a lump of audusd there 2025 [[employee of non-addressee] indicated that he had sold a large, unspecified amount of AUD against USD, and the level]

02/16/2012 16:39:35 [employee of non-addressee] Says it’s not offered !

02/16/2012 16:40:24 [employee of non-addressee] Says thx mate”²⁴⁴

²⁴³ “Rice” is Forex slang for the USD/JPY currency pair.

²⁴⁴ [...].

- (262) On 24 February 2012, between 07:38:12 and 14:15:35, [employee of non-addressee], [employee of Credit Suisse] and [employee of non-addressee] exchanged competitively sensitive information on current trading activity, again disclosing details on the currency pair, the trading amount and trading conditions. Later in the day, [employee of non-addressee] disclosed commercially sensitive information on GBP/JPY. The trading conditions he experienced (*'first buyer i've seen today so its probably the top'*) provided valuable insights as they allowed the other participating traders to adjust their price levels for that specific currency pair.

"02/24/2012 07:38:12 [employee of Credit Suisse] Says morning##

02/24/2012 07:42:02 [employee of non-addressee] Says mrng, supra offering eurgbp at 05 [[employee of non-addressee] indicated that a customer (possibly a supranational institution) was trading EUR against GBP, and the level]

02/24/2012 07:42:22 [employee of Credit Suisse] Says yeh sold 30 odd here [[employee of Credit Suisse] indicated that he had traded 30 million EUR against GBP]

02/24/2012 08:02:52 [employee of non-addressee] Says i lost a decent slug of eurgbp on a 2 way²⁴⁵ then.... [[employee of non-addressee] indicated that he had sold a rather big amount of EUR against GBP in a two way quote]

02/24/2012 08:03:01 [employee of non-addressee] Says the 05 offers bailed me out nicely

02/24/2012 08:03:08 [employee of non-addressee] Says wasnt too much below 00 [In the previous sentence and this one, [employee of non-addressee] indicated that another market participant was offering a higher level than his had helped in his trading]

[...]

02/24/2012 14:15:21 [employee of non-addressee] Says lost 50 gbpjpy lev type

02/24/2012 14:15:35 [employee of non-addressee] Says first buyer i've seen today so its probably the top...." ²⁴⁶ [[employee of non-addressee] indicated he had sold 50 million GBP against JPY to a leveraged fund, which, for him, was the highest that he could obtain because there was not much demand for that currency pair in the market]

- (263) On 27 February 2012, between 08:18:55 and 12:55:53, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] repeatedly exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount, trading conditions (*'profit taking'* by clients, *'struggle'*, retail clients that *'hammer'*, Russians selling *'again and again'*), and type of customer (*'retail'*, *'Russia'*). Those exchanges provided the participating traders with valuable cumulative insights into current trading patterns,

²⁴⁵ A two-way quote is a type of quote that gives both the bid and the ask price of a security, informing would-be traders of the current price at which they could buy or sell the security. The two-way quote also shows the spread between the bid and the ask, giving traders an idea of the current liquidity in the security (a smaller spread indicates more liquidity).

²⁴⁶ [...]

which were not available to other competitors, but informed their subsequent actions on the market.

02/27/2012 08:18:55 *[employee of non-addressee] Says rooskies selling usdjpy 95-8* [[employee of non-addressee] informed that he had received offers to buy USD against JPY from Russian customers and indicated the level]

02/27/2012 08:20:44 *[employee of non-addressee] Says see some sellers here as well* [[employee of non-addressee] indicated that he was also seeing some sellers of the same currency pair]

02/27/2012 08:20:48 *[employee of non-addressee] Says ta*

02/27/2012 08:20:48 *[employee of non-addressee] Says profit taking* [[employee of non-addressee] explained that the sellers he had seen were taking profits in the market]

02/27/2012 08:20:58 *[employee of non-addressee] Says ye[some guys on etools now* [[Employee of non-addressee] confirmed [employee of non-addressee]'s views]

02/27/2012 09:48:35 *[employee of non-addressee] Says lost ton usd*

02/27/2012 09:48:40 *[employee of non-addressee] Says struggle* [[employee of non-addressee] had sold 100 million USD with some difficulties]

02/27/2012 09:56:47 *[employee of non-addressee] Says Lose pounds there, will be around* [[employee of non-addressee] sold GBP]

02/27/2012 10:00:20 *[employee of Credit Suisse] Says bot 50 on bid* [[employee of Credit Suisse] had bought 50 million GBP]

02/27/2012 10:08:16 *[employee of non-addressee] Says retail hammer eurjpy*

[...]

02/27/2012 10:16:49 *[employee of non-addressee] Says retail sell eurjpy again* [[employee of non-addressee] noted that retail investors were insistently selling the EUR/JPY currency pair]

02/27/2012 10:24:17 *[employee of non-addressee] Says russia sell eur* [[employee of non-addressee] informed that a Russian customer was selling EUR]

02/27/2012 10:24:45 *[employee of non-addressee] Says same*

02/27/2012 10:39:38 *[employee of non-addressee] Says russia sell again*

02/27/2012 10:50:22 *[employee of non-addressee] Says ...and again*

02/27/2012 10:51:35 *[employee of non-addressee] Says cheers mate*

02/27/2012 10:53:34 *[employee of non-addressee] Says and here*

02/27/2012 11:27:54 *[employee of non-addressee] Says russia sell again* [[employee of non-addressee] informed that the Russian customer were selling again (see comment at 10:24:17)]

02/27/2012 11:29:15 *[employee of non-addressee] Says these lads are starting to become a bit fooking annoying*

02/27/2012 12:49:11 *[employee of non-addressee] Says lose pounds there -can be good on the day* [[employee of non-addressee] had a selling position in GBP]

02/27/2012 12:50:12 [employee of non-addressee] Says get eur guy usually about [[employee of non-addressee] was buying EUR]

02/27/2012 12:55:27 [employee of non-addressee] Says hear m/e demand in cross 40's [[Employee of non-addressee] indicated there was a rumour that a Middle-East bank was buying EUR/GBP, and the level]

02/27/2012 12:55:40 [employee of non-addressee] Says thx

02/27/2012 12:55:53 [employee of non-addressee] Says a few offers appearing in cable ahead of 1.59²⁴⁷ [[Employee of non-addressee] was receiving offers to buy GBP against USD, and the level]

- (264) On 2 March 2012, between 08:24:43 and 12:15:13, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] repeatedly exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount ('ton', 'again ton', 'lump', '275'), exchange rate ('sub 60', '.9115'), trading conditions ('super easy'), and type of customer ('spain', 'lev', 'fats (fast) money'). [Employee of non-addressee] and [employee of Credit Suisse] also disclosed some sensitive information on upcoming and, in [employee of Credit Suisse]'s case, recently executed conditional (stop) orders. [Employee of Credit Suisse] further indicated that it was [employee of non-addressee]'s trades ('sold a lump of betty') that produced a change in the value of the GBP triggering his stop orders. Again, those multiple exchanges provided the participating traders with valuable cumulative insights into current trading patterns, which were not available to other competitors and informed their subsequent actions on the market.

"03/02/2012 08:24:43 [employee of non-addressee] Says spain selling eurUSD on the tools [[employee of non-addressee] noted that a Spanish counterparty (presumably the [...]) was selling EUR against USD on electronic trading platforms]

03/02/2012 08:24:51 [employee of non-addressee] Says thx

03/02/2012 08:42:23 [employee of non-addressee] Says sold ton eurUSD sub 60 for lev, super easy [[employee of non-addressee] indicated he had easily sold 100 million EUR against USD below an indicated level]

03/02/2012 08:47:13 [employee of non-addressee] Says got dirty shet same [[employee of non-addressee] had done the same transaction]

03/02/2012 08:51:36 [employee of non-addressee] Says same again eurUSD, ton [[employee of non-addressee] had also repeated the transaction]

03/02/2012 08:52:40 [employee of non-addressee] Says get eurUSD here fats money [[employee of non-addressee] had bought EUR against USD]

03/02/2012 08:52:50 [employee of non-addressee] Says thx mate

03/02/2012 09:20:57 [employee of non-addressee] Says more stops now sub 1.5885 [[Employee of non-addressee] indicated that he had stop orders for GBP/USD, and the level]

[...]

²⁴⁷ [...]

03/02/2012 12:11:33 [employee of non-addressee] Says sold a lump of betty..
[[employee of non-addressee] had sold a big amount of GBP against USD]

03/02/2012 12:11:50 [employee of non-addressee] Says u nailed it

03/02/2012 12:11:51 [employee of Credit Suisse] Says yeh 100 worth of stops gone off here [[employee of non-addressee] and [employee of Credit Suisse] told [employee of non-addressee] that his trading had produced a change in the value of the GBP triggering stop orders for approximately 100 million]

03/02/2012 12:11:52 [employee of non-addressee] Says thats for sure

03/02/2012 12:15:13 [employee of non-addressee] Says usd/chf : bought about 275 usdchf there through .9115.. leveraged and stops losses some liquidity above 30+35 for the time being²⁴⁸ [[Employee of non-addressee] indicated that he had bought 275 million USD against CHF and gave information of the prevailing trading environment for this currency pair]

- (265) On 6 March 2012, between 09:13:44 and 10:31:09, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] typically started by exchanging commercially sensitive information about recently executed or upcoming client trades, disclosing specific details including currency pair, trading direction, amount ('3 ton', '100', 'small clip', '200'), trading conditions ('horrible', 'only bids'), and type of customer ('my interesting seller', 'cop', the 'guy i like'). Later in the day [employee of non-addressee] and [employee of non-addressee] shared sensitive information on upcoming and, in [employee of non-addressee]'s case, recently executed conditional (stop) orders. Those multiple exchanges reduced mutual uncertainty, provided the traders with valuable cumulative insights into current trading patterns, which were not available to other competitors and informed their subsequent actions on the market. Finally, [employee of non-addressee] sought advice on the evolution of the GBP/USD exchange rate, to which [employee of Credit Suisse] replied. Instead of acting independently, [employee of non-addressee] could have taken this information into account in deciding his own future strategy.

03/06/2012 09:13:44 [employee of non-addressee] Says lost 3 ton eurUSD.... one off trade [[Employee of non-addressee] had sold 300 million EUR against USD]

03/06/2012 09:13:53 [employee of non-addressee] Says lost 100 audUSD too., macro [He had also sold 100 million AUD against USD]

03/06/2012 09:18:19 [employee of non-addressee] Says thx

03/06/2012 09:21:12 [employee of non-addressee] Says get another small clip cable from my interesting seller [[Employee of non-addressee] had bought a small amount of GBP against USD from a counterparty with which he usually got interesting levels]

03/06/2012 09:22:42 [employee of non-addressee] Says tks

03/06/2012 09:28:50 [employee of non-addressee] Says got cable from a cop in the 20's #s [[Employee of non-addressee] informed that he had bought GBP against USD from a big corporation, and indicated the approximate level]

²⁴⁸ [...]

03/06/2012 09:29:35 [employee of non-addressee] Says Get pounds horrible
[[employee of non-addressee] bought GBP at a very bad level]

03/06/2012 09:29:45 [employee of non-addressee] Says yep same [[employee of non-addressee] was in the same position as [employee of non-addressee]]

03/06/2012 09:30:31 [employee of Credit Suisse] Says only bids here 100+
[[employee of Credit Suisse] had orders to buy GBP, and indicated the level]

“03/06/2012 09:54:11 [employee of non-addressee] Says tricky stop at 1.3160...eur
cad kick on thru it [[employee of non-addressee] had a stop order difficult to execute.
He hoped that the evolution of the EUR could push the exchange rate to the trigger
point]

03/06/2012 09:54:28 [employee of non-addressee] Says any chance we could get 80
to trade cable pis

03/06/2012 09:54:33 [employee of non-addressee] Says ta [employee of non-
addressee]

03/06/2012 09:54:35 [employee of Credit Suisse] Says yeh trendline there

03/06/2012 09:56:44 [employee of non-addressee] Says sold 200 eur/usd
[[Employee of non-addressee] had sold 200 million EUR against USD]

03/06/2012 09:56:50 [employee of non-addressee] Says guy i like

03/06/2012 09:56:54 [employee of non-addressee] Says ...ish

03/06/2012 09:56:56 [employee of non-addressee] Says thx

03/06/2012 09:56:58 [employee of non-addressee] Says ts

[...]

03/06/2012 10:22:23 [employee of non-addressee] Says few stops close in audusd ,
nzusd and usdcad [[Employee of non-addressee] informed that stop orders in
AUD/USD, NZD/USD and USD/CAD were executed]

03/06/2012 10:22:28 [employee of non-addressee] Says thx

03/06/2012 10:30:36 [employee of non-addressee] Says euro seller here again
..another hunj²⁴⁹ [[Employee of non-addressee] had received an offer to buy 100
million EUR]

03/06/2012 10:30:57 [employee of non-addressee] Says we see a eur seller
here..usually directional [[employee of non-addressee] also had an offer to buy
EUR]

03/06/2012 10:31:09 [employee of non-addressee] Says thx²⁵⁰

- (266) On 9 March 2012, between 09:35:17 and 15:42:47, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] repeatedly disclosed specific details including currency pair, trading direction, amount ('bully', 'ton', 'a few clips', 'bully', 'a good amount'), exchange rate

²⁴⁹ “Hunj” is short for “hundred”.

²⁵⁰ [...].

(‘1.57’), trading conditions (‘*ddiirrrtttyy*’, ‘*good jap offers at 78-83*’, ‘*very easily*’, ‘*holds well*’), and type of customer (‘*real money*’, ‘*interesting name*’, ‘*dodgy prop desk*’, ‘*corp*’, ‘*retail*’, ‘*model*’). This type of contact reduced their uncertainty as regards the timing, extent and details of the intended conducts to be adopted on the market and thus placed them at a competitive advantage vis-à-vis other traders. Later in the day, [employee of non-addressee] and [employee of Credit Suisse] also exchanged commercially sensitive information on upcoming conditional (stop) orders.

“03/09/2012 09:35:17 [employee of non-addressee] Says sold bully cable for real money [[employee of non-addressee] had sold 50 million GBP against USD to a real-money (non-leveraged) fund]

03/09/2012 09:35:42 [employee of non-addressee] Says gotta be the right trade after thos figs [[employee of non-addressee] stated that this was the right way to trade after the publication of specific (probably macro-economic) figures of the market]

03/09/2012 09:38:15 [employee of non-addressee] Says lost ton eur [[employee of non-addressee] had sold 100 million EUR]

03/09/2012 09:38:19 [employee of non-addressee] Says ddiirrrtttyy

03/09/2012 10:03:19 [employee of non-addressee] Says Lose a few clips of pounds here [[employee of non-addressee] had sold GBP for an unspecified (small) amount]

03/09/2012 10:04:21 [employee of non-addressee] Says eta type stops a little lower now cble [[employee of non-addressee] indicated that he had stop orders in GBP/USD at a lower level as before]

03/09/2012 10:04:34 [employee of non-addressee] Says thx

03/09/2012 10:24:32 [employee of non-addressee] Says lost usdjpy

03/09/2012 10:24:37 [employee of non-addressee] Says interesting name [[Employee of non-addressee] had sold an undetermined amount of USD against JPY to an interesting customer]

03/09/2012 10:24:49 [employee of non-addressee] Says good jap offers at 78-83 [[Employee of non-addressee] informed that he had seen good offers to sell USD against JPY from Japanes customers and indicates the level)]

03/09/2012 10:25:56 [employee of non-addressee] Says stops at 90 and obv 00 here usdyen [[employee of non-addressee] indicated he had stop orders in USD/JPY, and the level]

03/09/2012 10:27:17 [employee of non-addressee] Says tks [employee of non-addressee]

03/09/2012 10:36:38 [employee of non-addressee] Says lost stg...dodgy prop desk [[employee of non-addressee] had sold GBP to a potentially dangerous trader trading on his own account]

03/09/2012 10:36:46 [employee of non-addressee] Says Lose Cable and get x - corp will be about. [[employee of non-addressee] was selling GBP against USD and buying EUR against GBP from a big corporation]

03/09/2012 10:52:37 [employee of Credit Suisse] Says ta mate

[...]

03/09/2012 13:23:29 [employee of non-addressee] Says lost bully stgjpy [[employee of non-addressee] sold 50 million GBP against JPY]

03/09/2012 13:26:10 [employee of Credit Suisse] Says nice

03/09/2012 13:41:46 [employee of non-addressee] Says Sold a good amount of usd/jpy very easliy [[employee of non-addressee] sold a big but undetermined amount of USD against JPY]

03/09/2012 13:41:55 [employee of non-addressee] Says tks [employee of non-addressee]

[...]

03/09/2012 13:45:48 [employee of Credit Suisse] Says got stop there, dam [[employee of Credit Suisse] informed that he had stop orders for the GBP/JPY currency pair]

03/09/2012 13:57:12 [employee of non-addressee] Says corps buy eur [[employee of non-addressee] had an offer to sell EUR to a big corporation]

[...]

03/09/2012 14:19:26 [employee of Credit Suisse] Says only bids below cable no stops [[employee of Credit Suisse] had some offers to buy GBP against USD but no stop orders]

03/09/2012 14:19:43 [employee of non-addressee] Says retail pops up with demand

03/09/2012 14:19:49 [employee of non-addressee] Says 1.57

03/09/2012 14:20:00 [employee of non-addressee] Says ish [[Employee of non-addressee] noted that retail investors were placing orders to buy and indicated the level]

03/09/2012 14:20:15 [employee of non-addressee] Says i sqrd²⁵¹ up for now

03/09/2012 14:20:28 [employee of non-addressee] Says sqrd up longs..haha

03/09/2012 14:25:16 [employee of non-addressee] Says sold some audusd a nd bird., holds well [[Employee of non-addressee] had sold an undetermined amount for AUD against USD]

03/09/2012 14:26:29 [employee of non-addressee] Says thx

03/09/2012 15:09:43 [employee of non-addressee] Says Lvi breaks in Cable

03/09/2012 15:11:38 [employee of non-addressee] Says sold bully cable for model [[employee of non-addressee] had sold 50 million GBP against USD on behalf of a customer who used a quantitative model in his trading strategy]

03/09/2012 15:13:08 [employee of non-addressee] Says selling here too [[Employee of non-addressee] was also selling GBP against USD]

[...]

²⁵¹ “Squared” means to have no net risk position. To be “squared at the fix” means that the trader has no net position at the fix.

03/09/2012 15:26:52 [employee of non-addressee] Says see usdjpy buying again [[employee of non-addressee] noted that he saw clients willing to buy USD against JPY]

03/09/2012 15:27:05 [employee of non-addressee] Says thx

03/09/2012 15:36:38 [employee of non-addressee] Says eur still stubborn here isnt it

03/09/2012 15:42:47 [employee of non-addressee] Says keep losing kiwi now”²⁵² [[Employee of non-addressee] was selling NZD against USD]

- (267) On 14 March 2012, between 09:05:02 and 13:40:07, [employee of non-addressee] and later in the day [employee of non-addressee] revealed commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount (‘ton’, ‘a lump’), exchange rate (‘in 60s’, ‘14-17’) and trading conditions (‘super easy’, a ‘guy cutting short’). [Employee of Credit Suisse], [employee of non-addressee] and [employee of non-addressee] all thanked [employee of non-addressee] for the sharing of information. These pieces of information are indeed valuable to the traders as the knowledge of the price offered as well as the trading conditions (‘super easy’ to buy ‘a lump’ of EUR/GBP ‘over the last 20mins’) reduced uncertainty for the participating traders in relation to the price levels they could offer for their upcoming trades.

“03/14/2012 09:05:02 [employee of non-addressee] Says lost ton eur in 60s

03/14/2012 09:05:06 [employee of non-addressee] Says guy cutting short [[employee of non-addressee] indicated he had sold 100 million EUR and the level to a market participant cutting his short position]

[...]

03/14/2012 13:36:44 [employee of non-addressee] Says just bought a lump of eurgbp 14-17 over the last 20mins, super easy [[employee of non-addressee] informed that he had easily traded a big amount of EUR against GBP in the last 20 minutes and indicated the level]

03/14/2012 13:39:36 [employee of Credit Suisse] Says ta

03/14/2012 13:39:42 [employee of non-addressee] Says thks dan

03/14/2012 13:40:07 [employee of non-addressee] Says thx mate”²⁵³

- (268) On 16 March 2012, between 13:00:31 and 15:19:15, [employee of non-addressee], [employee of non-addressee], [employee of Credit Suisse] and [employee of non-addressee] repeatedly disclosed specific details including currency pair, trading direction, amount (‘duece’ (deuce), ‘52’, ‘ton’, ‘150’), exchange rate (‘over 1.15’), trading conditions (‘easy’), and type of customer (‘lev’, ‘model’, ‘real money’). In the ordinary course of business, those traders had no reason or means of knowing each other’s recently concluded trades. Later in the day, [employee of non-addressee] also disclosed competitively sensitive information on fix positions, enabling the other participating traders to reduce their uncertainty heading into the fix trading.

²⁵² [...].
²⁵³ [...].

“03/16/2012 13:00:31 [employee of non-addressee] Says lose usdjpy lev [[employee of non-addressee] was selling an undetermined amount of USD against JPY to a leveraged fund]

03/16/2012 13:01:01 [employee of non-addressee] Says lose a duece eurUSD.. model [[Employee of non-addressee] had sold 200 million EUR against USD to a customer using a quantitative model for his trading strategy]

03/16/2012 13:07:41 [employee of non-addressee] Says lose 52 eur ecb [[employee of non-addressee] was selling 52 million EUR at the ECB fix]

03/16/2012 13:33:01 [employee of non-addressee] Says lost a ton cable... real money .. easy [[Employee of non-addressee] had easily sold 100 million GBP against USD to a real-money (non-leveraged) fund]

03/16/2012 13:33:53 [employee of Credit Suisse] Says got 100 stg yen over 1.15 fix time [[employee of Credit Suisse] had received an order to buy 100 million GBP against JPY at the fix]

03/16/2012 13:41:10 [employee of non-addressee] Says real money buying betty [[employee of non-addressee] had an offer to sell GBP against USD to a real-money (non-leveraged) fund]

03/16/2012 13:43:27 [employee of Credit Suisse] Says mad move

03/16/2012 13:45:31 [employee of non-addressee] Says sold usdjpy [[employee of non-addressee] had sold an undetermined amount of USD against JPY]

03/16/2012 13:45:38 [employee of non-addressee] Says tks

[...]

03/16/2012 15:18:50 [employee of non-addressee] Says fixes small

03/16/2012 15:18:55 [employee of non-addressee] Says get 50 eur lose 70 cable [[employee of non-addressee] indicated the order amounts he received for the fix, in EUR and GBP, both against USD]

03/16/2012 15:19:11 [employee of non-addressee] Says lost 150 usdjpy there

03/16/2012 15:19:15 [employee of non-addressee] Says lev”²⁵⁴ [[Employee of non-addressee] had sold 150 million USD against JPY to a leveraged fund]

- (269) On 26 March 2012, between 08:42:09 and 08:53:51, [employee of non-addressee], [employee of Credit Suisse] and [employee of non-addressee] exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount (‘100’), exchange rate (‘1525’) and type of customer (‘fast money’). A bit later, [employee of non-addressee] shared sensitive information on upcoming conditional (stop) orders. [Employee of non-addressee] reacted on this information giving additional intelligence. Those multiple exchanges enabled each of them to act on the market and to adjust their strategies with the benefit of cumulative knowledge that was not available to other, non-participating traders.

²⁵⁴ [...].

"03/26/2012 08:42:09 [employee of non-addressee] Says range buys 100 eurUSD [[Employee of non-addressee] had an offer to sell 100 million EUR against USD]

03/26/2012 08:42:33 [employee of Credit Suisse] Says bot a ton cable here 15-25 [[employee of Credit Suisse] indicated that he had bought 100 million GBP against USD, and the level]

03/26/2012 08:42:55 [employee of non-addressee] Says fast money lifts me

03/26/2012 08:51:53 [employee of non-addressee] Says few cable stops building thru 00 [[employee of non-addressee] was getting some stop orders in GBP/USD around a specific level]

03/26/2012 08:53:43 [employee of non-addressee] Says yep...

03/26/2012 08:53:51 [employee of non-addressee] Says same as last week but a little higher²⁵⁵

- (270) On 27 March 2012, between 06:34:13 and 09:47:26, [employee of non-addressee], [employee of Credit Suisse] and [employee of non-addressee] repeatedly exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount ('bully', '50', '50') and type of customer ('range guy', 'model a/c', 'corp'). Later in the day [employee of non-addressee] revealed sensitive information on a trend in upcoming conditional (stop) orders that was also experienced by [employee of non-addressee]. Those multiple exchanges provided the participating traders with valuable cumulative insights into current trading patterns and enabled them to act on the market with the benefit of that knowledge that was not available to non-participating traders.

"03/27/2012 06:34:13 [employee of non-addressee] Says range guy buys bully eur [[employee of non-addressee] received an offer to sell 50 million EUR]

03/27/2012 06:46:31 [employee of non-addressee] Says model in selling eur [[employee of non-addressee] received an offer to buy EUR from a market participant using a quantitative model in his trading strategy]

03/27/2012 06:47:34 [employee of Credit Suisse] Says morning sold 50 cable [[employee of Credit Suisse] sold 50 million GBP against USD]

03/27/2012 06:47:52 [employee of non-addressee] Says just bought 50 betty [[Employee of non-addressee] bought 50 million GBP against USD]

03/27/2012 06:48:06 [employee of Credit Suisse] Says there u go stale mate agin

03/27/2012 06:48:13 [employee of non-addressee] Says absolutely

03/27/2012 08:13:10 [employee of non-addressee] Says range guy sells eur [[employee of non-addressee] received an offer to buy EUR]

[...]

03/27/2012 08:57:09 [employee of non-addressee] Says model a/c²⁵⁶ buys bully eur [[employee of non-addressee] had an offer to sell 50 million EUR to a company using a quantitative model for his trading strategy]

²⁵⁵ [...].

03/27/2012 09:30:29 [employee of non-addressee] Says corp sells quid [[employee of non-addressee] had an offer to buy GBP from a big corporation]

03/27/2012 09:32:57 [employee of non-addressee] Says tks [employee of non-addressee]

03/27/2012 09:47:16 [employee of non-addressee] Says few stops building below 82.60 now usdyen [[employee of non-addressee] had some new stop orders in USD/JPY and indicated the level]

03/27/2012 09:47:26 [employee of non-addressee] Says same²⁵⁷ [[employee of non-addressee] was in the same position as [employee of non-addressee] with respect to stop orders]

- (271) On 13 April 2012, between 09:23:13 and 13:33:21, [employee of Credit Suisse] and [employee of non-addressee] exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount ('60', '100', '100', 'duece'), exchange rate ('55ish'), trading conditions ('got easy'), and type of customer ('guy playing with gamme'). Later in the day, [employee of Credit Suisse] also shared sensitive information about his intended trading position ('lhs x'). The multiple pieces of information exchanged provided a valuable cumulative insight into current trading patterns that was not available to other competitors and allowed the participating traders to adjust their trading strategy.

"04/13/2012 09:23:13 [employee of Credit Suisse] Says paid for 60 cable got easy [[employee of Credit Suisse] had easily bought 60 million GBP against USD]

04/13/2012 09:24:12 [employee of non-addressee] Says tks

[...]

04/13/2012 12:03:06 [employee of Credit Suisse] Says sold 100 cable 55 ish [[employee of Credit Suisse] informed that he had sold 100 million GBP against USD, and indicated the level]

04/13/2012 12:03:20 [employee of non-addressee] Says ta [employee of Credit Suisse]

04/13/2012 12:03:31 [employee of non-addressee] Says its all u

04/13/2012 12:03:34 [employee of Credit Suisse] Says feels like lhs xxxx as well [[employee of Credit Suisse] shared his intention to remain in a selling position in EUR/GBP]

[...]

04/13/2012 12:49:04 [employee of non-addressee] Says boght 100 x

04/13/2012 12:49:08 [employee of non-addressee] Says guy playing with gamme [[Employee of non-addressee] indicated that he had bought 100 million EUR/GBP to an option-trading customer]

04/13/2012 12:49:13 [employee of non-addressee] Says thx

²⁵⁶ a/c means 'account'.

²⁵⁷ [...]

04/13/2012 13:32:49 [employee of non-addressee] Says sold a duece eurUSD
[[Employee of non-addressee] had sold 200 million EUR against USD]

04/13/2012 13:33:21 [employee of Credit Suisse] Says caught it nicely''²⁵⁸

- (272) On 18 April 2012, between 08:28:07 and 12:26:14, [employee of Credit Suisse], [employee of non-addressee] and [employee of non-addressee] started by exchanging commercially sensitive information about recently executed client trades. The information disclosed by [employee of Credit Suisse] that his sale of a 'lump' of 'x' (EUR/GBP) 'didn't budge' the exchange rate enabled the other participating traders to better anticipate market movements in that currency pair, giving them a competitive advantage vis-à-vis other competitors. Also, the fact that 'euro corps' (European corporations) are 'back in x' (EUR/GBP), an information revealed by [employee of non-addressee], enabled the participating traders to act on the market with the benefit of that knowledge. Later, [employee of non-addressee] and [employee of non-addressee] shared additional commercially sensitive information about recently executed client trades, for which [employee of non-addressee] repeatedly expressed gratitude ('thx'), indicating that this information was useful to him. Later in the day, [employee of non-addressee] sought advice on any trading activity that other participating traders might have seen in CHF. Both [employee of non-addressee] and [employee of non-addressee] replied and shared commercially sensitive information on trades recently executed in that currency: [employee of non-addressee] indicated that he had a small bid from a leveraged fund in EUR/CHF while [employee of non-addressee] indicated that he had sold 50 million USD/CHF to a customer using a quantitative model for his trading strategy in the morning. This cumulative knowledge informed [employee of non-addressee] when devising his trading strategy, providing him with a competitive advantage vis-à-vis other non-participating traders.

04/18/2012 08:28:07 [employee of Credit Suisse] Says buyer asking about

04/18/2012 08:43:38 [employee of Credit Suisse] Says sold lump didnt budge xx [[employee of Credit Suisse] indicated that his customer was asking for a level, that he had sold a big amount of 'xx' (EUR against GBP), but that the level had not moved]

04/18/2012 08:44:26 [employee of non-addressee] Says Bought a lump of Cable there [[employee of non-addressee] had bought a big amount of GBP against USD]

04/18/2012 08:44:53 [employee of non-addressee] Says tks

04/18/2012 08:45:51 [employee of non-addressee] Says i lost pounds above 90...comes back ok [[employee of non-addressee] informed that he had sold an undetermined amount of GBP and indicated the level]

04/18/2012 08:51:33 [employee of non-addressee] Says those euro corps back in x here [[employee of non-addressee] had received trading orders from big European corporations in EUR/GBP]

04/18/2012 08:52:40 [employee of non-addressee] Says thx mate

²⁵⁸ [...]

04/18/2012 08:54:40 [employee of non-addressee] Says stops inusdhp at 7585 [[Employee of non-addressee] informed that he had stop orders for the USD/JPY currency pair and indicated the level]

04/18/2012 08:56:26 [employee of non-addressee] Says lost X to the guy who is about [[Employee of non-addressee] informed that he had sold EUR against GBP]

[...]

04/18/2012 11:53:19 [employee of non-addressee] Says lose ton cross to lev guy [[employee of non-addressee] had sold 100 million EUR against GBP to a leveraged fund]

04/18/2012 11:53:28 [employee of non-addressee] Says wooooo

04/18/2012 11:53:29 [employee of non-addressee] Says thx

04/18/2012 12:12:15 [employee of non-addressee] Says roosky buys eurUSD [[employee of non-addressee] was selling EUR against USD to a specific (presumably Russian) customer]

04/18/2012 12:12:20 [employee of non-addressee] Says thx

04/18/2012 12:17:06 [employee of non-addressee] Says seen anything chflads? [[employee of non-addressee] asked the other participating traders if they had seen any trading in CHF]

04/18/2012 12:17:43 [employee of non-addressee] Says small lev buyer ofeurCHF, nthg worth mentioning [[employee of non-addressee] indicated that he had a small bid from a leveraged fund in EUR/CHF]

04/18/2012 12:17:50 [employee of non-addressee] Says ok mate

04/18/2012 12:18:03 [employee of non-addressee] Says one model we like bouht usdCHF this am

04/18/2012 12:18:06 [employee of non-addressee] Says only 50 [[Employee of non-addressee] indicated that he had sold 50 million USD/CHF to a customer using a quantitative model for his trading strategy in the morning]

04/18/2012 12:26:09 [employee of non-addressee] Says Both some pounds there feels like it could pop thru the 00, got stops thru 1.6020. [[employee of non-addressee] indicated that he had bought an undetermined amount of GBP, and that he hoped the rate would increase to reach the triggering level of the stops in his book]

04/18/2012 12:26:14 [employee of non-addressee] Says bought “²⁵⁹

- (273) On 19 April 2012, between 06:55:31 and 07:46:09, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of Credit Suisse] and [employee of non-addressee] routinely exchanged commercially sensitive information about recently executed client trades. Particularly, the fact that [employee of non-addressee] ‘cant buy pounds’, an information confirmed by [employee of non-addressee] (*‘snap’*) allowed the participating traders to take this specific market knowledge into account and accordingly adapt their trading strategy. The same is true for the information shared

²⁵⁹ [...]

by [employee of non-addressee] on his selling of EUR/JPY (*'doesn't go well'*) and corroborated by [employee of Credit Suisse] (*'same here'*).

"04/19/2012 06:55:31 [employee of non-addressee] Says lose eurjpy to smart guy [[employee of non-addressee] had sold an undetermined amount of EUR against JPY]

[...]

04/19/2012 07:31:11 [employee of non-addressee] Says Sold large EUR/GBP - one off trade [[employee of non-addressee] indicated that he had sold all his EUR against GBP in a single, big transaction]

[...]

04/19/2012 07:32:19 [employee of non-addressee] Says romf's lot selling some cable [[Employee of non-addressee] signalled that [non-addressee] is selling GBP against USD]

[...]

04/19/2012 07:33:30 [employee of non-addressee] Says i cant buy pounds here [[Employee of non-addressee] was trying to buy GBP with no success]

04/19/2012 07:33:33 [employee of non-addressee] Says snap [the same]

04/19/2012 07:33:55 [employee of non-addressee] Says infact...i want to stamp on it...but cant just yet [[Employee of non-addressee] noted that he would like to avoid the mentioned trade]

04/19/2012 07:37:49 [employee of non-addressee] Says sell bully eurjpy

04/19/2012 07:37:52 [employee of non-addressee] Says doesnt go well [[employee of non-addressee] informed that he was selling 50 million EUR against JPY at a poor level]

04/19/2012 07:38:08 [employee of Credit Suisse] Says same here [[employee of Credit Suisse] noted that he was experiencing the same as [employee of non-addressee]]

04/19/2012 07:38:52 [employee of Credit Suisse] Says account i,ve never heard of [[employee of Credit Suisse] added that he had traded with a new customer]

04/19/2012 07:42:37 [employee of non-addressee] Says yep just hearing [employee of non-addressee] moaning - same here! [[employee of non-addressee] indicated a colleague from his desk was in the same position]

04/19/2012 07:42:45 [employee of non-addressee] Says good ole [employee of non-addressee]

04/19/2012 07:42:53 [employee of non-addressee] Says godfordammy hey!!

04/19/2012 07:43:07 [employee of non-addressee] Says haha

04/19/2012 07:43:11 [employee of non-addressee] Says haha

04/19/2012 07:45:54 [employee of non-addressee] Says sales guy took 4 pips on the deal

04/19/2012 07:46:09 [employee of non-addressee] Says so we are sorting that little situation out”²⁶⁰ [[Employee of non-addressee] indicated that a sales person from [non-addressee] had accepted the trade at a very low level, so the desk was trying to mend the situation]

- (274) On 23 April 2012, between 06:45:09 and 12:21:27, [employee of non-addressee] and [employee of non-addressee] started by exchanging commercially sensitive information on recently triggered conditional (stop) orders, specifying the currency pairs (EUR/JPY and GBP/USD). Next, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] repeatedly exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount (‘bully’, ‘deuce’, ‘another 50’, ‘100’), trading conditions (‘only got 2 orders’, ‘easy’), and type of customer (‘good range type guy’, ‘lev’, ‘corp’, ‘the m/e’). The participating traders decided their own strategy with the benefit of this information, enjoying a competitive advantage vis-à-vis other non-participating traders.

“04/23/2012 06:45:09 [employee of non-addressee] Says mng lads

04/23/2012 07:02:28 [employee of non-addressee] Says eurjpy stops all going off here [[employee of non-addressee] informed that his stop orders in EUR/JPY had reached their triggering point]

04/23/2012 07:03:01 [employee of non-addressee] Says thx

04/23/2012 07:15:04 [employee of non-addressee] Says Few stops triggered there in Cable [[employee of non-addressee] indicated that some of his stop orders in GBP/USD had also reached their triggering level]

04/23/2012 07:16:40 [employee of non-addressee] Says rang legends ..ta

04/23/2012 07:18:49 [employee of non-addressee] Says ive only got 2 orders within a big fig and one of em is mine in cble [[Employee of non-addressee] indicated that he only had two big orders in GBP/USD, one of them being his own order (proprietary trading)]

04/23/2012 07:19:14 [employee of non-addressee] Says bought a bully eur/gbp for good range type guy [[Employee of non-addressee] informed that he had bought 50 million EUR against GBP]

04/23/2012 07:20:55 [employee of non-addressee] Says thx

[...]

04/23/2012 07:40:44 [employee of non-addressee] Says get deuce usdjpy from lev [[employee of non-addressee] signalled that he was buying 200 million USD against JPY from a leveraged fund]

04/23/2012 07:43:11 [employee of non-addressee] Says bought another 50 x there corp [[Employee of non-addressee] informed that he had bought an additional 50 million EUR against GBP from a big corporation]

04/23/2012 07:43:24 [employee of Credit Suisse] Says ta this 60-65 level key now

²⁶⁰ [...]

04/23/2012 07:44:13 [employee of non-addressee] Says we have a some corp int around here eurgbp [[employee of non-addressee] indicated that he had seen interest from a big corporation in EUR/GBP]

04/23/2012 07:55:50 [employee of non-addressee] Says thx

[...]

04/23/2012 11:22:39 [employee of non-addressee] Says get paid out of the m/e - euro [[employee of non-addressee] noted that he had sold EUR to a Middle-East client]

04/23/2012 12:21:04 [employee of Credit Suisse] Says -100 cable easy [[employee of Credit Suisse] had easily sold 100 million GBP against USD]

04/23/2012 12:21:26 [employee of non-addressee] Says ta [employee of Credit Suisse]

04/23/2012 12:21:27 [employee of non-addressee] Says thx''²⁶¹

- (275) On 26 April 2012, between 06:33:44 and 10:13:21, [employee of Credit Suisse] asked for information on the other participating traders' trading activity in GBP/USD. [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] replied to his request and shared commercially sensitive information on their recent trading activity (or the absence thereof) in that currency pair. This market information seemed valuable to [employee of Credit Suisse], who subsequently thanked the three traders. [Employee of Credit Suisse] could indeed have taken this information into account in deciding on his future trading strategy, putting him at a competitive advantage vis-à-vis non-participating traders. Later in the day, [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] shared commercially sensitive information about recently executed client trades that again informed the participating traders' future trading strategies.

"04/26/2012 06:33:44 [employee of non-addressee] Says corps buys eurgbp here [[employee of non-addressee] informed that he had an order to sell EUR against GBP to a big corporation]

04/26/2012 06:34:05 [employee of non-addressee] Says mrng

04/26/2012 06:34:58 [employee of non-addressee] Says cheers...mng

04/26/2012 06:35:20 [employee of Credit Suisse] Says morning anything above in cable

04/26/2012 06:35:47 [employee of Credit Suisse] Says only stops upto 1.6230 [[employee of Credit Suisse] asked the other participant traders about their respective trading in GBP/USD, himself having only stop orders at a specified level]

04/26/2012 06:35:48 [employee of non-addressee] Says nthg much here - small gamma offers the whole way [[employee of non-addressee] had only seen small option-related trading]

04/26/2012 06:35:57 [employee of non-addressee] Says ntg here mate

²⁶¹ [...]

04/26/2012 06:36:00 [employee of Credit Suisse] Says neg gamma here [[employee of Credit Suisse] informed he had also seen option-related trading]

04/26/2012 06:36:16 [employee of non-addressee] Says blimey

04/26/2012 06:42:57 [employee of non-addressee] Says Stops thru 10, offers 20-30 in Cable [[employee of non-addressee] informed that he had some stop and immediate orders in GBP/USD, and specified the level of each order type]

04/26/2012 06:47:48 [employee of Credit Suisse] Says ta

[...]

04/26/2012 08:12:46 [employee of non-addressee] Says get eur russia [[employee of non-addressee] was buying EUR from a Russian customer (presumably the [...])]

04/26/2012 08:14:25 [employee of non-addressee] Says good seller cable...an average buyer gbpxxx offset [[Employee of non-addressee] offset his position in GBP by selling GBP against USD to a customer and buying GBP against EUR from another one]

04/26/2012 08:48:25 [employee of non-addressee] Says sold ton eurgbp, easy enough to do [[employee of non-addressee] had easily sold 100 million EUR against GBP]

04/26/2012 08:48:57 [employee of non-addressee] Says thx

04/26/2012 08:49:24 [employee of non-addressee] Says certainly split the legs

04/26/2012 10:08:46 [employee of non-addressee] Says corp gives me eur in clips 30-10

04/26/2012 10:09:44 [employee of non-addressee] Says thx

04/26/2012 10:13:21 [employee of non-addressee] Says Russia²⁶² [[employee of non-addressee] informed that a Russian customer was selling him small amounts of EUR and indicated the level]

- (276) On 9 May 2012, between 12:32:11 and 12:34:42, [employee of non-addressee] asked [employee of Credit Suisse] about (the completion of) his trading strategy. [employee of Credit Suisse]replied positively and provided additional details regarding the traded levels. In the ordinary course of business, [employee of non-addressee] would have had no reason or means of knowing that [employee of Credit Suisse]had recently 'cleared his bids'. This commercially sensitive information provided [employee of non-addressee] a competitive advantage vis-à-vis other non-participating traders. That exchange of information could inform his subsequent pricing behaviour. He could have adapted his own bid to a less competitive level, knowing that [employee of Credit Suisse] had been able to fill all his bids.

"05/09/2012 12:32:11 [employee of non-addressee] Says ur bids all cleared now [employee of Credit Suisse]?[[employee of non-addressee] asked [employee of Credit Suisse] if he had filled all his bid orders]

05/09/2012 12:33:57 [employee of Credit Suisse] Says yeh all filled [[employee of Credit Suisse] replied to [employee of non-addressee]'s inquiry]

²⁶² [...]

05/09/2012 12:34:37 [employee of non-addressee] Says ta mate...

05/09/2012 12:34:42 [employee of Credit Suisse] Says feels like its dropped 200 pips its only 40²⁶³ [[employee of Credit Suisse] gave indications on the traded level]

- (277) On 15 May 2012, between 07:32:57 and 13:58:12, [employee of non-addressee] started by asking other participating traders about their trading activity in EUR/GBP. [employee of non-addressee] replied to this request by sharing sensitive information about recently executed trades in that currency pair. In the ordinary course of business, [Employee of non-addressee] would have had no reason or means of knowing that [employee of non-addressee] has recently *'bought a few small clips thru 80'*. [Employee of non-addressee] subsequently expressed gratitude (*'tks'*) to [employee of non-addressee] for this information that [employee of non-addressee] could take into account in deciding his own strategy. [Employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of Credit Suisse], [employee of non-addressee] and [employee of non-addressee] then repeatedly exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount (*'ton'*, *'150'*), exchange rate (*'above 50'*, *'into 00'*), and type of customer (*'fast money'*, *'h/f type'*, *'range guy'*, *'fixer'*, *'opt related'*). Those multiple cumulative exchanges provided the participating traders with valuable insight into current trading patterns, which was not available to other non-participating traders and that was relevant to the participating traders' decision-making, enabling them to adjust their subsequent actions on the market.

"05/15/2012 07:32:57 [employee of non-addressee] Says anyone seeing eurgbp buying? [[employee of non-addressee] asked the other participating traders whether they had seen trading activity in EUR against GBP]

05/15/2012 07:34:35 [employee of non-addressee] Says not here mate

05/15/2012 07:34:50 [employee of non-addressee] Says bought a few small clips thru 80 [[employee of non-addressee] indicated he had bought small amounts of it and specified the level]

05/15/2012 07:34:52 [employee of non-addressee] Says thats it

05/15/2012 07:35:24 [employee of non-addressee] Says tks

05/15/2012 07:47:11 [employee of non-addressee] Says lose bet fast money [[Employee of non-addressee] had sold GBP against USD to a customer seeking to take profit rapidly]

05/15/2012 08:37:33 [employee of non-addressee] Says got some eurUSD thereabove 50 [[Employee of non-addressee] had indicated that he had bought some EUR against USD, and specified the level]

[...]

05/15/2012 08:38:34 [employee of non-addressee] Says Get pounds there - h/f²⁶⁴ type [[employee of non-addressee] was buying GBP from high-frequency customers]

²⁶³ [...].

²⁶⁴ High-frequency: a type of trader, mostly computer-based, that executes a large number of trades at very fast speed.

[...]

05/15/2012 12:46:42 [employee of Credit Suisse] Says filling light bids here into 00

05/15/2012 12:46:54 [employee of Credit Suisse] Says cable [[employee of Credit Suisse] informed he was buying small amounts of GBP against USD, and indicated the level]

[...]

05/15/2012 13:15:26 [employee of non-addressee] Says lose ton eur range guy [[employee of non-addressee] noted he was selling 100 million EUR]

05/15/2012 13:43:58 [employee of non-addressee] Says fixer sells eur [[employee of non-addressee] indicated that a customer that normally traded in the fix had sold EUR]

05/15/2012 13:44:44 [employee of non-addressee] Says thx

05/15/2012 13:58:03 [employee of non-addressee] Says bgt 150 eur opt related [[employee of non-addressee] had bought 150 million EUR from an option-trading customer]

05/15/2012 13:58:12 [employee of non-addressee] Says thx''²⁶⁵

- (278) On 16 May 2012, between 06:19:28 and 13:55:38, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of Credit Suisse] and [employee of non-addressee] repeatedly exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount ('bully', 'a lump', '200', 'bits and bobs', 'bully', '100'), and type of customer ('corp', 'priv guys', 'lev', 'model', 'range guy', 'corp', 'good rm guy', 'ruskie', 'fixie type'). In the middle of those exchanges, [employee of non-addressee] also disclosed sensitive information on upcoming conditional (stop) orders, specifying the level and the currency pair. Those multiple cumulative exchanges enabled each of them to act on the market with the benefit of knowledge that was not available to non-participating traders.

"05/16/2012 06:19:28 [employee of non-addressee] Says lost a bully gbpchf

05/16/2012 06:19:29 [employee of non-addressee] Says corp [[Employee of non-addressee] informed he was selling 50 million GBP against CHF to a big corporation]

[...]

05/16/2012 06:32:31 [employee of non-addressee] Says Given a lump of pounds there to a nailed on buyer [[employee of non-addressee] indicated that he had sold a big amount of GBP]

05/16/2012 06:33:27 [employee of non-addressee] Says tks

[...]

05/16/2012 07:16:49 [employee of non-addressee] Says sold 200 audusd

²⁶⁵ [...]

05/16/2012 07:16:54 [employee of non-addressee] Says priv guys bailing [[Employee of non-addressee] had sold 200 million AUD against USD, and specified the kind of customer]

05/16/2012 07:17:09 [employee of non-addressee] Says thx

[...]

05/16/2012 07:39:36 [employee of non-addressee] Says seeing some cable sellers

05/16/2012 07:39:49 [employee of non-addressee] Says all bits and bobs [[employee of non-addressee] was receiving some small offers for GBP against USD]

05/16/2012 07:39:55 [employee of non-addressee] Says and lev buyers of usdacd [[employee of non-addressee] was also receiving bids for USD against CAD from leveraged funds]

05/16/2012 07:58:24 [employee of non-addressee] Says model sellers quid [[employee of non-addressee] also received offers of GBP from customers that used quantitative models in their trading strategy]

05/16/2012 07:58:37 [employee of non-addressee] Says lose eur range guy [[employee of non-addressee] was selling EUR]

05/16/2012 08:03:50 [employee of Credit Suisse] Says lose xxxxxxxxxx het ok [[employee of Credit Suisse] was selling EUR against GBP]

[...]

05/16/2012 08:32:39 [employee of non-addressee] Says first eur sellers

05/16/2012 08:32:52 [employee of non-addressee] Says sold bully for corp [[employee of non-addressee] had sold 50 million EUR for a big corporation]

[...]

05/16/2012 10:21:39 [employee of non-addressee] Says pick up stops above this 65 res²⁶⁶ lvl now [[employee of non-addressee] was receiving stop orders above the current level, which he considered to be a resistance level]

05/16/2012 10:21:44 [employee of non-addressee] Says sold ok betty there good rm guy [[Employee of non-addressee] had sold GBP to a real-money (non-leveraged) customer]

05/16/2012 10:21:53 [employee of non-addressee] Says ta

05/16/2012 10:21:58 [employee of non-addressee] Says usdjpy [[employee of non-addressee] specified the currency pair for which he received stop orders]

05/16/2012 10:25:39 [employee of Credit Suisse] Says bot 100 usdjpy [[employee of Credit Suisse] had bought 100 million USD against JPY]

05/16/2012 10:25:57 [employee of non-addressee] Says thx

[...]

²⁶⁶ Resistance means a price level at which traders have standing customer orders to sell, which creates resistance in a rising market i.e., as prices are rising, when it hits a certain level, people begin selling and that extra supply creates resistance against the price rising further.

05/16/2012 12:44:41 [employee of non-addressee] Says ruskie gives me cross [[Employee of non-addressee] had received an order in EUR/GBP from a Russian customer]

05/16/2012 12:44:50 [employee of non-addressee] Says not very nice of him

05/16/2012 12:49:10 [employee of non-addressee] Says thx

05/16/2012 12:57:14 [employee of non-addressee] Says Another round of usd buying here [[employee of non-addressee] was receiving buying orders in USD]

05/16/2012 13:55:21 [employee of non-addressee] Says Lose eur/gbp fixie type [[employee of non-addressee] was selling EUR against GBP to a customer that usually trades during the fix]

05/16/2012 13:55:38 [employee of non-addressee] Says ta [employee of non-addressee]²⁶⁷

- (279) On 22 May 2012, between 07:04:56 and 07:19:50, [employee of non-addressee] and [employee of Credit Suisse] started by exchanging sensitive information on upcoming conditional (stop) orders. [Employee of non-addressee] and [employee of non-addressee] subsequently exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount ('ton', 'a big old lump', '2 ton', '150', 'loads'), trading conditions ('easy', 'didnt wanna go down', 'easy to cover'), and type of customer ('corp type', 'real money'). [Employee of non-addressee] and [employee of Credit Suisse] then speculated about the identity of a trade counterparty. Again, those multiple cumulative exchanges reduce mutual uncertainty and provided the traders with valuable insight into current trading patterns, which was not available to other non-participating traders and that was relevant to the traders' decision-making, enabling them to adjust their subsequent actions on the market.

05/22/2012 07:04:56 [employee of non-addressee] Says few stops in betty 50+60 .. nothing huge [[Employee of non-addressee] had received some small stop orders in GBP/USD and indicated the level]

05/22/2012 07:13:10 [employee of Credit Suisse] Says yeh same here [[employee of Credit Suisse] had the same kind of stop orders]

05/22/2012 07:13:25 [employee of non-addressee] Says mng

05/22/2012 07:13:43 [employee of non-addressee] Says just let about a ton go corp type

05/22/2012 07:13:49 [employee of non-addressee] Says lose em easy [[Employee of non-addressee] had easily sold 100 million GBP against USD to a big corporation]

05/22/2012 07:14:07 [employee of non-addressee] Says and sold a big old lump late yesterday....didnt wanna go down [[Employee of non-addressee] had also sold a big amount of GBP against USD with some difficulties the previous day]

[...]

05/22/2012 07:16:08 [employee of non-addressee] Says lost 2 ton usdjpy [[Employee of non-addressee] had sold 200 million USD against JPY]

²⁶⁷ [...]

05/22/2012 07:16:14 [employee of non-addressee] Says lost 150 eurUSD.. real money [[Employee of non-addressee] had sold 150 million EUR against USD to a non-leveraged customer]

05/22/2012 07:16:17 [employee of non-addressee] Says easy to cover

05/22/2012 07:18:45 [employee of non-addressee] Says ive sold loads of betty ..who tf is buying it?? [[Employee of non-addressee] indicated he had been selling a lot of GBP against USD and wonders who was behind the orders]

05/22/2012 07:19:50 [employee of Credit Suisse] Says [...] ? ”²⁶⁸ [[employee of Credit Suisse] speculated that it might be [...]]

- (280) On 30 May 2012, between 06:59:27 and 09:57:31, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of Credit Suisse] repeatedly exchanged commercially sensitive information about recently executed client trades disclosing specific details including currency pair, trading direction, amount (‘150’, ‘a ton’), exchange rate (‘16+18’), trading conditions (‘2 way’), and type of customer (‘corps’, ‘lev’, ‘small mid east buyer’, ‘a local bank’). In the middle of those exchanges, [employee of non-addressee] also disclosed sensitive information on upcoming conditional (stop) orders, specifying the level (‘higher’) and the currency pair. Later, [employee of non-addressee] asked [employee of non-addressee] about his trading position in GBP/USD. Those cumulative exchanges enabled the participating traders to act on the market with the benefit of knowledge that was not available to non-participating traders.

“05/30/2012 06:59:27 [employee of non-addressee] Says 2 way eurUSD flow

05/30/2012 06:59:29 [employee of non-addressee] Says corps buying

05/30/2012 06:59:32 [employee of non-addressee] Says lev selling [[Employee of non-addressee] had concluded opposite transactions in EUR/USD. He had bought from a big corporation and sold to a leveraged fund]

05/30/2012 07:00:51 [employee of non-addressee] Says ta ..mag fellas

05/30/2012 07:09:19 [employee of non-addressee] Says small mid east buyer of betty down here [[employee of non-addressee] had sold GBP against USD to a Middle-East customer]

05/30/2012 07:12:05 [employee of non-addressee] Says thx

05/30/2012 09:39:46 [employee of non-addressee] Says got a dirty 150 usdjpy at 16+18 from a local bank [[Employee of non-addressee] had bought 150 million USD against JPY from a local bank and indicated the level]

05/30/2012 09:41:37 [employee of non-addressee] Says thx

05/30/2012 09:51:07 [employee of non-addressee] Says few bids lower appear in cable [[employee of non-addressee] was receiving bids in GBP/USD]

05/30/2012 09:51:36 [employee of non-addressee] Says tks

²⁶⁸ [...].

05/30/2012 09:52:53 [employee of non-addressee] Says someone just lost a ton eur/usd tehre [[Employee of non-addressee] had seen a sale of 100 million EUR against USD]

05/30/2012 09:53:08 [employee of non-addressee] Says thx

05/30/2012 09:56:30 [employee of non-addressee] Says stops higher cable now [[employee of non-addressee] was receiving higher stop orders for GBP/USD]

05/30/2012 09:57:04 [employee of non-addressee] Says sounds like ur long [employee of non-addressee] [[Employee of non-addressee] asked [employee of non-addressee] if he was 'long', that is if he had a selling position in GBP/USD]

05/30/2012 09:57:18 [employee of non-addressee] Says no flies on you [employee of non-addressee]

05/30/2012 09:57:31 [employee of Credit Suisse] Says keep loseing stg yen [[employee of Credit Suisse] was selling GBP against JPY]

05/30/2012 09:57:31 [employee of non-addressee] Says ...only buzzin around me ”²⁶⁹ [[Employee of non-addressee] answered to [employee of non-addressee]'s comment at 09:57:18, about the fact that [employee of non-addressee] was very active]

- (281) On 5 June 2012, between 08:38:40 and 09:06:44, [employee of non-addressee] sought advice and asked [employee of Credit Suisse] about trading activity in EUR/USD. [Employee of Credit Suisse] replied to this request by telling [employee of non-addressee] that he had not seen any activity in that currency pair ('sry mate no'), an information [employee of non-addressee] was grateful for ('tks bro'). [Employee of non-addressee] also revealed commercially sensitive information about a recently executed client trade, disclosing specific details on the currency pair, the exchange rate ('2530') and the type of customer ('rookies'). In the ordinary course of business, [employee of Credit Suisse] would have no reason or means of knowing that [employee of non-addressee] had recently concluded that trade. He was at a competitive advantage if the same type of customer asked him for a trade in the same currency, knowing that the customer had accepted to trade at the level proposed earlier by [employee of non-addressee].

“06/05/2012 08:38:40 [employee of non-addressee] Says are you seeing much eur/usd selling [employee of Credit Suisse] [[Employee of non-addressee] asked [employee of Credit Suisse] if he was receiving selling orders for EUR/USD]

06/05/2012 08:39:00 [employee of non-addressee] Says pretty quiet on the flow front here

06/05/2012 08:44:28 [employee of non-addressee] Says rookies buying cable at 2530 [[Employee of non-addressee] informed that a Russian customer had bought GBP against USD and indicated the level]

06/05/2012 09:06:14 [employee of Credit Suisse] Says sry mate no

06/05/2012 09:06:24 [employee of Credit Suisse] Says nothing just seen it melt 100 pips [[employee of Credit Suisse] replied to [employee of non-addressee] indicating that he had not seen any offer in EUR/USD, but had observed a decrease in the level of that currency pair]

²⁶⁹ [...]

06/05/2012 09:06:44 [employee of non-addressee] Says tks bro''²⁷⁰-

- (282) On 13 June 2012, between 10:02:36 and 13:34:36, [employee of non-addressee] and [employee of Credit Suisse] exchanged sensitive information on upcoming and recently executed conditional (stop) orders, including the currency pairs and the level, thereby disclosing it also to [employee of non-addressee] and [employee of non-addressee], who were present in the chatroom and thanked [employee of non-addressee] and [employee of Credit Suisse] for the information. Instead of acting independently, the four traders could then take this information into account in deciding their respective future market strategies.

06/13/2012 10:02:36 [employee of non-addressee] Says stops building here eurgbp

06/13/2012 10:02:38 [employee of non-addressee] Says topside [[employee of non-addressee] had received stop orders for the EUR/GBP currency pair at a high level]

06/13/2012 10:02:46 [employee of non-addressee] Says ta mate

06/13/2012 13:04:05 [employee of non-addressee] Says tuff to get dun stop around 70 in eurgbp [[employee of non-addressee] indicated that it was difficult to execute stop orders for EUR/GBP at a specific level]

06/13/2012 13:30:28 [employee of non-addressee] Says cheers mate

06/13/2012 13:34:36 [employee of Credit Suisse] Says yeh all clean here as well, offers into 00 now²⁷¹ [[employee of Credit Suisse] indicated that he had no longer stop orders in EUR/GBP but had some immediate orders and indicated the level]

- (283) On 2 July 2012, between 09:01:18 and 09:23:59, [employee of non-addressee] and [employee of non-addressee] exchanged commercially sensitive information about recently executed client trades and conditional (stop) orders, disclosing specific details including currency pair, trading direction, amount ('bully', 'small'), trading conditions ('lively'), and type of customer ('russia'). [Employee of Credit Suisse] was also present in the chatroom and thanked the other participating traders for the information ('ta'). Those exchanges reduced mutual uncertainty and provided the traders with valuable cumulative insights into current trading patterns that were not available to non-participating traders and informed their future actions on the market.

07/02/2012 09:01:18 [employee of non-addressee] Says lost some x there smalls lively [[employee of non-addressee] indicated that he easily sold some small amounts of EUR against GBP]

07/02/2012 09:01:48 [employee of Credit Suisse] Says ta

07/02/2012 09:03:28 [employee of non-addressee] Says yeh same here, got given before the pmi data clearly not full and lost em again 10 min ag [[employee of non-addressee] indicated he also sold EUR against GBP]

07/02/2012 09:19:30 [employee of non-addressee] Says russia buy bully eurUSD [[employee of non-addressee] had sold 50 million EUR against USD to a Russian customer, presumably the [...]]

²⁷⁰ [...]
²⁷¹ [...]

07/02/2012 09:23:59 [employee of non-addressee] Says aud stops go off²⁷²
[[employee of non-addressee] signalled that the levels of the stop orders he had for AUD had been triggered]

- (284) On 12 July 2012, between 07:16:03 and 14:36:12, [employee of non-addressee] started by asking the other participating traders about trading activity in GBP/USD. Within seconds, [employee of Credit Suisse] and [employee of non-addressee] replied to this request by telling [employee of non-addressee] they had not ‘got any bids’ in that currency pair. [Employee of non-addressee] then put his request into context by disclosing sensitive information on upcoming conditional (stop) orders, such information then immediately corroborated by [employee of non-addressee] (‘i have that too’). This information exchange enabled the participating traders to adjust and align their strategies and act on the market with the benefit of knowledge that was not available to other, non-participating traders. Later in the day, [employee of non-addressee], [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] repeatedly exchanged commercially sensitive information about recently executed client trades and upcoming conditional (stop) orders, disclosing specific details including currency pair, trading direction, amount (‘50’, ‘bully’), exchange rate (‘below 70’, ‘just below 60’, ‘00’), and type of customer (‘real money’, ‘sharp guy’, ‘russia’, ‘sharp guy’, ‘lev’, ‘a fixer’). Those exchanges provided the participating traders with valuable multiple insights into current trading patterns that were not available to non-participating traders and that informed their actions on the market.

“07/12/2012 07:16:03 UTC [employee of non-addressee] posted: u got bids cable chaps? [[Employee of non-addressee] asked the other participating traders if they had any bids in the GBP/USD currency pair]

07/12/2012 07:16:12 UTC [employee of Credit Suisse] posted: no

07/12/2012 07:16:16 UTC [employee of non-addressee] posted: no [[employee of Credit Suisse] and [employee of non-addressee] replied to [employee of non-addressee]’s inquiry]

07/12/2012 07:16:19 UTC [employee of non-addressee] posted: i got a stop near to 00 that will be ard [[Employee of non-addressee] indicated that he had a stop order in GBP/USD. He thought it would be hard to execute it]

07/12/2012 07:16:30 UTC [employee of non-addressee] posted: i have that too [[Employee of non-addressee] informed that he had the same type of stop orders as [employee of non-addressee]]

[...]

07/12/2012 07:32:46 UTC [employee of non-addressee] posted: got some eurUSD and audUSD... real money [[Employee of non-addressee] indicated that he had received orders in EUR and AUD against USD from non-leveraged customers]

[...]

07/12/2012 08:35:43 UTC [employee of non-addressee] posted: lose eur sharp guy [[employee of non-addressee] had sold EUR]

²⁷² [...]

07/12/2012 10:33:39 UTC [employee of non-addressee] posted: stops below 70 now eur [[employee of non-addressee] informed he had stop orders in EUR and indicated the level]

07/12/2012 10:39:40 UTC [employee of non-addressee] posted: russia sell eur [[employee of non-addressee] informed that a Russian customer (probably the [...]) was willing EUR]

07/12/2012 10:42:19 UTC [employee of non-addressee] posted: lost 50 betty

07/12/2012 10:42:20 UTC [employee of non-addressee] posted: real money [[Employee of non-addressee] indicated that he had sold 50 million GBP against USD to a real-money (non-leveraged) customer]

07/12/2012 10:42:48 UTC [employee of Credit Suisse] posted: ta

07/12/2012 11:05:59 UTC [employee of non-addressee] posted: sharp guy bids eurUSD just below 60 [[employee of non-addressee] reported on a customer willing to buy EUR against USD, and the level]

07/12/2012 14:05:02 UTC [employee of non-addressee] posted: get bully eur

07/12/2012 14:05:05 UTC [employee of non-addressee] posted: lev [[employee of non-addressee] had bought 50 million EUR from a leveraged fund]

07/12/2012 14:16:26 UTC [employee of non-addressee] posted: few stops at 00 in betts [[Employee of non-addressee] informed that he had stop orders in GBP/USD and indicated the level]

[...]

07/12/2012 14:35:22 UTC [employee of non-addressee] posted: stops not far away cable lads [[Employee of non-addressee] indicated that he was close to reach the triggering level in his stop orders for the GBP/USD currency pair]

07/12/2012 14:35:30 UTC [employee of non-addressee] posted: danke

07/12/2012 14:35:53 UTC [employee of non-addressee] posted: thks mate

07/12/2012 14:35:59 UTC [employee of non-addressee] posted: we just lost eurUSD to a fixer [[employee of non-addressee] had sold an undetermined amount of EUR against USD to a customer that usually traded during the fix]

07/12/2012 14:36:12 UTC [employee of non-addressee] posted: ta fella²⁷³

(285) In some other occasions, multiple exchanges took place when [employee of Credit Suisse] was logged in the chatroom. Though he did not intervene directly in the discussions, he had access to them. Such multiple cumulative disclosures increased [employee of Credit Suisse]'s level of confidence about the potential direction of the market price of the discussed currency pairs and thereby enabled him to make better informed decisions on his trading strategy:

- on 10/02/2012, from 9:54:37 to 9:55:37, and from 10:42:49 to 13:52:48 (disclosures of trading activity in EUR/JPY and EUR/GBP)²⁷⁴;

²⁷³ [...]
²⁷⁴ [...]

- on 22/02/2012, from 08:08:30 to 08:35:40 (disclosures of trading activity in EUR/GBP)²⁷⁵;
- on 02/03/2012, from 7:03:04 to 7:11:03 (disclosures of trading activity in USD/JPY)²⁷⁶;
- on 09/03/2012, from 8:22:54 to 8:57:14 (disclosures of trading activity in AUD, of the absence of trading activity in USD/JPY and of trading activity in EUR/SEK, GBP/SEK and NOK/SEK following the publication of Swedish (most probably economic) data)²⁷⁷;
- on 15/03/2012, from 9:12:02 to 11:16:28 (disclosures of trading activity in GBP/USD)²⁷⁸;
- on 23/03/2012, from 13:47:39 to 15:19:24 and from 15:21:12 to 15:21:18 (disclosures of trading activity in EUR, AUD and USD/JPY)²⁷⁹;
- on 10/04/2012, from 7:39:42 to 7:58:04 (disclosures of trading activity in EUR/GBP and GBP/USD)²⁸⁰;
- on 12/04/2012, from 6:30:03 to 8:30:30 and from 8:46:37 to 9:29:30 (disclosures of trading activity in EUR/USD, EUR/GBP, GBP/USD and EUR/SEK)²⁸¹;
- on 20/04/2012, from 7:16:14 to 14:08:47 (disclosures of trading activity in EUR/GBP, GBP/USD, USD/JPY and GBP/JPY)²⁸²;
- on 25/04/2012, from 9:56:44 to 10:13:50 (disclosures of trading activity in EUR/JPY and USD/JPY)²⁸³;
- on 02/05/2012, from 7:05:43 to 10:27:35 (disclosures of trading activity in EUR (most probably against GBP or USD) after the publication of Italian economic data)²⁸⁴;
- on 03/05/2012, from 9:17:14 to 12:59:34 (disclosures of trading activity in EUR/GBP and GBP/USD)²⁸⁵;
- on 23/05/2012, from 8:44:57 to 14:38:53 (disclosures of trading activity in EUR/GBP)²⁸⁶;
- on 12/06/2012, from 13:57:02 to 14:27:22 (disclosures of trading activity in EUR/GBP amid a rally (i.e. sharp increase) in gold price)²⁸⁷;

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- on 14/06/2012 , from 9:27:48 to 14:35:32 (disclosures of trading activity in EUR/USD and GBP/USD)²⁸⁸;
- on 19/06/2012, from 6:31:26 to 8:10:10 (disclosures of trading activity in GBP/USD)²⁸⁹;
- on 03/07/2012 , from 7:58:34 to 8:23:23 (disclosures of trading activity in EUR, USD/JPY and GBP/USD)²⁹⁰;
- on 04/07/2012, from 8:18:04 to 13:08:27 (disclosures of trading activity in EUR and GBP/USD)²⁹¹;
- on 05/07/2012, from 6:55:31 to 12:02:45 (disclosures of trading activity in EUR, most probably against GBP or USD)²⁹²;
- on 06/07/2012, from 12:08:12 to 13:48:36 (disclosures of trading activity in GBP/USD)²⁹³;
- on 09/07/2012, from 6:51:17 to 12:27:08 (disclosures of trading activity in EUR/USD)²⁹⁴.

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

- (286) When engaging in fixing-related trading, traders should decide independently whether to decrease, offset or increase their open risk positions in order to optimize their exposure to risk at the fix. However, in the present case, the frequent and recurrent exchanges of information occasionally facilitated specific forms of coordination, which took place with a view to benefiting the participating traders or to avoiding trading against each other’s interest.
- (287) By occasionally coordinating (or standing down), the participating undertakings sought to gain an advantage over competitors that did not participate in the STG Lads chatroom. This concerns certain instances where the participating traders who had disclosed that their open risk positions at the fix were of a certain type spotted the opportunity to potentially obtain additional benefits from it (see recitals (291) to (299)). Specifically, this coordination consisted in a practice called “standing down”.
- (288) The occasional standing down practice concerned instances²⁹⁵ in which traders refrained from trading as they otherwise had planned to undertake during the time of the fix on account of another trader’s announced position or trading activity. The modification of some participating traders’ behaviour during this time reduced the risk that a transaction by the participating trader would not achieve the desired outcome and avoided simultaneous trading in opposite directions.

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[...]

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[...]

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See, for instance, chats of 26 May 2011 ([...]), 14 June 2011 ([...]) and 31 October 2011 ([...]). The evidence does not show any instance of standing down in the STG Lads chatroom after 31 October 2011.

- (289) The traders could only ensure that they stood a chance to seize the opportunities to stand down or ask others to stand down by engaging in an extensive daily exchange of information, which they did. Whether the opportunities they tried to spot would arise or not in a given period was not dependent on their will, but on how client orders were aligned.
- (290) Having exchanged current or forward-looking commercially sensitive information regarding their open risk positions without any intention of exploring trading opportunities as a potential counterparty or as a potential customer, the participating traders were occasionally in a position to align their trading interests by means of ‘standing down’, in other words one or more of the traders refrained from trading as they otherwise had planned during the time of the fix, the contrary being perceived to have the potential to negatively affect the trading interests of another participating trader.
- (291) The instances of coordination were occasional during the overall period of infringement (three instances in approximately 14 months of infringement). For example, on 26 May 2011, [employee of non-addressee] expressly instructed [employee of non-addressee] to stop buying GBP at the time of the fix. At the beginning of the extract, some minutes before the fix, [employee of non-addressee] announced that he had acquired 100 million GBP. At that point, [employee of non-addressee] told him to “stop”. [employee of non-addressee] hesitated and immediately afterwards realised that [employee of non-addressee] was telling him to “stop buying” GBP, which [employee of non-addressee] confirmed (“yes”). [employee of non-addressee] apologising for being slow (“sryslow”) illustrates the fact that there was a previous consensus to act in that way:
- “05/26/2011 14:50:50 [employee of non-addressee] Says bgt ton [[employee of non-addressee] bought 100 million]*
- 05/26/2011 14:50:52 [employee of non-addressee] Says quid [[employee of non-addressee] specifies that he bought GBP]*
- 05/26/2011 14:52:08 [employee of non-addressee] Says stop*
- 05/26/2011 14:52:27 [employee of non-addressee] Says ?*
- 05/26/2011 14:52:49 [employee of non-addressee] Says stop buying*
- 05/26/2011 14:52:49 [employee of non-addressee] Says haha [[employee of non-addressee] laughs]*
- 05/26/2011 14:53:03 [employee of non-addressee] Says sryslow [[employee of non-addressee] apologises for being slow]*
- 05/26/2011 14:53:31 [employee of non-addressee] Says buying*
- 05/26/2011 14:53:33 [employee of non-addressee] Says yes”²⁹⁶*
- (292) Credit Suisse claims that the extract does not prove that coordination took place.²⁹⁷ However, an attentive reading of the extract leads to understand that [employee of non-addressee] is instructing [employee of non-addressee] on his way of trading in the minutes leading to the fix. [employee of non-addressee] acknowledges the

²⁹⁶ [...].
²⁹⁷ [...]

instruction and apologises for taking time in understanding. [employee of non-addressee] may be trying to make a little joke to apologise in a friendly way (“haha”, “sryslow”), but [employee of non-addressee] is not amused, he does not laugh back. [employee of non-addressee] acknowledges the instruction and apologises for taking time in understanding. Also, [employee of non-addressee] confirms the instruction and [employee of non-addressee] does not object to it.

- (293) The fact that a trader instructs a competitor to stop buying a big amount of a currency (100 million GBP) in the minutes leading to the fix cannot be considered normal market behaviour. On the contrary, the fact that [employee of non-addressee] (whose position in the market is unknown) advises [employee of non-addressee] to act this way could only mean that, according to the information at [employee of non-addressee] disposal (not known by [employee of non-addressee]), this trade will go against [employee of non-addressee]’s interests.
- (294) This behaviour entails willingness to coordinate their trading activities in order to benefit other participating traders. If [employee of non-addressee] follows his competitor request, he will stand down in order to protect [employee of non-addressee] interests.
- (295) On 14 June 2011, [employee of non-addressee] hedged his risk on GBP (“quid” or “cable”) with [employee of non-addressee] in order not to compete with [employee of non-addressee]’s trading position at the fix:

“06/14/2011 14:31:18 UTC [employee of non-addressee] posted: get 40 quid at fix [[employee of non-addressee] had orders to buy 40 million GBP from his customers at the upcoming fix and needed to sell GBP in the market to offset this position]

06/14/2011 14:31:52 UTC [employee of non-addressee] posted: get 30X [[employee of non-addressee] had orders to buy 30 million EUR against GBP from his customers at the fix and needed to sell EUR/GBP to cover this exposure]

06/14/2011 14:36:01 UTC [employee of non-addressee] posted: sounds like a fight

06/14/2011 14:36:24 UTC [employee of non-addressee] posted: in eur

06/14/2011 14:36:29 UTC [employee of non-addressee] posted: ha

06/14/2011 14:49:53 UTC [employee of non-addressee] posted: Ihs cable fix [[employee of non-addressee] had orders to buy GBP against USD from his customers at the upcoming fix rate and needed to sell GBP/USD in the market to offset this position]

06/14/2011 14:50:02 UTC [employee of non-addressee] posted: [employee of non-addressee] you should be proud

06/14/2011 14:50:21 UTC [employee of non-addressee] posted: [employee of non-addressee] massively bottled it against your 30 cross and gave me the fix [[employee of non-addressee] flattened his position by transferring it to [employee of non-addressee]]

06/14/2011 14:50:28 UTC [employee of non-addressee] posted: you big girl [employee of non-addressee]

06/14/2011 14:50:38 UTC [employee of non-addressee] posted: i am relaxed mate

06/14/2011 14:50:45 UTC [employee of non-addressee] posted: *smash it up* [[employee of non-addressee] encouraged [employee of non-addressee] to sell his position]

06/14/2011 14:51:00 UTC [employee of non-addressee] posted: *i am buying usdjpy instead*²⁹⁸

- (296) Credit Suisse claims that the Commission’s conclusion about this extract is speculative and counterintuitive in light of the market dynamics²⁹⁹.
- (297) However, none of Credit Suisse’s arguments addresses the fact that the extract shows that [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] exchanged confidential information on their current trading strategies in the minutes before the fix and used that information to coordinate their trading behaviour.
- (298) In order to hedge their exposure at the fix, [employee of non-addressee] would need to sell GBP and [employee of non-addressee] would need to buy GBP in similar amounts in the market (see exchanges from 14:31:18 to 14:31:52). Therefore, their GBP orders would almost cancel each other out. [employee of non-addressee] was in the same position as [employee of non-addressee] and would also need to sell GBP (see exchange at 14:49:53). Due to the knowledge [employee of non-addressee] had of the trading positions of the other participants in the chatroom, he decided to refrain from competing with [employee of non-addressee] at the upcoming fix and transferred his position to [employee of non-addressee] before the fix (see exchange at 14:50:21). This transaction enabled [employee of non-addressee] to be in a better position to influence the fix in their desired direction. This is confirmed by [employee of non-addressee] when he says “*Smash it up*”³⁰⁰.
- (299) Credit Suisse also argues that there is no language in the chat that mentions the traders refraining from any action or changing their behaviour.³⁰¹ This argument is not convincing. The extract itself indicates the motive for [employee of non-addressee]’s decision to transfer his position to [employee of non-addressee] instead of competing with [employee of non-addressee] at the upcoming fix. In fact, it is [employee of non-addressee] who informs [employee of non-addressee] about the change of trading behaviour of [employee of non-addressee]: “*[employee of non-addressee] you should be proud*” “*[employee of non-addressee] massively bottled it against your 30 cross and gave me the fix*”. According to Collins Dictionary, “*If you say that someone has bottled it, you mean that they have lost their courage at the last moment and have not done something they intended to do.*”³⁰² Therefore, the language used by [employee of non-addressee] shows that [employee of non-addressee] intended to trade in a certain way and he decided to act differently upon learning about [employee of non-addressee]’s position, which is on the opposite direction. That is, [employee of non-addressee] is refraining from trading as he intended to do precisely on account of another trader’s announced position. The

298 [...]

299 [...]

300 Smash: rapidly sell as currency price is dropping.

301 [...]

302 See <https://www.collinsdictionary.com/dictionary/english/bottle-it>.

actual change of his trading strategy is confirmed later on by [employee of non-addressee], when he says “*i am buying usdjpy instead*”.

- (300) As mentioned before, the instances of coordination were occasional during the overall period of infringement. Moreover, in the current case the evidence available to the Commission shows that, during the period of participation of Credit Suisse in the infringement, there was no effective instance of standing down.
- 4.1.3.3. The existence of a set of tacit rules (together, the underlying understanding) that manifested in the exchanges of information is supported by contents of the chats and corroborated by the settling parties
- (301) Participating in the STG Lads chatroom entailed for the participating traders membership of a closed group of traders who trusted each other and tacitly committed to comply with an underlying understanding, see recital (163)).
- (302) Evidence ([...]) shows that the underlying understanding manifested itself in an extensive and recurrent pattern of exchanges of information consistently held over time, including information updates to account for fresh orders or new context, including during the whole participation of [employee of Credit Suisse] in the chatroom (see recitals (164) to (167)). The commitments and mutual expectations implicit in the underlying understanding enabled the traders to contribute to and rely on such a continuous pattern of recurrent exchanges of current or forward-looking commercially sensitive information, as well as to identify additional occasions to avoid mutual interference by coordinating their trading activities with respect to FX spot trading of G10 currencies.
- (303) The settling parties agree that the participating traders involved in the private chatroom engaged in the exchanges of information and occasional trading coordination, expecting some degree of reciprocity. Such an underlying understanding appears from numerous chats in which traders, for example, express gratitude or apologise when departing from the tacit rules.³⁰³
- (304) The Commission notes, first, [...] ³⁰⁴ the existence, components, purpose and functioning of the underlying understanding between all members of the STG Lads chatroom (including Credit Suisse’s participation therein). [...]. [...] the Commission could rely to prove to the requisite legal standard the existence of the underlying understanding. Credit Suisse’s voluntary participation in the STG Lads chatroom, together with the content and the tone of the discussions resulting from the transcripts of the chatroom could be considered concurrent indicia in that regard.
- (305) [...].³⁰⁵
- (306) Nevertheless, Credit Suisse has not admitted its participation in this underlying understanding.³⁰⁶

³⁰³ See, for example, recital 6(104).

³⁰⁴ [...].

³⁰⁵ [...].

³⁰⁶ [...].

4.2. Participation in the conduct

- (307) [Non-addressee], [non-addressee], [non-addressee], [non-addressee] and Credit Suisse, engaged in the conduct described in Section 4.1.3 above in the periods indicated in the following table:

BANK	TRADER	ENTRY	EXIT
[non-addressee]	[employee of non-addressee]	[...]	[...]
	[employee of non-addressee]	[...]	[...]
	[employee of non-addressee]	[...]	[...]
[non-addressee]	[employee of non-addressee]	[...]	[...]
[non-addressee]	[employee of non-addressee]	[...]	[...]
	[employee of non-addressee]	[...]	[...]
	[employee of non-addressee]	[...]	[...]
[non-addressee]	[employee of non-addressee]	[...]	[...]
Credit Suisse	[employee of Credit Suisse]	07/02/2012	12/07/2012

- (308) Credit Suisse engaged in the conduct described in Section 4.1.3 above from 7 February 2012³⁰⁷ until 12 July 2012.³⁰⁸
- (309) The participation of Credit Suisse in the collusive arrangements is established on the basis of the participation in the chatroom of [employee of Credit Suisse] on its behalf during the period in which the arrangements took place.
- (310) The Commission considers that once [employee of Credit Suisse]’s membership³⁰⁹ to the STG Lads chatroom during a period of anticompetitive arrangements is proven (while trading on behalf of Credit Suisse), his continued involvement is established irrespective of whether he: a) was an active participant in a given instance of the anticompetitive discussions, b) was simply present in the chatroom as those discussions were taking place between other traders or, c) had connected to the chatroom after an anticompetitive episode had taken place, but was able to see their content. In this regard, it is taken into account that [employee of Credit Suisse] did not leave the chatroom in reaction to the arrangements that were taking place or otherwise distanced himself from them.

³⁰⁷ Chat of 7 February 2012 ([...]).

³⁰⁸ Chat of 12 July 2012 ([...]).

³⁰⁹ Having access to the contents of the chatroom and having the possibility to communicate within that chatroom with the other members.

5. LEGAL ASSESSMENT

(311) Having regard to the body of evidence in the Commission file and the facts as described in Section 4, the Commission's legal assessment is set out in this Section.

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

5.1.1. Agreements and/or concerted practices

5.1.1.1. Principles

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

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

(314) In its judgment in PVC II case,³¹⁰ the General Court stated that “it is well established in the case law that for there to be an agreement within the meaning of Article [101(1)] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way”.³¹¹

(315) Although Article 101(1) of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of “concerted practices” and “agreements between undertakings”, the object is to bring within the prohibition of these articles a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition.³¹²

(316) The criteria of coordination and cooperation laid down by the case law of the Court of Justice, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine

³¹⁰ Judgment of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, EU:T:1999:80, paragraph 715 and the case law referred to therein.

³¹¹ The case law of the Court of Justice and the General Court in relation to the interpretation of Article 81 of the EC Treaty [currently Article 101 of the Treaty] applies equally to Article 53 of the EEA Agreement. See recitals No 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement, as well as Case E-1/94 of 16.12.1994, recitals 32-35. References in this text to Article 101 of the Treaty therefore apply also to Article 53 of the EEA Agreement.

³¹² Judgment of 17 July 1972, *Imperial Chemical Industries v Commission*, 48/69, EU:C:1972:70, paragraph 64.

independently the commercial policy which it intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect of 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.³¹³

- (317) Information exchanges can create mutually consistent expectations regarding the uncertainties present in the market. On that basis, companies can then reach a common understanding on the terms of coordination of their competitive behaviour, even without an explicit agreement on coordination. Exchange of information about intentions concerning future conduct is the most likely means to enable companies to reach such a common understanding.³¹⁴ Conduct thus 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 coordination of their commercial behaviour.³¹⁵ 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.
- (318) Furthermore, exchanges of information between competitors can be characterised as a concerted practice if they reduce or remove the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted.³¹⁶
- (319) 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.³¹⁷
- (320) Moreover, it is established case law that the exchange of information between undertakings, in pursuance of a cartel falling under Article 101(1) of the Treaty, concerning their respective deliveries, which not only covers deliveries already made

³¹³ Judgment of 16 December 1975, *Suiker Unie and others v Commission*, 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, EU:C:1975:174, paragraph 174.

³¹⁴ Commission's Guidelines on the applicability of Article 101 of the Treaty to horizontal co-operation agreements, OJ C 11, 14.1.2011, p. 1–72, point 66 (“Horizontal Guidelines”).

³¹⁵ Judgment of 17 December 1991, *Hercules Chemicals v. Commission*, T-7/89, EU:T:1991:75, paragraphs 258–261 and judgment of 5 April 2006, *Degussa AG v. Commission*, T-279/02, EU:T:2006:103, paragraph 132.

³¹⁶ Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraph 35; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 121 and judgment of 24 September 2019, *HSBC v Commission*, T-105/17, EU:T:2019:675, paragraph 61.

³¹⁷ Judgment of 8 July 1999, *Hüls v Commission*, C-199/92P, EU:C:1999:358, paragraphs 161–166.

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.³¹⁸

- (321) The concepts of agreement and concerted practice are fluid and may overlap. The anticompetitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be analytically artificial to sub-divide what is clearly a continuing common enterprise having one and the same common objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 101 of the Treaty lays down no specific category for a complex infringement of the present type.³¹⁹
- (322) For instance, in this regard, according to paragraph 59 of the Commission's Guidelines on Horizontal Cooperation,³²⁰ "communication of information among competitors may constitute an agreement, a concerted practice, or a decision by an association of undertakings with the object of fixing, in particular, prices or quantities. Those types of information exchanges will normally be considered and fined as cartels. Information exchange may also facilitate the implementation of a cartel by enabling companies to monitor whether the participants comply with the agreed terms. Those types of exchanges of information will be assessed as part of the cartel".
- (323) In its PVC II judgment,³²¹ the General Court stated that "[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [101] of the Treaty".
- (324) An agreement for the purposes of Article 101(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term "agreement" can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice has pointed out, it follows from the express terms of Article 101(1)

³¹⁸ Judgment of 6 April 1995, *Société Métallurgique de Normandie v Commission*, T-147/89, T-148/89 and T-151/89, EU:T:1995:67, paragraph 72; judgment of 6 April 1995, *Trefilunion v Commission*, T-148/89, EU:T:1995:68, paragraph 72; and judgment of 6 April 1995, *Société des treillis et panneaux soudés v Commission*, T-151/89, EU:T:1995:71, paragraph 72.

³¹⁹ Judgment of 17 December 1991, *Hercules v Commission*, T-7/89, EU:T: 1991:75, paragraph 264.

³²⁰ Horizontal Guidelines, OJ C 11, 14.1.2011, p. 1.

³²¹ Judgment of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, EU:T:1999:80, paragraph 696.

of the Treaty that an agreement may consist not only in an isolated act but also in a series of acts or a continuous conduct.³²²

5.1.1.2. Application to this case

- (336) The following sections address the entirety of the conduct described in Section 4.1.3: (i) the exchanges of information are discussed in Section 5.1.1.2(a), (ii) the occasional instances of coordination in Section 5.1.1.2(b), and (iii) the underlying understanding in Section 5.1.1.2(c).
- (a) The extensive and recurrent exchanges of sensitive current or forward-looking information retained in this Decision constitute concerted practices and/or agreements
- (337) As described in Section 4.1.3.1, the participating traders were in direct, extensive and recurrent contact, making regularly available to each other in a multilateral private chatroom, the STG Lads chatroom, certain current or forward-looking commercially sensitive information on their commercial conduct and plans. These exchanges of information were related to outstanding customer orders (see Section 4.1.3.1(a)), the open risk positions of the participating traders (see Section 4.1.3.1(b)), bid-ask spreads quoted for specified currency pairs for certain trade sizes (see Section 4.1.3.1(c)) and other current or planned trading activities (see Section 4.1.3.1(d)).
- (338) Evidence shows that the participating traders acting on behalf of their banks, including Credit Suisse, actively participated in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information. On other occasions, the participating traders were present in the chatroom at the time the exchanges happened or logged in later on that day and, therefore, had access to these exchanges.
- (339) Through these extensive and recurrent exchanges of sensitive current or forward-looking information, engaged in by their respective traders, the undertakings concerned revealed their joint intention to cooperate regarding their FX spot trading activity of G10 currencies and knowingly substituted practical cooperation between them for the risks of competition.
- (340) In particular, the exchanges of information between the undertakings contributed to creating mutually consistent expectations and to removing uncertainty between them as regards the timing, extent and details of the intended conducts to be adopted on the market. It also comforted the participating traders in making their subsequent decisions informed by that knowledge.
- (341) On the basis of the above, the Commission considers that the conduct described in Section 4.1.3.1, consisting of extensive and recurrent exchanges of information between the undertakings concerned, qualifies as agreements and/or concerted practices within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (b) The occasional instances of coordination facilitated by the exchanges of information constitute concerted practices and/or agreements

³²² Judgment of 8 of July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92P, EU:C:1999:356, paragraph 81.

- (342) The extensive and recurrent exchanges of information facilitated occasional instances of coordination among the traders in the form of standing down with a view to securing commercial benefits for the undertakings concerned, as described in Section 4.1.3.2.³²³
- (343) On this basis, the Commission considers that the conduct described in Section 4.1.3.2, consisting of occasional instances of coordination, constitutes concerted practices and/or agreements in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement. However, it is not necessary, for the purpose of this Decision, to further discuss this conduct since, as explained in Section 5.1.3.4 below, Credit Suisse is not held liable for it, given that the instances of coordination documented within the STG Lads chatroom occurred exclusively before Credit Suisse joined it.
- (c) The underlying understanding constitutes an agreement
- (344) On the basis of the evidence on the Commission's file, membership in the STG Lads chatroom also entailed compliance with a set of tacit rules (together referred to as the underlying understanding, see Section 4.1.3.3), commitments and reciprocity, which were understood by the participating undertakings and by means of which the participating traders knowingly substituted practical cooperation for the risks of competition.
- (345) The participating traders tacitly understood that rules were necessary in a situation where they shared with each other certain current or forward-looking commercially sensitive information about their own trading that, in some cases, exposed them to market opportunism from the recipients of this information, as described in recitals (255) and (301). These tacit rules could be summarised as follows:
- The participating traders would gather in the private STG Lads chatroom to disclose and exchange information throughout the trading day. To ensure that none of the participating traders could free ride on certain information shared by the others, each of them was expected to disclose information of the types described in Section 4.1.3.1 and traders apologized when they failed to do so, as shown in recitals (142) to (146).
 - The information exchanged in the chatroom among the participating traders would not be disclosed by the recipient traders to other competing traders outside the private chatroom (see recitals (150) to (154)).
 - The information exchanged could be used to the benefit of the participating traders including to identify occasions appropriate for coordination (see Section 4.1.3.2).
 - The information exchanged would not be used against those participating traders who shared it (see recital (132)).

³²³ Credit Suisse argues that the SSO refers to another form of coordination by stating that traders “could have” (but had not) engaged in the coordination of their bid-ask spreads (paragraph 118 of the SSO). Credit Suisse seems to refer to the following statement of paragraph 118 of the SSO [...]. A more attentive reading of this paragraph reveals that such statement follows from [...]. However, the Commission does not hold Credit Suisse liable for this form of coordination and it is accordingly not further discussed in this Decision.

- (346) These extensive exchanges of information in the environment of a multilateral private chatroom helped the participating traders monitoring compliance with the underlying understanding because it made it easier to detect deviations from these tacit rules.
- (347) [...] acknowledged the underlying understanding and characterised it as a distinct agreement within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement. Credit Suisse has not acknowledged its participation in the underlying understanding and has disputed its existence.³²⁴
- (348) The Commission considers that [...] support the existence of a set of tacit rules (see Section 4.1.3.3). In view of the principle of unfettered evaluation of evidence, from which it follows that any evidence can be relied upon when it has been obtained lawfully and that the only criterion to assess its probative value is its credibility,³²⁵ the Commission may rely on settlement submissions to prove the existence of an infringement of Article 101 of the Treaty. Accordingly, in this case, the Commission relies on [...] to strengthen the evidentiary basis of the existence of the underlying understanding, which was characterised as a distinct restrictive agreement by four out of five of the participating undertakings.
- (349) On this basis, the Commission considers that the conduct described in Section 4.1.3.3, consisting of tacit rules referred to as the underlying understanding, constitutes an agreement in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.1.1.3. Arguments of Credit Suisse and assessment thereof by the Commission

- (a) The extensive and recurrent exchanges of sensitive current or forward-looking information
- (350) Credit Suisse does not expressly contest the Commission's conclusion that the extensive and recurrent exchanges of sensitive current or forward-looking information constitute concerted practices and/or agreements.
- (b) The occasional instances of coordination
- (351) Credit Suisse claims that the Commission has failed to prove the existence of coordination to the requisite evidentiary standard.³²⁶ This claim is unconvincing for the reasons explained in Section 5.1.1.3(c) and 5.1.2.2(c)., however, the Commission does not address this point further since Credit Suisse is not held liable in respect of the occasional instances of coordination (see recitals (544) and (545)).
- (c) The underlying understanding
- (352) Credit Suisse claims, first, that the Commission has failed to prove the existence of an underlying understanding to the requisite evidentiary standard³²⁷ and sets out what it considers to be the standard of proof that the Commission should respect in order to establish that the underlying understanding constitutes an agreement.³²⁸

³²⁴ [...].

³²⁵ Judgment of 19 December 2013, *Siemens AG and Others*, C-239/11P, C-489/11P and C-498/11P, EU:C:2013:866, paragraph 128.

³²⁶ [...].

³²⁷ [...].

³²⁸ [...].

- (353) Credit Suisse claims that, according to paragraph 100 of the Toshiba judgment of the General Court, the Commission “*must produce evidence that a common understanding existed and that this understanding is not capable of being called into question by evidence adduced by (Credit Suisse)*”.³²⁹
- (354) Credit Suisse also claims that the evidence must permit the conclusion that there was an infringement “*beyond all reasonable doubt*” and that this standard will not be met where “*a plausible explanation can be given [...] which rules out an infringement of Community rules on competition.*”³³⁰
- (355) Second, Credit Suisse argues that the Commission is unable to identify any chats which explicitly refer to the underlying understanding or its rules and that the Commission is unable to corroborate the existence of an underlying understanding with any other evidence,³³¹ including other direct evidence which the Commission could have but failed to consider (e.g. [employee of Credit Suisse]’s FX spot trading book).³³²
- (356) Credit Suisse also argues that contemporaneous documentary evidence is insufficient to establish a common understanding where that evidence does not refer to the existence of an alleged agreement, is neither clear nor wholly unambiguous and contains significant exaggeration.³³³ According to Credit Suisse, at most, such evidence may accredit, but not prove, the existence of an agreement.³³⁴
- (357) In particular, Credit Suisse contests that the chat of 7 February 2012, in which [employee of Credit Suisse] is welcomed back to the STG Lads chatroom (see Section 4.1.2.2) supports the conclusion that [employee of Credit Suisse]’s renewed membership took place in full awareness of what that membership entailed and its implications.³³⁵
- (358) Third, with regard to the settlement submissions, Credit Suisse claims that accepting the settlement submissions as evidence would go against the settled case law as to the Commission’s burden of proof.³³⁶ It also contests the value of settlement submissions as evidence claiming that settlement submissions are not reliable because the settling parties can have commercial reasons to accept the settlement.
- (359) Moreover, Credit Suisse argues that the Commission would have cherry-picked evidence from [...] leniency materials to build a case around the concept of an “underlying understanding”, choosing to ignore fundamental concerns and clarifications raised by Credit Suisse and the settling parties.³³⁷

³²⁹ [...]
³³⁰ [...]; see also judgment of 12 September 2007, *Coats Holdings Ltd and J & P Coats Ltd v Commission*, T-36/05, EU:T:2007:268, paragraph 71, citing judgment of 28 March 1984, *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission*, 29/83 and 30/83, EU:C:1984:130, paragraph 16 et seq.; judgment of 21 January 1999, *Riviera Auto Service Etablissements Dalmasso SA, Garage des quatre vallées SA, Pierre Joseph Tosi, Palma SA (CIA - Groupe Palma), Christophe and Gérard Palma v Commission*, T185/96, T-189/96 and T-190/96, EU:T:1999:8, paragraph 47.

³³¹ [...].

³³² [...]

³³³ [...]

³³⁴ [...].

³³⁵ [...].

³³⁶ [...]

³³⁷ [...]

- (360) Furthermore, according to Credit Suisse, it is settled case law that an admission by one undertaking accused of having participated in a cartel, the accuracy of which is contested by several other undertakings similarly accused, cannot be regarded as constituting adequate proof of an infringement unless it is supported by other evidence.³³⁸
- (361) Credit Suisse’s arguments must be rejected for the following reasons.
- (362) First, with regard to the requisite evidentiary standard to prove the existence of an underlying understanding, Credit Suisse cannot rely, in the present case, on the case law it cites. In the *Toshiba* case,³³⁹ the applicant had referred to potentially exculpatory evidence. However, while Credit Suisse contested the interpretation of some pieces of evidence by the Commission, it has not adduced (or submitted) any kind of exculpatory evidence in support of such claim. Also, according to the General Court, the “alternative plausible explanation standard” only applies “*where the Commission relies solely on the conduct of the undertakings on the [relevant] market*”, and “*such an explanation is irrelevant from the moment when the existence of the infringement is not merely presumed, but is established by proof.*”³⁴⁰ Besides, “*that rule does not apply to all cases in which the infringement is established by deduction from other facts, by indirect or non-documentary evidence.*”³⁴¹
- (363) Moreover, it is settled case law that the requisite legal standard is met when the Commission presents “sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place”³⁴².
- (364) Thus, according to the case law, the Commission must show precise and consistent evidence in order to establish the existence of the infringement. However, it is important to emphasise that it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement.³⁴³
- (365) Second, Credit Suisse’s arguments with regard to the alleged lack of explicit reference to the underlying understanding in the content of the chats must equally be rejected. Due to the tacit nature of the rules, the underlying understanding was not explicitly written down and the set of rules were (tacitly) understood by the participating traders. As explained in recital (163), these rules were very simple: the participating traders would exchange information on their trading activities in a private chatroom in full trust, keeping the information amongst the members of the chatroom and refraining from damaging each other’s interests. Such set of tacit rules

³³⁸ [...]

³³⁹ Judgment of 12 July 2012, *Toshiba Corp. v European Commission*, T-113/07, EU:T:2011:343, paragraph 98.

³⁴⁰ Judgment of 3 March 2011, *Siemens AG v European Commission*, T-110/07, EU:T:2011:68, paragraphs 49, 51.

³⁴¹ Judgment of 12 July 2012, *Toshiba Corp. v European Commission*, T-113/07, EU:T:2011:343, paragraph 87.

³⁴² Judgment of 8 July 2004, *JFE Engineering Corp., formerly NKK Corp., Nippon Steel Corp., JFE Steel Corp. and Sumitomo Metal Industries Ltd v Commission*, T-67/00, T-68/00, T-71/00 and T-78/00, EU:T:2004:221, paragraph 179; judgment of 25 October 2011, *Aragonesas Industrias y Energía, SAU v European Commission*, T-348/08, EU:T:2011:621, paragraph 95.

³⁴³ Judgment of 12 July 2011, *Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corp v Commission*, T-112/07, ECLI:EU:T:2011:342, paragraph 60.

did not require any sophisticated implementation, and specifically, such simple rules did not need to be explicitly mentioned, nor put in writing, because they were based on simple concepts that may be implemented easily without the need of a specific discussion.

- (366) In these circumstances, and in the present case, the establishment of a “firm conviction” that the infringement took place cannot mean that the Commission is required to acquire written, explicit contemporary evidence of the existence of the tacit agreement. Such a requirement would imply that the standard of proof to establish a tacit agreement would be different from the standard for any other fact or finding retained by the Commission, since it could only be proven by means of compelling, stand-alone evidence stating it, while the very nature of a tacit agreement implies that there is no explicit documentary record of it.
- (367) Moreover, the General Court has upheld that a common understanding which has not been explicitly referred to because its contents are understood by the participants to the agreement without an explicit discussion, is perfectly capable of existing as an unwritten understanding among the parties and can be established by directly or indirectly establishing its constituent elements (see recital (163) and section 5.1.1.2(c)).³⁴⁴ In this context, the Commission must meet the generally applicable standard of proof, as explained in recitals (363) and (364), showing precise and consistent evidence to establish the existence of the infringement.
- (368) The existence and contents of the underlying understanding are established on the basis of the whole body of evidence. Concerning the nature of the evidence, the prevailing principle in EU law is “*the unfettered evaluation of evidence and the sole criterion relevant in that evaluation is the reliability of the evidence*”.³⁴⁵ Therefore, the sole criterion relevant in evaluating the probative value of an item of evidence is its reliability. The Commission can use direct evidence (i.e. evidence which tends to demonstrate directly the relevant fact) or indirect evidence (i.e. evidence which tends to prove a fact with which the relevant fact bears a logical relationship).
- (369) It is settled case law³⁴⁶ in the context of tacit agreements that consist of a set of interrelated elements, that if one of the elements is a logical premise for other well established elements, the latter constitutes indirect evidence of the element which is their logical premise. The logical premise is implicit and can be legally inferred from them. It is also settled case law³⁴⁷ that indirect evidence constitutes “prima facie evidence” requiring a certain degree of corroboration, but that it cannot be undermined by an alternative plausible explanation of the facts. The defendant must first prove the fallacy of the Commission’s reasoning. Finally, the Commission can also rely on statements made by other undertakings or witness statements and also reconstitute circumstances through a combination of fragmentary evidence and

³⁴⁴ Judgment of 12 July 2012, *Toshiba Corp. v European Commission*, T-113/07, EU:T:2011:343, paragraph 123.

³⁴⁵ Judgment of 8 July 2004, *Dalmine SpA v Commission*, T-50/00, EU:T:2004:220, paragraph 72.

³⁴⁶ Judgment of 12 July 2011, *Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corp v Commission*, T-112/07, EU:T:2011:342, paragraphs 76, 226, 230 and 255; judgment of 12 July 2012, *Toshiba Corp. v European Commission*, T-113/07, EU:T:2011:343, paragraphs 97, 186, 189 and 206; judgment of 12 July 2011, *Mitsubishi Electric Corp. v. European Commission*, T-133/07, EU:T:2011:345, paragraphs 91, 174, 175 and 214.

³⁴⁷ Judgment of 25 October 2011, *Aragonesas Industrias y Energía, SAU v European Commission*, T-348/08, EU:T:2011:621, paragraphs 97-99.

indicia. The Commission could also base its decision solely on coincidences and indicia, but in such a case, its conclusions can be rebutted by adducing an alternative plausible explanation.

(370) In line with precedent cases concerning tacit or implicit agreements,³⁴⁸ the underlying understanding consists of a set of interrelated elements by which the underlying understanding can be inferred from the information exchanges³⁴⁹ as follows:

(1) One, the information exchanges are well established elements. The participating traders entered into extensive and recurrent exchanges of commercially sensitive information in the STG Lads chatroom operating in a circle of trust, mutual expectations and benefits.

When [employee of Credit Suisse] (who was a founding member of the STG Lads chatroom) joined Credit Suisse, he renewed his membership to the chatroom in full awareness of what that membership entailed and its implications, including the allegiance to the underlying understanding (see recitals (136) to (141)).

After re-joining, [employee of Credit Suisse] did not ask any question to verify what re-joining entailed or what he was expected to do. Moreover, contrary to Credit Suisse's claims,³⁵⁰ [employee of Credit Suisse] did not distance himself from the anticompetitive exchanges or the tacit rules underlying these exchanges. In fact, roughly one hour after re-joining the chatroom, he actively participated together with the other traders in an exchange of information on their respective positions for the fix. Such exchange was not linked to an exchange necessary to trade as counterparties (see recital (141)). It is logical to conclude that [employee of Credit Suisse] brought to his position at Credit Suisse the knowledge that he had previously acquired vis-à-vis the functioning of the STG Lads chatroom and its circle of trust, including the tacit rules that the members followed.

(2) Two, participating in the STG Lads chatroom required respecting a set of tacit rules³⁵¹ which manifested in the exchanges of information. There is direct evidence of the interrelated elements of the underlying understanding in the

³⁴⁸ Judgment of 12 July 2011, *Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corp v Commission*, T-112/07, EU:T:2011:342, paragraphs 76, 226, 230 and 255; judgment of 12 July 2012, *Toshiba Corp. v European Commission*, T-113/07, EU:T:2011:343, paragraphs 97, 186, 189 and 206; judgment of 12 July 2011, *Mitsubishi Electric Corp. v. European Commission*, T-133/07, EU:T:2011:345, paragraphs 91, 174, 175 and 214.

³⁴⁹ Judgment of 12 July 2011, *Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corp v Commission*, T-112/07, EU:T:2011:342, paragraphs 230 and 255; judgment of 12 July 2012, *Toshiba Corp. v European Commission*, T-113/07, EU:T:2011:343, paragraphs 189 and 206; judgment of 12 July 2011, *Mitsubishi Electric Corp. v. European Commission*, T-133/07, EU:T:2011:345, paragraphs 175 and 214.

³⁵⁰ [...]

³⁵¹ According to these tacit rules, (i) the participating traders would gather in the private STG Lads chatroom to disclose and exchange information throughout the trading day; (ii) the information exchanged in the chatroom would not be disclosed by the recipient traders to other competing traders outside the private chatroom; (iii) the information exchanged could be used to the benefit of the participating traders including to identify occasions appropriate for coordination; and, (iv) this information would not be used against those who shared it (see recital (163)).

form of contemporaneous documentary evidence, i.e. the chats, that when read as a whole show the existence of the tacit rules (see Section 4.1.3.1): (i) the fact that such information should be shared between the traders within the private chatroom (see recitals (142) to (146)); (ii) the fact that the commercially sensitive information was shared in the trust that it would not be disclosed outside the chatroom (see recitals (150) to (154)); (iii) the fact that they were shared for the traders' benefit (see, for example, recitals (142) to (146), (190), (211) to (213), (236), (238), (269), (270), (272), (274), (278), (280) and (284)) and (iv) the fact that the information would not be used against the traders who shared it (see recital (132)). To that effect, the Commission has retained more than 100 pieces of evidence of illegitimate exchanges of information in chats described in this Decision (see, for example, Sections 4.1.2 and 4.1.3).

For example, with regard to the tacit rules that (i) the information should be shared within the private chatroom and that (ii) it could be used to the traders' respective or common benefit, on 2 April 2012, [employee of Credit Suisse], trading on behalf of Credit Suisse, apologised for a delay in answering a direct question about his trading position (the question is asked at 06:47:33 and answered at 07:11:46).³⁵² As described in recitals (142) to (146), since the information exchanged was only useful for a specific time window, if the traders fail to exchange their information or to do so timely, they fall short of the tacit rules as their information cannot be used to the benefit of the members of the chatroom. Credit Suisse claims that the apology is simply "*a courteous and polite apology*" and that it is plausible to think that it responds to the fact that "[employee of Credit Suisse] apologises because he is unable to match a trade".³⁵³ However, as explained in recitals (144) to (146), [employee of Credit Suisse]'s apology does not respond to the fact that he cannot match. [Employee of non-addressee] knew since 06:47:24 that [employee of Credit Suisse] and himself were trading in the same direction and so they could not match (i.e. [employee of non-addressee] knew even before the question was asked at 06:47:33). Therefore, the most plausible explanation is that [employee of Credit Suisse] apologises for failing to act in the way he was expected to, i.e. answering a question in a timely manner.

An example regarding the tacit rule not to share information outside the private chatroom is provided by a chat of 1 June 2012.³⁵⁴ [employee of Credit Suisse], trading on behalf of Credit Suisse, and three other traders (in the absence of [employee of non-addressee]), complained of [employee of non-addressee]'s lesser commitment to the STG Lads chatroom and the fact they suspected him of communicating outside the information obtained in the chatroom. They thought he just reported "the good stuff" to traders in another chatroom. In view of this suspected breach of the tacit rules by [employee of non-addressee], the other traders considered whether they should enforce these rules by expelling [employee of non-addressee] from the chatroom (see recitals (150) to (154)). As described in recitals (151) and (152), Credit Suisse claims that the references to [employee of non-addressee] in the extract are exclusively a joke

352 [...]
353 [...]
354 [...]

among the participating traders based on [employee of non-addressee]’s [...].³⁵⁵ However, even accepting such claim (*quod non*), the joke would be that the proposed measure was exaggerated with respect to [employee of non-addressee]’s failures, and still, this would mean that [employee of non-addressee] fell short of complying with the tacit rules.

As a last example, a chat of 9 June 2011 illustrates the fourth tacit rule. [employee of Credit Suisse] was logged in the chatroom at the time when [employee of non-addressee], [employee of non-addressee] and [employee of non-addressee] shared confidential information concerning the level of their stop orders with the intention to get clarity on the value of the GBP, to determine how likely it was that it would reach the level necessary to prompt their orders and consequently to adapt their trading behaviour. The willingness to share commercially sensitive information that could be used against the trader sharing it shows that the participating traders were aware that the information exchanged was not supposed to be used to the detriment of the trader who disclosed it, with the expectation that the others would provide similar information (see recital (303)).

- (371) Therefore, according to the case law regarding indirect evidence of implicit, unwritten agreements, the information exchanges constitute indirect evidence of the elements that are their logical premise, i.e. the existence of the underlying understanding. Without keeping this set of rules competitors could have used the information provided against the other participating trader’s interest.
- (372) Third, with regard to the use of settlement submissions as admissions with corroborative value, it is settled case law that “*no provision or general principle of European Union law prohibits the Commission from relying, as against an undertaking, on statements made by other incriminated undertakings. If that were not the case, the burden of proving conduct contrary to Articles 101 and 102 TFEU, which is borne by the Commission, would be unsustainable and incompatible with its task of supervising the proper application of those provisions which is entrusted to it by the TFEU*”.³⁵⁶
- (373) Accordingly, the General Court has recently pointed out in *Pometon* that, in the framework of a hybrid procedure, the admissions provided by the settling parties will inevitably closely influence the establishment of facts regarding the non-settling undertaking.³⁵⁷ The use of the acknowledgements contained in settlement submissions is consistent with existing Commission practice in parallel hybrid cases³⁵⁸ and flows from the provisions of the Settlement Notice, which only

³⁵⁵ [...]

³⁵⁶ Judgment of 7 November 2019, *Campine NV and Campine Recycling NV v European Commission*, T-240/17, EU:T:2019:778, paragraph 117 and the case law cited, including judgment of 13 September 2013, *Total Raffinage Marketing v. Commission*, T-566/08, EU:T.2013:423, paragraph 65.

³⁵⁷ Judgment of 28 March 2019, *Pometon Spa v European Commission*, T-433/16, EU:T:2019:201, paragraphs 92 and 93.

³⁵⁸ Commission decision of 20 July 2010 addressed to Timab Industries and CFPR in Case AT 38866 - *Animal Feed Phosphates*, which was upheld in its entirety by the General Court and the European Court of Justice.

contemplates two exceptions³⁵⁹ to the rule that settlement submissions may be used as evidence against any party to the same cartel. These exceptions are a safeguard applicable only when the Commission unilaterally departs from the settlement procedure, which is not the case here. Hence, in the present case, and pursuant to point 27 of the Settlement Notice, the settlement submissions can “*be used as evidence against any of the parties to the proceedings*” (emphasis added).

- (374) As set out in recital (348), the probative value of any piece of evidence depends solely on its reliability. In the specific case of corporate statements, according to the case law, particularly high probative value may be attached to corporate statements if they are self-incriminating, made on behalf of an undertaking by a person under a professional obligation to act in the interests of that undertaking and provided after deliberate and mature reflection.³⁶⁰ [...].
- (375) More generally, settlement submissions, just as leniency statements, are self-incriminating corporate statements made on behalf of a company involved in the infringement after deliberate and mature reflection. The General Court considers that the same logic applies to settlement submissions and leniency statements to the extent that they involve to different degrees a voluntary admission, based on the free will of the undertaking concerned: “*The cooperation and degree of cooperation which the undertaking wishes to offer in the administrative procedure is therefore entirely a matter for it. Both the procedure following an application for immunity under the leniency notice and that relating to the proposal for a settlement are forms*

³⁵⁹ The Settlement Notice addresses expressly the only two exceptions to the use of settlement submissions as evidence at points 27 and 29, according to which provided that the Commission departs unilaterally from the settlement:

- Point 27. “*The Commission retains the right to adopt a statement of objections which does not reflect the parties’ settlement submission. If so, the general provisions in Articles 10(2), 12(1) and 15(1) of Regulation (EC) No 773/2004 will apply. The acknowledgements provided by the parties in the settlement submission would be disregarded by the Commission and cannot be used as evidence against any of the parties to the proceedings. Hence, the parties concerned would no longer be bound by their settlement submissions and would be granted a time-limit allowing them, upon request, to present their defence anew, including the possibility to access the file and to request an oral hearing.*”
- Point 29. “*The Commission retains the right to adopt a final position which departs from its preliminary position expressed in a statement of objections endorsing the parties’ settlement submissions, either in view of the opinion provided by the Advisory Committee or for other appropriate considerations in view of the ultimate decisional autonomy of the Commission to this effect. However, should the Commission opt to follow that course, it will inform the parties and notify to them a new statement of objections in order to allow for the exercise of their rights of defence in accordance with the applicable general rules of procedure. It follows that the parties will then be entitled to have access to the file, to request an oral hearing and to reply to the statement of objections. The acknowledgments provided by the parties in the settlement submissions will be disregarded by the Commission and will not be used in evidence against any of the parties to the proceedings*”.

³⁶⁰ Judgment of 12 July 2011, *Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corp v Commission*, T-112/07, EU:T:2011:342, paragraph 71; judgment of 13 September 2013, *Total Raffinage Marketing v. Commission*, T-566/08, EU:T:2013:423, paragraph 66 and case law cited: “66. Particularly high probative value may be attached to statements which, first, are reliable, second, are made on behalf of an undertaking, third, are made by a person under a professional obligation to act in the interests of that undertaking, fourth, go against the interests of the person making the statement, fifth, are made by a direct witness of the circumstances to which they relate and, sixth, were provided in writing deliberately and after mature reflection (see, to that effect, *JFE Engineering and Others v Commission*, paragraph 41 above, paragraphs 205 to 210)”.

of cooperation. Accordingly, the same logic applies to the settlement procedure. The proposal for a settlement by the undertaking concerned, which recognises its liability for the infringement, following preparatory discussions conducted as part of the settlement procedure, is based on the free will of that undertaking.”³⁶¹ Therefore, settlement submissions and leniency statements could assist the Commission to discharge its burden of proof in establishing an infringement.

- (376) In the present case, there are particular reasons [...] regarding the existence and contents of the underlying understanding. These reasons [...] establish directly the interrelated set of tacit rules referred to as “the underlying understanding”, which had been indirectly inferred by the Commission from the contemporaneous documentary evidence.³⁶²
- (377) Whenever the General Court has been confronted with arguments claiming that self-incriminating statements which also inculpated other companies in a cartel could be prompted by different interests, the General Court has adopted a consistent approach. In the leniency context, irrespective of whether the corporate statements had been provided in the context of immunity or of reduction of fines and under the 2002 or the 2006 Leniency Notice, the General Court has consistently held that the incentives for undertakings to obtain a reward for cooperation do not necessarily translate into an incentive to submit distorted evidence to downplay their own contribution to the infringement and maximise the participation of the other members of the cartel, since they run the risk of jeopardising their chances to qualify for leniency if they do not provide genuine cooperation.³⁶³ The same can be said for the settlement procedure. The submission of distorted evidence to downplay their own contribution to the infringement and maximise the participation of the other members of the cartel will jeopardise the party’s chances of benefitting fully under the Settlement Notice.
- (378) Furthermore, the credibility [...] is strengthened [...] by indirect evidence (see recitals (369) to (371)). According to the case law, a single inculpatory corporate statement which is contested by one of the parties to the infringement needs to be corroborated by other evidence regarding that contesting party.³⁶⁴ Specifically, it can

³⁶¹ Judgment of 20 May 2015, *Timab Industries v European Commission*, T-456/10, EU:T:2015:296, paragraph 120.

³⁶² Judgment of 7 November 2019, *Campine NV and Campine Recycling NV v European Commission*, T-240/17, EU:T:2019:778, paragraph 119 and the case law cited, reproducing paragraph 68 of judgment of 13 September 2013, *Total Raffinage Marketing v. Commission*, T-566/08, EU:T:2013:423, paragraph 68 (“68 In particular, where a person admits that he committed an infringement and thus admits the existence of facts going beyond those whose existence could be directly inferred from the documentary evidence, that implies, a priori, in the absence of special circumstances indicating otherwise, that that person had resolved to tell the truth. Thus, statements which run counter to the interests of the declarant must in principle be regarded as particularly reliable evidence (*JFE Engineering and Others v Commission*, paragraph 41 above, paragraphs 211 and 212; *Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 Bolloré and Others v Commission* [2007] ECR II-947, paragraph 166; and judgment of 8 July 2008 in *Case T-54/03 Lafarge v Commission*, not published in the ECR, paragraph 59”).

³⁶³ Judgment of 21 May 2014, *Toshiba Corp. v European Commission*, T-519/09, EU:T:2014:263, paragraphs 50 and 51; judgment of 16 November 2006, *Peróxidos Orgánicos, SA v Commission*, T-120/04, EU:T:2006:350, paragraph 70.

³⁶⁴ Judgment of 12 July 2019, *Sony Optiarc, Inc and Sony Optiarc America, Inc v Commission*, T-763/15, EU:T:2019:517, paragraph 51; judgment of 12 July 2011, *Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corp v Commission*, T-112/07, EU:T:2011:342, paragraph 68.

be corroborated by a separate corporate statement from another party³⁶⁵. Therefore, if a fact can be established by two separate mutually corroborating corporate statements, it can also be established, *a fortiori*, [...] support the facts established by the Commission's reading of evidence on the existence of the underlying understanding. Accordingly, [...] are part of the body of evidence demonstrating the existence and contents of the underlying understanding and of the rest of the practices established in this decision.³⁶⁶

- (379) Besides the use of settlement submissions as evidence³⁶⁷, Credit Suisse's claims concern the use of other documents presented in the settlement and leniency context (see recital (359)). All these claims should also be dismissed.
- (380) With regard to documents presented [...] casting doubt on the underlying understanding, [...]. [...] admit [...] the existence of tacit rules which, taken together, constitute the "underlying understanding".
- (381) The Court of Justice has pointed out that a statement made by a company admitting the existence of, and its participation in an infringement entails considerable legal and economic risks, including, *inter alia*, the risk of actions for damages being brought before the national courts, in the context of which the Commission's establishment of a company's infringement may be invoked.³⁶⁸ Moreover, in the present case, the [...] documents [...] do not downplay their [...] role in the

³⁶⁵ Judgment of 19 December 2013, *Siemens and Others v Commission*, C-239/11 P, C-489/11P and C-498/11P, EU:C:2013:866, paragraph 191.

³⁶⁶ Judgment of 13 September 2013, *Total Raffinage Marketing v. Commission*, T-566/08, EU:T:2013:423, paragraphs 73 to 75: "73. Admittedly, according to the case-law, a statement by one undertaking accused of having participated in a cartel, the accuracy of which is contested by several other undertakings similarly accused, cannot be regarded as constituting adequate proof of an infringement committed by the latter unless it is supported by other evidence, though the degree of corroboration required may be less in view of the reliability of the statements at issue (*JFE Engineering and Others v Commission*, paragraph 41 above, paragraphs 219 and 220).

74. In the present case, however, the Commission did not rely on a statement by a single participant which was disputed by the other participants, but on statements made independently by a number of undertakings, which in broad terms are agreed on the description of the infringement (see paragraphs 58 to 61 above). In addition, the Commission relied on numerous pieces of documentary evidence that supplement and corroborate the content of the corporate statements, some of which will be examined at paragraph 76 *et seq.* below.

75. Accordingly, the statements in question form part of the body of evidence demonstrating the agreements or concerted practices relating to the fixing of the prices of paraffin waxes decided upon at the technical meetings in which the applicant participated. The arguments whereby the applicant challenges the probative value of those statements must therefore be rejected".

³⁶⁷ Credit Suisse claims that the Commission attributes the acknowledgements in [non-addressee]' settlement submission to Credit Suisse (...); however, that is not the case. [...]. This acknowledgment is not attributed to Credit Suisse; nevertheless, this fact is still relevant to ascertain whether [employee of non-addressee] acted in the same understanding when he re-joined the chatroom and the conduct on Credit Suisse's behalf on 7 February 2012 (see recitals (136) to (141) and (503)).

³⁶⁸ Judgment of 7 November 2019, *Campine NV and Campine Recycling NV v European Commission*, T-240/17, EU:T:2019:778, paragraph 120 and the case law cited. See also judgment of 21 May 2014, *Toshiba Corp. v European Commission*, T-519/09, EU:T:2014:263, paragraphs 48 and 49: "[...] the adoption by the Commission of a decision finding that an undertaking participated in an infringement of Article 81 EC and Article 53 of the EEA Agreement might have disadvantages for that undertaking, even where it benefits from the Commission's leniency programme. Such a finding may result, in particular, in regulatory implications, legal actions by private operators and damage to commercial reputation. Therefore, it is not plausible that an undertaking would admit the existence of an infringement and its own participation in it if that infringement was not committed".

underlying understanding or in any way single out Credit Suisse. These documents facilitate the establishment of the specific tacit agreement in full knowledge of the circumstances.³⁶⁹ In addition, neither the Commission [...] considers that admitting to the underlying understanding was contradictory or incompatible with the evidence submitted [...].

- (382) Finally, while Credit Suisse contests the use as evidence of documents produced in the settlement and leniency context, Credit Suisse resorts to these documents to support its claim that information was being provided across multiple chatrooms at the same time as in the STG Lads chatroom.³⁷⁰ However, the oral statements referred to by Credit Suisse show that the instances in which information was provided to third parties or across different chatrooms concern information shared with sales desks or clients or information necessary to trade as counterparties. Hence, these information exchanges did not involve competing traders and, therefore, are not part of the illegal exchanges covered by this Decision.
- (383) In addition, Credit Suisse makes several generic claims against the existence of the underlying understanding allegedly supported by exculpatory evidence (e.g. [employee of Credit Suisse]’s FX spot trading book). Such evidence, however, was not provided to the Commission,³⁷¹ despite the fact that Credit Suisse had every possibility to submit it to substantiate its claims. The Commission is unable to determine whether documents not submitted by Credit Suisse cast doubt on the tacit rules or on [employee of Credit Suisse]’s adherence to them or Credit Suisse’s ability to profit from the information obtained. However, Credit Suisse’s decision not to submit such evidence puts into question its value and, in particular, its exculpatory nature.
- (384) For all the reasons stated in recitals (361) to (382) the Commission considers that the existence of an underlying understanding as an agreement within the meaning of Article 101 of the Treaty has been proved to the requisite evidentiary standard. However, the Commission will not hold it against Credit Suisse for the reasons explained in recitals (546) and (547) below.

³⁶⁹ Judgment of 13 September 2013, *Total Raffinage Marketing v. Commission*, T-566/08, EU:T:2013:423, paragraph 67: “In addition, even if some caution as to the evidence provided voluntarily by the main participants in an unlawful cartel is generally called for, given the possibility that those participants might tend to play down the importance of their contribution to the infringement and maximise that of the others, the fact remains that seeking to benefit from the application of the 2002 Leniency Notice in order to obtain immunity from, or a reduction of, the fine does not necessarily create an incentive to submit distorted evidence in relation to the participation of the other members of the cartel. Indeed, any attempt to mislead the Commission could call into question the sincerity and the completeness of the cooperation of the person seeking to benefit, and thereby jeopardise his chances of benefiting fully under the 2002 Leniency Notice (see, to that effect, Case T-120/04 *Peróxidos Orgánicos v Commission* [2006] ECR II-4441, paragraph 70)”. Judgment of 21 May 2014, *Toshiba Corp. v European Commission*, T-519/09, EU:T:2014:263, paragraph 50: “Even if some caution as to the evidence provided voluntarily by the main participants in an unlawful cartel is generally called for, the fact remains that the fact of seeking to benefit from the Leniency Notice in order to obtain immunity from or a reduction in the amount of the fine does not necessarily create an incentive to submit distorted evidence as regards the participation of the other members in the cartel. Indeed, any attempt to mislead the Commission could call into question the sincerity and the completeness of cooperation of the person seeking to benefit, and thereby jeopardise his chances of benefiting fully under the Leniency Notice”.

³⁷⁰ [...]
³⁷¹ [...]

5.1.2. Restriction and/or distortion of competition

5.1.2.1. Principles

- (385) Article 101 of the Treaty and Article 53 of the EEA Agreement prohibit agreements and concerted practices that have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions. It is settled case law that, for the purpose of the application of Article 101 of the Treaty and Article 53 of the EEA Agreement, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market.³⁷² The same applies to concerted practices.³⁷³
- (386) In order to determine whether a type of coordination between undertakings reveals a sufficient degree of harm to competition that it may be considered a restriction of competition ‘by object’ within the meaning of Article 101(1) of the Treaty, regard must be had, *inter alia*, to its content, its objectives and the economic and legal context of which it forms a part.³⁷⁴
- (387) It is inherent in the Treaty provisions on competition that every economic operator must determine autonomously the policy which it intends to pursue on the common market. Thus, according to that case law, such a requirement of autonomy precludes any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself or contemplates adopting on the market, where the object or effect of those contacts is to give rise to conditions of competition which do not correspond to the normal conditions of the market in question, taking into account the nature of the products or the services provided, the size and number of the undertakings and also the volume of the market.³⁷⁵
- (388) The exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted.³⁷⁶

³⁷² Judgment of 6 July 2000, *Volkswagen AG v Commission*, T-62/98, EU:T:2000:180, paragraph 178 and case law cited therein; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 53.

³⁷³ Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraph 51 and case law cited therein; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 127.

³⁷⁴ Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 117; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 57; judgment of 2 April 2020, *Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others*, C-228/18, EU:C:2020:265, paragraph 67; judgment of 30 January 2020, *Generics (UK) Ltd and Others v Competition and Markets Authority*, C-307/18, EU:C:2020:52, paragraph 67.

³⁷⁵ Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraphs 32 and 33; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 119 and 120; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 60.

³⁷⁶ Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 121; judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08,

- (389) In particular, an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the intended conducts to be adopted by the undertakings concerned on the market, must be regarded as pursuing an anticompetitive object.³⁷⁷
- (390) The Horizontal Guidelines state that exchanges of information about the future intentions of competitors in relation to their market conduct can create mutually consistent expectations regarding the uncertainties present in the market. On that basis, they are likely to enable competitors to reach a common understanding on the coordination of competitive conduct among themselves (as they remove strategic uncertainty) and consequently facilitate collusion.³⁷⁸ The exchange of forward-looking information and price information is particularly likely to lead to a collusive outcome on the market. Therefore exchanges of information about such future intentions are, by their very nature, harmful to the proper functioning of normal competition.
- (391) According to the General Court, 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 with the object or effect either of influencing the conduct on the market of an actual or potential competitor or of disclosing to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.³⁷⁹
- (392) It has also been held that concerted action on indicative prices (such as spreads in the FX market) affects competition because it allows the participants in such arrangements to foresee with a reasonable degree of certainty what pricing policy will be pursued by their competitors.³⁸⁰

5.1.2.2. Application to this case

- (393) According to the case law cited in recital (386), in order to determine whether a type of coordination between undertakings reveals a sufficient degree of harm to competition that it may be considered a restriction of competition ‘by object’, regard

EU:C:2009:343, paragraph 35; judgment of 12 July 2019, *Sony Optiarc, Inc and Sony Optiarc America, Inc v Commission*, T-763/15, EU:T:2019:517, paragraph 52; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 61.

³⁷⁷ Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 122; judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraphs 41; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 62.

³⁷⁸ Horizontal Guidelines, paragraphs 66, 73 and 74.

³⁷⁹ Judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 144.

³⁸⁰ Judgment of 3 July 2018, *Keramag Keramische Werke and Others v Commission*, T-379/10, EU:T:2013:457, paragraphs 51-52, 57-58 and 62-64.

must be had, *inter alia*, to its content, its objectives and the economic and legal context of which it forms a part.

(a) The extensive and recurrent exchanges of information

– (a.1) *Content of the conduct*

(394) As regards the content of the conduct, the participating traders engaged in recurrent and extensive exchanges of information through which they revealed to each other certain current or forward-looking commercially sensitive information about confidential aspects of their market conduct. These exchanges included:

(a) Information on outstanding customers' orders (see recitals (170) to (228)). These exchanges applied to: (i) customers' conditional orders, (ii) WMR or ECB's fix positions and (iii) customers' immediate orders.

(i) The exchange of information on *customers' conditional orders*, as stated in recital (176) and described in recitals (183) to (195), increased market transparency for the chatroom members and thus enabled them to gain a better understanding of the direction towards which the market might move, when certain pricing levels were reached. In this respect, the recurrent update of knowledge of customers' confidential conditional orders placed with the participating traders was capable of influencing the participating undertakings' trading strategy and of increasing their ability to exploit that level of insider information in their trading activities for their own benefit.

(ii) Regarding the information exchanges revealing *orders for the fix*, as described in recital (202), the participating traders had effective access to more specific and timely information about competitor positions than they would otherwise have had absent the exchanges. This conferred on them the ability to predict with a greater degree of confidence the direction in which the market may move at the time of the fix. The participating undertakings could take advantage of this improved degree of confidence about the market trends at or around the fix to adjust their trading strategy (for example, by trading at or in advance of the fix in order to hedge their net client orders, by choosing not to net off or by refraining from trading) and thereby attempt to boost their profits at the expense of other competitors and counterparties who did not have access to the information.

(iii) The exchange of current or forward-looking commercially sensitive information related to *customers' immediate orders* (such as the size or the direction of specific, non-aggregated orders or the type³⁸¹ or name of customer) removed some of the uncertainties that are inherent to Forex trading and increased the level of transparency about the evolution of the involved exchange rates for the participating traders. Some of the

³⁸¹ It is worth noting that even if the exact identity of an end-customer is not revealed, communicating the type of customer (for example, a central bank) in such a way that market participants know whether or not a trade was 'informed' (see recitals (40), (49) and (50)) is clearly not 'a view shared by market participants on the general state of, and trends in the market' and hence goes beyond the concept of Market Colour, as defined by the Bank of International Settlements (see recital (51)).

exchanges of information (see recitals (225), (226) and (227)) show that the participating traders disclosed information on their clients' identities when discussing details of their customers' immediate orders. The clients identified were mostly significant market participants, such as financial institutions whose trading activity is informative (see recital (40)) and, therefore, may anticipate short-term FX movements. Hence, the disclosure of details on such customers' immediate orders increased the pool of information available to the participating undertakings concerning which way (up or down) currency prices were likely to move (see recitals (215) to (221)).

- (b) Information on open risk positions (see recitals (229) to (238)). As stated in recital (231), the recurrent knowledge update of the open risk positions of participating traders provided them with information which could be, for a window of minutes or until new information superseded it, relevant to their subsequent trading decisions and could enable the participating undertakings to identify opportunities for coordination. In particular, when one trader disclosed an open risk position, the other participating traders would refrain from trading by withholding bids or offers so that the price of the involved currency pair would not move in a direction adverse to the trader with the open risk position.
 - (c) Information on bid-ask spreads quoted for specified currency pairs for certain trade sizes and for certain client types (see recitals (239) to (251)). As a result of the exchanges on bid-ask spreads, the participating traders could reduce the risk inherent in trading currencies to their benefit, so that with the knowledge acquired from the exchanges with their competitors they could safely offer to their clients the upper range in the market price levels. Even a minor spread difference for large volume transactions, such as the ones the participating undertakings dealt with, could have resulted in large benefits for them to the detriment of their clients.
 - (d) Information on current or planned trading activities (see recitals (252) to (285)). The cumulative disclosure of other details of participating traders' current or planned trading activities, or a combination of the topics described above (customer orders and/or open risk position) also removed some of the uncertainties that are inherent in Forex spot trading and increased the level of market transparency. The availability of this information provided the participating undertakings with valuable cumulative insights into current trading patterns of their competitors and comforted them in their risk assessment when developing their own trading strategies.
- (395) According to the case law, the requirement of autonomy precludes any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself or contemplates adopting on the market, where the object or effect of those contacts is to give rise to conditions of competition which do not correspond to the normal conditions of the market in question, taking into account the nature of the products or

the services provided, the size and number of the undertakings and also the volume of the market.³⁸²

(396) In the STG Lads chatroom, the exchanges of information were not random or limited to punctual incidents but followed a persistent pattern of recurrent and extensive contacts between the participating undertakings consistently held over time. This constant and extensive flow of information shared within the chatroom allowed the participating undertakings to have a full picture of what their competitors were doing and also what they were not doing while actually trading in the market. This flow of information contributed to creating mutually consistent expectations and to reducing uncertainty between the participating undertakings as regards the timing, extent and details of the intended conducts to be adopted on the market and about the potential direction (up or down) of the involved exchange rates.

(397) Therefore, in the present case, the information exchanges went beyond an exchange of information in the public domain, were not justified for the purpose of exploring trading or actually trading with each other as counterparties (see recitals (177), (197), (216), (230), (242) and (254)), but reduced uncertainty inherent and essential to competition on the market for FX spot trading, enabling the participating undertakings to adapt their conduct on the market and eventually facilitated occasional coordinated behaviour relating to FX spot trading activities of G10 currencies (see recitals (291) and (295)). Whereas undertakings ought to determine their trading strategies independently, an exchange of information between competitors on their respective trading strategies or positions was liable to influence their conduct on the market and, as such, created conditions of competition that were different from the norm.³⁸³

– (a.2) *Objective of the conduct*

(398) As regards the objective of the conduct, in view of the nature, the frequency and the level of disaggregation of the information exchanged in the chatroom (as described in Section 4.1.3.1), the Commission concludes that the aim of the exchanges was to reduce normal market uncertainties for the participating undertakings on the market for FX spot trading, in order to reduce risk and to comfort them in their pricing decisions.

(399) Price and risk management are parameters of competition (as Credit Suisse acknowledges in its reply to the SO³⁸⁴) that the participating undertakings should have managed autonomously; however, the undertakings that were involved, via the participation of their traders in the chatroom, substituted competition by cooperation amongst them.

(a) Regarding price (and bid-ask spreads), the exchanges of information on outstanding customer orders and the cumulative disclosure of other details of current or planned trading activities removed some of the uncertainties that are

³⁸² Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraphs 32 and 33; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 119 and 120; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 60.

³⁸³ Judgment of 10 November 2017, *Icap plc and Others v. European Commission*, T-180/15, EU:T:2017:795, paragraph 52.

³⁸⁴ [...]

inherent in Forex spot trading. These exchanges increased the level of transparency about the participating traders' trading strategies (see recitals (164), (171), (176), (201), (202) and (215)). The participating traders disclosed in the chatroom information on their outstanding customer orders, such as the identity or type of client, which provided them with an insight into the subsequent movements in the involved exchange rate. As the undertakings' pricing strategy depends on their expectations of FX rates tendencies, these exchanges informed their pricing behaviour about general pricing trends thereby reducing the risk inherent in pricing currencies (e.g. likely resulting in lower expected losses).

The exchanges of information on bid-ask spreads in the chatroom (see recitals (239) to (251)) also provided the participating traders with greater certainty on the prices they were quoting and informed their subsequent trading behaviour concerning spreads. Those exchanges were capable of enabling the participating traders to align their spreads for particular transactions and, thereby, their all-in price offered to a specific client for a particular transaction. Any potential counterparty who was not aware of such exchanges of non-publicly available information on spreads and who might have contacted more than one of the participating traders to get a price on a specific trade, might have received less competitive prices from them.

- (b) Regarding risk management, as stated in recitals (32) to (34), traders are compensated not only for the immediacy of the service they provide but also for assuming the subsequent risk of holding a certain currency in their inventories (the open risk positions). The expertise of FX spot traders resides in their risk management skills and their capacity to reduce their risk of losses. For instance, in this particular case, traders adjusted their position in a currency depending on their expectations on its price evolution (see recitals (35) and (36)); if a participating undertaking expected a decrease in the market price of a currency and held a long position in it, it reduced its position in order to reduce the risk of making losses linked to a price decrease of the involved currency. The exchanges of information on open risk positions (see recitals (234) to (238)) provided the participating traders with greater certainty on the trading intentions of each other and hence removed some of the uncertainty as to the potential evolution of a specific Forex rate, thereby helping the participating undertakings in the management of their own trading risk.
- (400) Therefore, the extensive exchanges of current or forward-looking commercially sensitive information (as described in Section 4.1.3.1) reduced uncertainty between the participating undertakings on their respective trading strategies and of the direction in which the market might move. These exchanges of information allowed the participating undertakings to make their daily risk management decisions comforted by the knowledge of their competitors' trading behaviour, trading exposures and immediate plans. This could help them to better predict each other's future conduct in the market and gave them the ability to inform their subsequent trading decisions. The participating undertakings would be in the position to either persevere in their intended course of action comforted in their risk assessment with the information they had, eventually adapting their price to that risk perception, or to

change course and trade differently to how they would have traded absent that information. As Credit Suisse admits, “[...] *in essence, all information in the chatroom was provided for the guidance of others*”.³⁸⁵

(401) In conclusion, the continuous exchanges of commercially sensitive information provided the participating undertakings with the opportunity to subtract themselves from competition on the merits with regard to key parameters of competition (price and risk management). This constant flow of information exchanges within the chatroom also entailed an asymmetry of information between the participating undertakings and their non-participating competitors to the advantage of the former, since only the participating traders were continuously aware of their trading behaviours, trading exposures and immediate plans and this knowledge provided them more comfort when adopting their market behaviour.

– (a.3) *Economic and legal context*

(402) The FX spot trading activity is very dynamic. FX rates are primarily driven by trader’s order flows (see recitals (41) to (45)). Traders’ positions are also moving constantly. The nature of market making and the very large volumes transacted in a very liquid market forces market makers to adapt their positions quickly throughout the day. Precisely because of this context, the timing and the frequency of the exchanges, as well as their extent and detail are relevant factors to be taken into account in the assessment of the conduct since they directly contribute to increasing the transparency and reducing the uncertainty that is inherent to a competitive scenario.

(a) Regarding timing, the participating traders exchanged information while they were actually operating in the market, sharing their positions with their competitors while they were executing transactions (see recitals (214) to (228)). The exchanges included constant live updates of the evolution of the information shared (see recitals (186), (187), (190), (204), (210) and (211), (219), (223) to (228)). Moreover, as explained in recitals (196) to (213), the participating traders usually engaged in exchanges of sensitive information on their fix positions (such as the size or direction of their orders) in the hours preceding the relevant fix, which reduced the uncertainty of the participating traders.

(b) Regarding frequency, the exchanges occurred on a very frequent basis (e.g. the exchanges took place within seconds). This directly contributed to reducing normal market uncertainties on the FX spot trading and increasing transparency because, due to the dynamism and market liquidity, the value of the information discussed lasted for a very short period of time (until new information superseded or overrode it).

(c) Regarding the extent and details of the information exchanges concerning the intended conducts to be adopted on the market, the participating undertakings provided certain current or forward-looking commercially sensitive information about confidential aspects of their market conduct (i.e. the existing level of clients’ conditional orders, the size of their orders executable at the fix, the type or identity of customers in immediate orders or the bid-ask spread

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level applied to specific trades) that was not justified by any potential or actual trading with each other, as stated in recitals (177), (197), (216), (230), (242) and (254), and provided the participating undertakings with an informational advantage enabling them to adjust their trading strategies, compared to other market participants.

(403) Therefore, in this context, as stated in recital (399), the conduct was capable of affecting the basic parameters of competition, i.e. (i) price and (ii) risk management, on which Credit Suisse should have been competing autonomously, altering the terms on which the participating undertakings competed in the market.

– (a.4) *Conclusion*

(404) Taking into account the content, objectives and economic and legal context of the exchanges of information described above, the Commission considers that this conduct was objectively capable of restricting competition on the market for FX spot trading of G10 currencies because it informed the participating undertakings' subsequent trading decisions and resulted in an asymmetry of information between the STG Lads chatroom participants and their non-participating competitors,³⁸⁶ therefore significantly reducing normal market uncertainties to the participating undertakings' advantage compared to their non-participating competitors. In a context where sensitive information was continuously reported and updated in the chatroom in an extensive fashion, the fact that other participating traders would not disclose the one or the other types of orders or positions was also revealing for the participating traders with a given position or pending order of the fact that there was no risk of mutual interference or possibility of mutual assistance in that regard.

(405) Therefore, an overall assessment of the content of the conduct, in the light of the aims objectively pursued and the economic and legal context in which the conduct took place (as referred to in recitals (394) to (403)), reveals a sufficient degree of harm to competition to conclude that the exchanges of commercially sensitive, current or forward-looking information qualify as restrictive of competition by object in the sense of Article 101 of the Treaty and Article 53 EEA in relation to FX spot trading of G10 currencies.

(b) The occasional instances of coordination facilitated by the exchanges of information

(406) First, as regards the content of the conduct, the recurrent and extensive exchanges of information through which the participating undertakings revealed to each other certain current or forward-looking commercially sensitive information about confidential aspects of their market conduct, increased market transparency enabling the participating undertakings to engage in occasional coordination of their trading activities by occasionally adapting their trading activity in order not to interfere with one or several participating undertakings, while instead, under normal market conditions, they should have competed with each other (see recitals (286) to (299)).

(407) Second, as regards the objective of the conduct, the extensive information exchanges reduced the normal market uncertainties of the FX spot trading of G10 currencies enabling the participating undertakings to spot opportunities where one trader could benefit if the others would stand down in order not to interfere with their immediate trading strategy. By participating in the STG Lads chatroom and exchanging

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forward-looking information of the kind described in Section 4.1.3.1, all participating undertakings stood ready to seize the opportunities to prevent mutual interferences. The actual instances of coordination were contingent upon the timing and characteristics of the client orders received in a given period.

- (408) Third, as regards the economic and legal context where the conduct took place, as explained in recital (402) and in Section 2.3, the FX spot trading activity is very dynamic. Traders' positions are moving constantly. The nature of market making and the very large volumes transacted in a very liquid market forces market makers to adapt their positions quickly throughout the day. Therefore, the characteristics and the dynamics of the FX spot trading market did not favour constant coordination.
- (409) However, in this case the participating undertakings engaged in some occasional instances of coordination which were facilitated by the multilateral, extensive and continuous exchanges of certain current or forward-looking commercially sensitive information about their trading that took place in the STG Lads chatroom. Thanks to these exchanges, the participating undertakings were able to spot occasions in which they would refrain from action in order to help another cartel participant with higher stakes at play (as set out in recitals (286) to (290)). This occasionally resulted in coordinated trading at and around the WMR or ECB fixes in the form of 'standing down' (see recitals (291) to (299)).
- (410) In conclusion, as regards the occasional instances of coordination in the FX spot trading of G10 currencies, an overall assessment of the content of such conduct, in the light of the aims objectively pursued and the economic and legal context in which the conduct took place (as referred to in recitals (406) to (408)), reveals a sufficient degree of harm to competition to conclude that the occasional instances of coordination can be qualified as a restriction of competition by object in the sense of Article 101 of the Treaty and Article 53 EEA. However, Credit Suisse is not held liable for the occasional instances of coordination (or standing down. During the period of participation of Credit Suisse in the infringement, there was no effective instance of standing down(see recital (300)).

(c) The underlying understanding

- (411) First, as regards the content of the conduct, participating in the STG Lads chatroom entailed for the participating undertakings, via their traders, membership of a closed group of traders who trusted each other and tacitly committed to comply with the terms of an underlying understanding, as described in Section 4.1.3.3.
- (412) The fact that the participating undertakings consented to systematically disclose such sensitive information to competing traders in a multilateral chatroom can only be explained by their mutual trust that the recipients would not use the information received to the detriment of the provider of the information and their respective expectations of reciprocity in the form of recurrent exchanges for mutual benefit.
- (413) The mutual commitments and expectations implicit in the underlying understanding can be inferred from the transcripts of the conversations held in the chatroom during the relevant period as complemented by the admissions of the settling parties in their settlement submissions. The underlying understanding enabled the participating undertakings to rely on a continuous pattern of recurrent exchanges of current or forward-looking commercially sensitive information (see Section 4.1.3.1). These exchanges of information increased market transparency enabling the participating undertakings to get an insight into each other's market conduct and potential FX

rates movements and to make their subsequent decisions informed by that knowledge. It also allowed them the possibility to engage in occasional coordinated behaviour relating to trading activities in the form of standing down (see Section 4.1.3.2), which the parties could not have adopted without the constant update of information.

- (414) Second, as regards the objective of the conduct, by means of the underlying understanding, the participating undertakings reduced the normal market uncertainties of the FX spot trading of G10 currencies and were comforted in their daily pricing and expert risk management decisions by the knowledge of their competitors' trading behaviours, trading exposures and immediate plans. The underlying understanding made it possible to create a climate of mutual certainty and confidence as to the future conduct of the participating undertakings. Therefore, by engaging in the exchanges of information, the participating undertakings had the expectation of standing a better chance to become aware of situations where the risk of mutual interference arose and to act upon them by coordinating the standing down of some of the participating undertakings.
- (415) Third, as regards the economic and legal context where the conduct took place, i.e. the FX spot trading of G10 currencies, it is very dynamic. As explained in recital (402), FX rates are primarily driven by trader's order flows and traders' positions are moving constantly. The nature of market making and the very large volumes transacted in a very liquid market forces market makers to adapt their positions quickly throughout the day. Precisely because of this context, the timing and the frequency of the exchanges, as well as their extent and detail directly contribute to increasing the transparency and reducing the uncertainty that is inherent to a competitive scenario.
- (416) In this context, the participating undertakings tacitly agreed that, rather than competing on the merits, they would be better off by recurrently and reciprocally disclosing to each other commercially sensitive information relating to different aspects of FX spot trading of G10 currencies in full trust. The underlying understanding implied for the participating undertakings the rational "ex ante" expectation of removing the market uncertainties to their mutual benefit and of standing a better chance to become aware of situations where the risk of mutual interference arose and to act upon them by coordinating their conduct.
- (417) In conclusion, an overall assessment of the content of the conduct, in the light of the aims objectively pursued and the economic and legal context in which the conduct took place (as referred to in recitals (411) to (416)), reveals a sufficient degree of harm to competition to conclude that the underlying understanding can be qualified as a restriction of competition by object. However, Credit Suisse is not held liable for the underlying understanding (see also recitals (546) and (547)).

5.1.2.3. Arguments of Credit Suisse and assessment thereof by the Commission

(a) The market context

- (418) First, Credit Suisse asserts that the Commission fails to assess the economic context properly and does not take the specific characteristics of the market into account

(such as the combined market share of the participating undertakings, the market structure or the significant liquidity and size of the FX spot market).³⁸⁷

- (419) Second, Credit Suisse maintains that market-makers can (and indeed must) share non-public information because this is integral to managing risk (for hedging and pricing accurately).³⁸⁸ In Credit Suisse's view,³⁸⁹ the alleged opacity that characterises the FX market together with the fact that traders act not only as competitors but also as counterparties would justify and legitimise all the exchanges of information among FX traders in multilateral chatrooms since such exchanges of information would allow traders to carry out their tasks more efficiently.
- (420) Third, regarding pricing, Credit Suisse argues that the Commission ignores the role of intermediary played by the sales desks. This is an important feature of the FX spot market and it is relevant to the intended or likely effect that the information exchanges in the STG Lads chatroom could have had and could have been intended to have given that it is the sales desks (and not traders) who are primarily responsible for, and ultimately control, pricing to clients.³⁹⁰
- (421) Fourth, Credit Suisse maintains that a proper economic assessment of the FX market leads to a different plausible explanation of the information exchanges and does not support the theory of harm put forward by the Commission because the participating traders in the STG Lads chatroom did not have the capacity to manipulate the market by coordinating their behaviour and because "standing down" to manipulate rates would be very unlikely to succeed.³⁹¹
- (422) For the reasons set out below, the Commission disagrees with Credit Suisse's arguments.
- (423) First, there is no fundamental difference between the market context described in Section 2 and the description given by Credit Suisse in its replies to the SO and the SSO,³⁹² except for the current degree of opaqueness in the FX spot trading market (see recitals (426) to (428)).
- (424) The requirement to have regard to the economic and legal context, as settled in *Cartes Bancaires* and other case law,³⁹³ cannot be interpreted as requiring a detailed assessment, in each individual case, of the market shares of the parties involved or the effects in the market. That would defy the very purpose of the category of restrictions by object. When referring to the economic and legal context in *Cartes Bancaires*, the ECJ linked this to general characteristics relevant for the type of products and markets under consideration.

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393 Judgment of 11 September 2014, *Groupement des cartes bancaires (CB) v Commission*, C-67/13P, EU:C:2014:2204, paragraph 53; judgment of 5 December 2013, *Solvay Solexis v Commission*, C-449/11P, EU:C:2013:802 paragraph 36; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 117; judgment of 27 April 2017, *FSL Holdings and Others v Commission*, C-469/15P, EU:C:2017:308, paragraph 105.

- (425) In the present case, the Commission has analysed the economic and legal context where the conduct took place (see Sections 2.1 to 2.5 and recitals (402), (408), (415) and (416)) and, having taken this into account, concluded that the exchanges among competitors of certain current or forward-looking commercially sensitive information (such as outstanding customers' orders, open risk positions and bid-ask spreads) in multilateral chatrooms, which in addition facilitated occasional behaviour, qualify as a restriction of competition by object.
- (426) Second, it follows from the analysis of the economic and legal context where the conduct took place that FX spot markets are not opaque (see, in particular, recitals (12) and (16), and Sections 2.1 to 2.5 including recital (402), (408), (415) and (416)).³⁹⁴ Traders have several sources of information which allow them to gather data to predict evolutions in the market and to price accurately without having to depend on information exchanges with competitors in multilateral chatrooms.
- (427) As Credit Suisse recognises in its Reply to the SO, since the early 1990s, traders are supported in their daily work by electronic screen-based brokerage systems.³⁹⁵ Moreover, traders have other available sources of information such as the market analysts or fellow traders of their own banks and the orders they receive from their own customers. Credit Suisse acknowledges that market information is gathered in practice from multiple channels either internally (FX sales, FX traders, other FX spot/derivative/proprietary trading desks, market research, etc.) or externally (traders from other banks, brokers, clients).³⁹⁶ All these information sources allow traders to predict market trends and to make their trading decisions using their own means.
- (428) With regard to price transparency, as stated in recital (12), the EBS/Reuters platforms offer services that allow traders and clients to access streaming price information, including aggregated spreads and best sell or buy offers, which update continuously.³⁹⁷ That public information is sufficient for the traders to make their own judgment about the evolution of FX rates and pricing accurately before entering into FX transactions.
- (429) The collaboration expected from market makers is to be available to customers to execute trades and to manage and hedge their risk, entering into transactions in the interdealer market if necessary. Beyond the concrete trades with each other when acting as counterparties, they remain competitors.
- (430) In that sense, as stated in recitals (37) to (39) and (158), the Commission has carefully considered the fact that the FX traders act in the market not only as competitors but also as counterparties. The Commission only takes issue with the extracts where the information exchanged exceeded what was necessary for trading

³⁹⁴ Madhavan (2000) defines market transparency as the ability of market participants to observe information about the trading process. Pre-trade transparency refers to the wide dissemination of current bid and ask quotations, depths as well as other pertinent trade related information such as the existence of large order imbalances. Post-trade transparency refers to the public and timely transmission of information on past trades, including execution time, volume, price, and possibly information about buyer and seller identifications. See Madhavan A. "Market microstructure: A survey", *Journal of Financial Markets* 3 (2000) 205-258, a study mentioned by Credit Suisse in [...]

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with each other when acting as counterparties. The reasoning followed by the Commission has been upheld by the General Court in the *HSBC* judgment.³⁹⁸

- (431) Third, Credit Suisse’s arguments with regard to the intermediary role played by the sales desks must equally be dismissed.³⁹⁹ The Commission does not affirm that traders control pricing to clients but that spreads quoted by traders affect the overall price paid by customers (see recital (48)). Besides, Credit Suisse recognises in the reply to the SSO the role played by traders in making pricing decisions: “*FX voice traders do not, and cannot, make pricing decisions and manage risk in a silo*”,⁴⁰⁰ which is consistent with CS’s previous economic report:⁴⁰¹ “*...traders are responsible for prices. When a client request comes to the bank, through the sales, traders then provide a price...*”.
- (432) Moreover, an agreement/a concerted practice may have an anticompetitive object even though there is no direct connection between that practice and [consumer] prices. Indeed, it is not possible on the basis of the wording of Article 101(1) of the Treaty to conclude that only concerted practices which have a direct effect on the prices paid by end users are prohibited⁴⁰². On the contrary, it is apparent from Article 101(1) of the Treaty that concerted practices may have an anticompetitive object if they ‘*directly or indirectly fix purchase or selling prices or any other trading conditions*’⁴⁰³.
- (433) Fourth, with regard to the existence of a different plausible explanation of the information exchanges, as already stated in recital (362), according to the case law, the existence of an alternative explanation for the facts is relevant only where the Commission relies solely on the conduct of the undertakings on the relevant market. Thus, such an explanation is irrelevant from the moment the existence of the infringement is not merely presumed, but is established by proof.⁴⁰⁴ In addition, pursuant to the principle of the unfettered evaluation of evidence, all types of evidence are admissible for proving an infringement.
- (434) In the case at hand, as stated in recitals (370)(2) and (376), the Commission has established the existence of the infringement based on contemporaneous documentary evidence (the STG Lads chatroom in its entirety), along with [...] leniency [...] and [...] settlement [...]. Since the conduct has been established by proof, the different plausible economic explanation of the information exchanges as

³⁹⁸ Judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraphs 151 and 152.

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⁴⁰² Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraph 36; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 123; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 63.

⁴⁰³ Judgment of 4 June 2009, *T-Mobile Netherlands*, C-8/08, EU:C:2009:343, paragraph 37; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraph 124; judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraph 64.

⁴⁰⁴ See, to that effect, judgment of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, EU:T:1999:80, paragraphs 727 and 728.

presented by Credit Suisse is not only rebutted in recitals (463) to (480), but also irrelevant.

- (435) Moreover, the Commission considers that the extensive exchanges of current or forward-looking commercially sensitive information reduces or removes the degree of uncertainty as to the operation of the market and enabled the participating traders to spot occasions for coordination, which were scarce. The Commission has never stated that the instances of coordination (or “standing down”) were the core element or the objective of the infringement nor that the information exchanges took place in order to identify such opportunities for coordination, as Credit Suisse suggests with its claims regarding market and rate manipulation. In any event, as stated above, at Section 5.1.3.4, Credit Suisse is not held liable for the occasional instances of coordination in the form of standing down.
- (436) For all the reasons set out in recitals (423) to (435) above, Credit Suisse’s arguments on the assessment of the economic context are not convincing.
- (b) Assessment of the information exchanges as a by object restriction
- (437) First, Credit Suisse submits⁴⁰⁵ that, according to *Cartes Bancaires* and *Lundbeck*, the category of conduct which restricts competition by object must be limited to conduct which may be considered so likely to have negative effects on competition that it is redundant to prove actual effects on the market.⁴⁰⁶ According to Credit Suisse, such redundancy arises where past experience and economic theory clearly show that certain behaviour “*leads to falls in production and price increases [...]*”.⁴⁰⁷
- (438) Credit Suisse claims that the Commission has failed to take the requisite care when concluding that the information exchanges between the participating traders constitute a restriction of competition by object.⁴⁰⁸ According to Credit Suisse, the Commission failed to consider whether the conduct was capable of leading to the degree of harm to competition required for it to be characterised as a by object infringement.
- (439) Second, Credit Suisse also claims, quoting AG Bobek,⁴⁰⁹ that the Commission must confirm “*that there are no specific circumstances that may cast doubt on the presumed harmful nature of the agreement in question*” and that such specific circumstances, which cast doubt on the anticompetitive object of an agreement or concerted practice, include its procompetitive effects.⁴¹⁰
- (440) Third, Credit Suisse alleges that the Commission’s framework for analysing competitive interactions is flawed and that risk management is not in itself a parameter of competition.⁴¹¹

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⁴⁰⁶ Judgment of 11 September 2014, *Groupement des cartes bancaires (CB) v Commission*, C-67/13P, EU:C:2014:2204, paragraphs 51 and 58.

⁴⁰⁷ Judgment of 30 January 2020, *Generics (UK) Ltd and Others v Competition and Markets Authority*, C-307/18, EU:C:2020:52, paragraph 64; judgment of 11 September 2014, *Groupement des cartes bancaires (CB) v Commission*, C-67/13P, EU:C:2014:2204, paragraphs 50 and 51.

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⁴⁰⁹ Opinion of Advocate General Bobek of 5 September 2019 in *Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others* (C-228/18), EU:C:2019:678, point 48.

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- (441) According to Credit Suisse, increased transparency and the reduction of uncertainty among competitors do not, on their own, restrict competition by object. The assessment turns on whether, given the particular market context, competitors would take advantage of the information exchanged to reduce strategic uncertainty among themselves such that an impact on a relevant parameter of competition in the market may be inferred.⁴¹²
- (442) Fourth, Credit Suisse alleges that the informational asymmetry could not place other competitors at a meaningful disadvantage or foreclose new entrants.⁴¹³ Credit Suisse also claims⁴¹⁴ that the Commission only provides high-level descriptions about how the traders could have potentially benefited from increased market transparency.
- (443) Fifth, Credit Suisse argues that financial markets are not comparable to bananas markets and that the Commission would not have enough precedents or knowledge to conclude that the conduct of the traders constitutes a restriction of competition by object.
- (444) The Commission disagrees with Credit Suisse's argument.
- (445) First, the role of experience and, therefore, foreseeability in that regard do not concern the specific category of an agreement in a particular sector, but the fact that it is established that certain forms of collusion, such as, in the case at hand, the recurrent and extensive exchanges of current or forward-looking commercially sensitive information between competitors about confidential aspects of their market conduct which allowed them to engage in coordination of their trading activities, are, in general and in view of the experience gained, so likely to have negative effects on competition that it is not necessary to demonstrate that they had such effects. Moreover, according to the recent judgment of the Court of Justice in *Lundbeck*⁴¹⁵ it is not necessary, in order to classify an agreement as a restriction of competition by object, that the same type of agreement has been found unlawful in the past.
- (446) Moreover, AG Kokott notes in her opinion⁴¹⁶ that the case law⁴¹⁷ does not require that an agreement be *prima facie* or undoubtedly sufficiently harmful to competition, without a detailed examination of its content, its objectives and the legal and economic context in which it occurs, in order to be regarded as a restriction of competition by object for the purpose of Article 101 of the Treaty.
- (447) As previously stated in recital (405), an overall assessment of the content of the conduct, in the light of the aims objectively pursued and the economic and legal

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⁴¹⁵ Judgment of 25 March 2021, *H. Lundbeck A/S and Lundbeck Ltd v Commission*, C-591/16P, EU:C:2021:243, paragraph 130.

⁴¹⁶ Opinion of Advocate General Kokott of 4 June 2020 in *H. Lundbeck A/S and Lundbeck Ltd v Commission* (C-591/16 P), EU:C:2020:428, points 156 and 157.

⁴¹⁷ Judgment of 11 September 2014, *Groupement des cartes bancaires (CB) v Commission*, C-67/13P, EU:C:2014:2204, paragraphs 53 and 54 and the case law cited; see, also, opinion of Advocate General Kokott of 19 February 2009 in *T-Mobile Netherlands and Others* (C-8/08), EU:C:2009:110, point 38 et seq. and the case law cited, and opinion of Advocate General Kokott of 22 January 2020 in *Generics (UK) and Others* (C-307/18), EU:C:2020:28, point 158; as well as the opinion of Advocate General Wahl of 27 March 2014 in *Groupement des cartes bancaires (CB) v Commission* (C-67/13P), EU:C:2014:1958, point 40 et seq. and the case law cited; and the opinion of Advocate General Bobek of 5 September 2019 in *Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others* (C-228/18), EU:C:2019:678, point 46.

context in which the conduct took place (as analysed in recitals (394) to (403)), reveals a sufficient degree of harm to competition to conclude that it can be qualified as a restriction of competition by object.

- (448) Second, with regard to the specific circumstances that would cast doubt on the anticompetitive object of an agreement or concerted practice, Credit Suisse's quotation of AG Bobek's Opinion in the *Budapest Bank* case does not refer to Article 101(3) of the Treaty or to procompetitive effects.⁴¹⁸
- (449) Third, concerning the Commission's framework for analysing competitive interactions and the parameters of competition,⁴¹⁹ Credit Suisse's claims regarding the latter directly contradict the contents of Credit Suisse's own reply to the SO,⁴²⁰ which expressly states that "*In carrying out FX spot trading, traders must deal with three essential parameters: (i) accurate market pricing, (ii) spread offering and (iii) expertise in risk management*". Accurate market pricing and spread offering are both price parameters and, as Credit Suisse confirms, risk management is, at the least, an essential input for pricing and spread offering in the Forex spot market.
- (450) In that sense, in the *ICAP* judgment,⁴²¹ the General Court concluded that the Commission was right to qualify the infringement as a by object restriction because although the coordination did not concern prices directly, it did concern inputs of the price. The General Court stated that, given the elements concerned were relevant for the price, "*the mere communication of information regarding [the concerned elements] was capable of giving an advantage to the banks concerned, removing them from the application of normal competition on the [relevant] market in a manner such that that exchange of information may be considered as having as its object the restriction of competition within the meaning of Article 101(1) TFEU*".⁴²²
- (451) Regarding strategic uncertainty, in the STG Lads chatroom the exchanges of information followed a persistent pattern of recurrent and extensive exchanges of information consistently held over time allowing the participating undertakings to have a full picture of what the other traders in the chatroom were doing (or not doing) while trading in the market, creating mutually consistent expectations and reducing uncertainty between them. The aim of the exchanges in the STG Lads chatroom was to reduce normal market uncertainties between the participants in the chatroom in order to reduce risk and to comfort them in their pricing decisions. Price and risk management are therefore the relevant parameters of competition in this particular market. Moreover, as it has been described in Section 2.4, information on order flow has a predictive value on price movement, particularly if it originates

⁴¹⁸ Opinion of Advocate General Bobek of 5 September 2019 in *Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others* (C-228/18), EU:C:2019:678, point 48 refers to the role of experience when applying Article 101(1) of the Treaty: "[...] *If experience tells us that the agreement under consideration belongs to a category of agreements that, most of the time, is detrimental to competition, a detailed analysis of the impact of that agreement on the markets concerned appears unnecessary. It is sufficient for the authority to verify that the relevant market(s) and the agreement in question do not have any special features which might indicate that the case at hand could constitute an exception to the experience-based rule*".

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⁴²¹ Judgment of 10 November 2017, *Icap plc and Others v European Commission*, T-180/15, EU:T:2017:795, paragraphs 66 to 71.

⁴²² Judgment of 10 November 2017, *Icap plc and Others v. European Commission*, T-180/15, EU:T:2017:795, paragraph 75.

from an informed end-customer. Given that price is a competition parameter, the exchange of information on demand movements between competitors does in fact reduce strategic uncertainty.

- (452) Fourth, the participating undertakings engaged in recurrent and extensive exchanges of information, which have been described in detailed in Section 4.1.3.1. Through these exchanges of information the participating undertakings revealed to each other certain current or forward-looking commercially sensitive information about confidential aspects of their market conduct. Those multiple exchanges of information benefited and enabled the participating undertakings to act on the market and to adjust their strategies with the benefit of cumulative knowledge that was not available to other competitors; hence putting them in a meaningful advantageous position.
- (453) Fifth, with regard to the absence of precedents or knowledge to conclude that the conduct at stake constitutes a restriction of competition by object, it should be noted that the Commission actually deals and has dealt with quite a number of financial cases in the last years, including two decisions dealing with the Forex G10 spot market.⁴²³ Moreover, the judgments in financial cartel cases do not support Credit Suisse's claims.⁴²⁴ Furthermore, while Credit Suisse argues that the financial and the bananas markets are not comparable, in its reply to the SSO⁴²⁵ and in its presentation in the second Oral Hearing, Credit Suisse itself quotes case law related to exchanges of information in bananas markets⁴²⁶ to make a comparison and argue against the qualification of the exchanges of information in the STG Lads chatroom as a restriction by object.
- (454) For all the reasons set out in recitals (445) to (453) above, Credit Suisse's arguments on whether the information exchanges were capable of leading to the degree of harm to competition required for it to be characterised as a by object infringement, are not convincing.
- (c) Legitimate and pro-competitive objectives of the exchanges of information
- (455) First, Credit Suisse claims that the Commission has failed to consider the legitimate and pro-competitive objectives behind the exchanges of information within the STG Lads chatroom and that it did not provide any insight into how it differentiates between legitimate and illegitimate information exchanges.⁴²⁷

⁴²³ See Commission Decisions of 16 May 2019 in cases AT 40135 – *Forex (Essex Express)* and *Forex (Three Way Banana Split)*; Commission Decision of 7 December 2016 in case AT.39914 – *Euro Interest Rate Derivatives (EIRD)*; Commission Decision of 4 February 2015 in case AT.39861 – *Yen Interest Rate Derivatives* and Commission Decision of 21 October 2014 in case AT.39924 - *Swiss Franc Interest Rate Derivatives*.

⁴²⁴ See for example, judgment of 10 November 2017, *Icap plc and Others v. European Commission*, T-180/15, EU:T:2017:79; judgment of 28 March 2019, *Pometon SpA v. Commission*, T-433/16, EU:T:2019:201, or judgment of 20 May 2015, *Timab Industries and CFPR v Commission*, T-456/10, EU:T:2015:296, upheld by judgment of 12 January 2017, *Timab Industries, CFPR v Commission*, C-411/15P, EU:C:2017:11.

⁴²⁵ [...]

⁴²⁶ Judgment of 14 March 2013, *Fresh Del Monte Produce, Inc v European Commission*, T-587/08, ECLI:EU:T:2013:129.

⁴²⁷ [...]

- (456) Second, Credit Suisse alleges that the scope of legitimate information exchanges among traders is significantly broader than the scope set out, being that all non-public information not clearly related to an executed transaction falls outside market colour.⁴²⁸ Moreover, according to Credit Suisse, an agreement which primarily pursues a (*prima facie* plausible) legitimate purpose cannot restrict competition by object, despite comprising elements which may appear to be capable of restricting competition.⁴²⁹
- (457) Third, Credit Suisse claims that “*the vast majority of communication relied on by the Commission [...] clearly resemble information exchanges which are considered entirely legitimate by central banks and market participants under the FX Global Code*” [emphasis added].⁴³⁰ It also claims that the FX Global Code permits the sharing of client groups, locations, and strategies as well as price ranges and volumes “*as long as they are referred to in general terms*”.⁴³¹
- (458) Fourth, Credit Suisse also argues that the problematic information exchanges identified by the Commission can occur for the following legitimate reasons:⁴³²
- Information on outstanding customers’ orders, to be able to price effectively and to formulate traders’ own risk strategy.
 - Information on other details of current or planned trading activities, to identify opportunities for matching and to provide information about the state of the market.
 - Information on bid-ask spreads, to provide further transparency in the market which allows traders to price more efficiently.
 - Information on open risk positions, to give insights as to the conditions of the market and to identify matching possibilities.
- (459) In particular, Credit Suisse indicates that exchanges on bid-ask spreads were intended to price more efficiently and that traders could not depart from the market price levels because the clients would have traded with other traders outside the chatroom. It also argues that there are instances in which the traders appear to narrow their spreads, and thereby potentially improve prices.⁴³³
- (460) Fifth, Credit Suisse further claims that “*sharing information on prices and bid-ask spreads also may serve as a useful benchmarking, which further improves market efficiency, by allowing market participants to know where to (re)position themselves and how they can improve the competitiveness of their prices.*” To substantiate this, Credit Suisse cites a report from the Bank for International Settlements explaining that “*while the business models of market-makers differ [...] they broadly share a number of common features. These include: [...] market expertise to provide competitive quotes, including during times of elevated financial market volatility*”.⁴³⁴

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[...], CGFS Papers No 52 “Market-making and proprietary trading: industry trends, drivers and policy implications” available at <https://www.bis.org/publ/cgfs52.pdf>.

- (461) Sixth, Credit Suisse argues that [...] information exchanges in the STG Lads chatroom were procompetitive.⁴³⁵
- (462) Seventh, Credit Suisse argues that economic literature confirms that information exchange narrows bid-ask spreads⁴³⁶ and improves prices shown to clients under a number of models, referring to four economic studies.⁴³⁷ Credit Suisse states that the Commission has not tried to rebut the evidence and the strong and intuitive economic reasoning provided by those studies. According to Credit Suisse, (1) when traders share information, uncertainty and the risk of losses decrease; (2) when the risk of losses decreases, then traders' costs (which are essentially linked to the losses due to FX price movements) will decrease too, and (3) this eventually enables traders to lower their price to end-customers by quoting tighter spreads. From this economic reasoning, Credit Suisse infers that the exchange of information within the STG Lads chatroom necessarily helps the market makers reducing risk and that consequently the market makers will automatically lower their spread quoted to client.⁴³⁸
- (463) For the reasons set out below, the Commission disagrees with Credit Suisse's arguments.
- (464) As a preliminary remark, the Commission notes that it is only in the context of the assessment of Article 101(3) of the Treaty that any pro-competitive effects can be taken into account with the exception of restrictions ancillary to a main operation. According to the case law,⁴³⁹ it is for the applicant either to show that the exchange of information could be qualified as an ancillary restriction (i.e. directly related and objectively necessary to the functioning of the FX market) or that the conditions in Article 101(3) of the Treaty are met. As regards qualifying the exchanges described in Section 4.1.3.1 as ancillary restrictions, Credit Suisse does not establish in its replies to the SO or the SSO that the FX market could not function without such

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⁴³⁶ The bid-ask spread is the difference between the bid price and the ask price quoted by a trader and represents the 'cost' or the 'price' a client has to pay for the service rendered (see also recital (32)). For example, if a client buys 1 million EUR against USD at the trader's ask price of 1.1550 and simultaneously does the reverse transaction (selling 1 million EUR against USD) at the trader's bid price of 1.1520, then the client will pay USD 1 155 000 for the first transaction and will receive USD 1 152 000 for the second transaction. The bid-ask spread is $(1.1550 - 1.1520) = 0.0030$ and the client will pay $1\ 000\ 000 \times (1.1550 - 1.1520) = 3\ 000$ USD for both transactions taken together. A higher bid price and a lower ask price will result in a narrower bid-ask spread, which is favourable for clients. Taking the example above, if the bid and ask prices are now respectively 1.1530 and 1.1540, the bid-ask spread will then be narrower $(1.1540 - 1.1530 = 0.0010)$ and the cost for the client for the same two transactions will now be 1 000 USD.

⁴³⁷ [...].

⁴³⁸ The following quotes from Credit Suisse illustrate this reasoning (see [...]):

- Comments on study from Copeland & Galai, 1983: *'in turn it follows that by being better informed (e.g. through information exchange enabled by STG Lads) market makers will generally reduce the bid-ask spread they quote to clients'*.

- Comments on study from Stoll, 1978: *'therefore it follows that by having access to more market information, market makers can reduce the information gap relative to investors/traders, which in turn translates into lower bid-ask spread quoted and prices offered to clients'*.

- Comments on studies from Ho & Stoll, 1981 and O'Hara & Oldfield, 1986: *'thus by reducing the (perceived) variance and uncertainty, exchanging information should be considered procompetitive. (...) Regarding STG Lads specifically, information sharing reduced the (perceived) variance of the FX rates indeed'*.

⁴³⁹ Judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraphs 154-160.

commercially sensitive exchanges of information. As regards Article 101(3) of the Treaty, Credit Suisse has not proven any procompetitive effects and does not allege the applicability of Article 101(3) of the Treaty (see also below in Section 5.1.5). However, for the sake of completeness, the Commission addresses below Credit Suisse's claims.

- (465) First, with regard to the differentiation between legitimate and illegitimate information exchanges, all the contacts considered anticompetitive by the Commission were described, analysed and legally assessed in sections 4 and 5 of the SO and in sections 3 and 4 of the SSO. In doing so, the Commission has fulfilled its legal duty and provided Credit Suisse with the information required to respect the fundamental principle of observance of its rights of defence. That principle requires, in particular, that the Statement of Objections which the Commission sends to an undertaking on which it envisages imposing a penalty for an infringement of the competition rules contains the essential elements used against it, such as the facts, the characterisation of those facts and the evidence on which the Commission relies, so that the undertaking may submit its arguments effectively in the administrative procedure brought against it.⁴⁴⁰ According to this case law, the Commission is not required to define the legitimate exchanges that it did not take into account against Credit Suisse.
- (466) Second, with regard to the legitimate purpose of information exchanges, as stated in the *Cartes Bancaires* judgment, once the restrictive object of an infringement has been established, the fact that the measures at issue pursued also a legitimate objective does not preclude them being regarded as having an object restrictive of competition.⁴⁴¹
- (467) In line with the *HSBC* judgment,⁴⁴² the Commission took due account of the economic and legal context where the information exchanges took place (encompassing a setting where the parties are market makers who act as competitors but also as potential counterparties), and excluded from its analysis the information exchanged in the context of a legitimate transaction between the participating traders. The exchanges of sensitive information referred to in Section 4.1.3.1 took place outside of this context. The commercially sensitive information that was exchanged between the participating undertakings in the STG Lads chatroom included outstanding customer orders, open risk positions, bid-ask spreads quoted for specified currency pairs, trade sizes and client types and other details of current or planned trading activities and went far beyond what was required for the negotiation of legitimate trades between them. As analysed in recitals (177), (197), (216), (230), (242) and (254), the type of information provided to competitors in the multilateral STG Lads chatroom was not justified for the purpose of exploring trading or actually trading with each other.

⁴⁴⁰ Judgment of 12 July 2019, *Sony Optiarc, Inc and Sony Optiarc America, Inc v Commission*, T-763/15, EU:T:2019:517, paragraph 72; judgment of 2 February 2012, *Dow Chemical v Commission*, T-77/08, EU:T:2012:47, paragraph 110 and the case law cited.

⁴⁴¹ Judgment of 11 September 2014, *Groupement des cartes bancaires (CB) v Commission*, C-67/13P, EU:C:2014:2204, paragraph 70.

⁴⁴² Judgment of 24 September 2019, *HSBC Holdings plc and Others v Commission*, T-105/17, EU:T:2019:675, paragraphs 151 and 152.

- (468) Moreover, whereas traders ought to determine their trading strategies independently, an exchange of information between competitors on their respective trading strategies or positions reduces uncertainty and is liable to influence each other's conduct on the market. As such, it creates conditions of competition that are different from the norm.⁴⁴³
- (469) Even if some of the exchanges in the multilateral chatroom might have had a legitimate purpose and some of the discussions might have been compatible with Article 101 of the Treaty and Article 53 EEA Agreement, the considerable amount of inculpatory evidence set out in Section 4.1.3.1 clearly demonstrates that the participating undertakings also used the chatroom to engage in anticompetitive exchanges.
- (470) Third, with regard to the information exchanges considered legitimate under the FX Global Code, this code specifies the type of information exchange that could disseminate market colour⁴⁴⁴ between market participants, i.e. “*the exchange of information on the general state of the market, views, and anonymised and aggregated flow of information*” [emphasis added]. As mentioned in recital (158), the communications analysed in this Decision are not, and go far beyond, mere exchanges about market colour, as defined by the FX Global Code. These communications are current or forward-looking commercially sensitive FX trading information, which includes details of outstanding customer orders (such as the size or the direction of specific, non-aggregated orders or the type or name of customers), open risk positions and bid-ask spreads (i.e. prices) quoted for specified currency pairs for certain trade sizes and for certain client types.
- (471) Furthermore, since the end of 2013, several banks banned their traders to use multilateral chatrooms with competitors.⁴⁴⁵ Credit Suisse does not contest this fact. Such ban has not impeded traders to continue carrying on their tasks. As a result, the Commission reaches the reasonable conclusion that (i) the information exchanges that took place in multilateral chatrooms with competitors were not necessary to carry out the traders' tasks⁴⁴⁶ and that (ii) these banks considered these information exchanges with competitors an unacceptable legal risk under the existing regulation (e.g. including the FX Global Code).
- (472) Fourth, with regard to Credit Suisse's claim that there were legitimate reasons for different types of information exchanges concerned by this Decision, it was shown in Section 5.1.2.2(a) that the information exchanges were objectively capable of restricting competition between the participating undertakings because they informed the traders' subsequent trading decisions and resulted in an asymmetry of information between the STG Lads chatroom participants and the non-participating traders.

⁴⁴³ Judgment of 10 November 2017, *Icap plc and Others v. European Commission*, T-180/15, EU:T:2017:795, paragraph 52.

⁴⁴⁴ The Commission relies on the definition of market colour provided by the FX Global Code (see footnote 54), which is not controversial [...].

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(473) Moreover, the continuous exchanges within the STG Lads chatroom significantly reduced normal market uncertainties to the advantage of the participating undertakings compared to other market participants.

- (a) Regarding the exchanges revealing outstanding customers' orders (conditional orders, orders for the fix and immediate orders) set out in recitals (170) to (228) and current or planned trading activities, set out in recitals (252) to (285), the Commission only retains information exchanges where traders revealed pieces of confidential information on specific ongoing or immediately executable transactions that were not justified for the purpose of exploring trading or actually trading with each other as counterparties (see recitals (177), (197) and (216)). Through these information exchanges, the participating undertakings provided each other with an insight on their current or forthcoming behaviour on the market (timing, pricing, trade size, etc.) reducing the uncertainty that is inherent to a competitive scenario, where the parties must determine autonomously their pricing and risk strategy (see recitals (171) and (172)).
- (b) Through the exchanges revealing their quoted or intended bid-ask spreads, as set out in recitals (239) to (251), the participating traders who were competitors in the market advised each other on strategies of pricing to quote to their clients. They disclosed the actual spread they quoted for specific currency pairs, trade sizes and client types, which may also affect the overall price paid by customers for trading currencies. In these exchanges, a participating trader consulted his competitors in the chatroom on the most convenient spread for a specific trade before offering a quote to his clients.

The exchanges of information on bid-ask spreads in the chatroom increased transparency and reduced market uncertainties for the participating traders regarding prices. These exchanges enabled the participating traders to obtain greater certainty on the spreads they were quoting and might have informed their subsequent trading behaviour concerning spreads. The information exchanges may also have allowed them to align their spreads for particular transactions and thereby their all-in price offered to a specific client for a particular transaction. A customer who is not aware of such exchanges of non-publicly available information on spreads may have contacted more than one of the parties' sales desks to get a price on a specific trade and may have received less competitive prices from them due to the exchanges of information on bid-ask spreads between the participating traders (see recital (243)).

Moreover, contrary to Credit Suisse's claims, there is evidence showing that the intention of the participating undertakings with the exchanges on bid-ask spreads was to be able to offer the widest (most expensive for the client) spread possible to the clients, within the constraints they jointly perceived were imposed by the wider market. In an extract of 17 February 2012,⁴⁴⁷ not contested by Credit Suisse, [employee of Credit Suisse] asks what current spreads the other traders are offering for a volume of 50 million (presumably, EUR/USD). [Employee of non-addressee] answers "5 *unfortunately*", and then adds "6 *if you are lucky*", thereby showing that the intent of the exchanges was

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to enable the traders to identify, and offer, the widest spread possible given the market conditions at that time.

As a result of the exchanges of information described in Section 4.1.3.1, the traders' uncertainty was reduced and they could 'safely' offer to their clients the upper end of wider spreads. Even a minor spread difference for large volume transactions, as the ones the participating traders dealt with, might have resulted in large benefits for the participating traders to the detriment of their clients.

- (c) As regard the exchanges revealing the traders' open risk positions, set out in recitals (233) to (238), the traders revealed whether they needed to sell or buy a specific currency in the market at a specific moment, which provided all other competitors in the chatroom with an insight into their potential hedging conduct. This information could potentially be used to match their positions (e.g. if one trader needed to buy a specific currency and another needed to sell the same currency). However, the opportunities retained as evidence are not related to a matching request since even when it was clear that no other participating trader was able to match, the participating undertakings continued updating each other about their position. These exchanges equipped the participating traders with information regarding their competitors' activities, which was relevant to adopt subsequent trading decisions for a window of minutes, or until the next information exchange superseded it.

Moreover, as stated in recital (230), traders do not typically disclose their open risk position to their competitors because of the risk that other traders could use that information to move the market against them. However, the participating traders in the chatroom disclosed their open risk position to their competitors without fearing that they could use the information against the disclosing trader, which also shows that they acted within a close circle of trust.

- (474) Fifth, with regard to the use of information on prices and bid-ask spreads as benchmarks, it is worth noting that Credit Suisse does not define the term "benchmarking" and that the BIS report Credit Suisse refers to studies trends in market-making and proprietary trading by primary dealers in sovereign bond markets, not by FX market traders and hence, its relevance for the present case is questionable.⁴⁴⁸
- (475) Even if "benchmarking" is understood as estimating FX rates to enable traders to adapt their pricing strategy and even if some of the trends studied and highlighted in the BIS report would also apply to the FX markets (which is in no way confirmed), Credit Suisse's assertion cannot be regarded as credible. The BIS report simply states that "*the business models of market makers [have as feature] market expertise to provide competitive quotes*".⁴⁴⁹ Nowhere does the report mention or suggest that market makers are expected or allowed to share trading information in order to gain this expertise.

⁴⁴⁸ CGFS Papers No 52 "Market-making and proprietary trading: industry trends, drivers and policy implications".

⁴⁴⁹ CGFS Papers No 52 "Market-making and proprietary trading: industry trends, drivers and policy implications", p. 6.

- (476) Sixth, regarding [...] claims on pro-competitiveness, [...] settling parties exercised their rights of defence arguing their case and testing their arguments with the Commission. [...]. [...] acknowledgement [...] the anticompetitive nature of the exchanges of information and their legal qualification as an infringement by object.
- (477) Seventh, concerning Credit Suisse's claim that economic literature would confirm that information exchanges narrow bid-ask spreads and improve prices, the Commission notes that there is a fundamental difference between information exchanged in a closed loop of traders in a multilateral chat and information widely available to the whole market, and Credit Suisse confuses these scenarios. A trader's uncertainty and risk of losses will indeed decrease when sensitive information is made available for that trader. However, what Credit Suisse omits to mention is that when sensitive information is shared only within a closed circle of traders (comprised of the participating undertakings), the risk will decrease only for those traders that shared the information and not for the non-participating traders, creating an asymmetry of information and providing the participating traders with a competitive advantage. Thus, Credit Suisse's economic reasoning does not hold when the information is shared in a closed group of colluding traders only.
- (478) Moreover, the argument by Credit Suisse that traders will lower their price to end-customers when the traders share information and see their risk of losses decrease (see recital (462)) must be dismissed. Indeed, after having seen their risk of losses and hence their costs diminishing thanks to sensitive information becoming available to them, traders might decide to take advantage of the piece of sensitive information they obtained by not automatically lowering their price and increase their profits instead. The latter course of action is encouraged by the fact that traders get bonuses that are linked to the profit they generate.
- (479) Finally, the four studies referred to as economic literature by Credit Suisse (see recital (462)) cannot affect any of the conclusions drawn in this Decision because the effects of information exchanges between traders on bid-ask spreads and the potential benefit to clients are simply not discussed in any of the four studies. The conclusions that Credit Suisse draws from them to justify the participating undertakings' behaviour within the STG Lads chatroom are therefore besides the point and misleading.
- (480) In conclusion, for all the reasons set out in recitals (464) to (479) above, Credit Suisse's arguments regarding the legitimacy and pro-competitiveness of the exchanges of information are not convincing.

5.1.3. *Single and continuous infringement*

5.1.3.1. Principles

- (481) A complex cartel may properly be viewed as a single and continuous infringement for the timeframe in which it existed. The concept of "single agreement" or "single infringement" presupposes a group of practices adopted by various parties in pursuit of a single anticompetitive economic aim.⁴⁵⁰ The cartel may well vary from time to time, or its mechanisms adapted or strengthened to take account of new developments.

⁴⁵⁰ Judgment of 15 March 2000, *Cimenteries CBR and Others v Commission*, T-25/95, EU:T:2000:77, paragraph 3699.

- (482) The mere fact that each participant in an infringement may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same anticompetitive object or effect. An undertaking which takes part in the common unlawful conduct by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement, where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.⁴⁵¹
- (483) On the one hand, 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, an undertaking may have participated directly in only some of the anticompetitive conducts comprising a single infringement, but have been aware of all the other unlawful conducts planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anticompetitive conducts comprising such an infringement and, accordingly, in relation to the infringement as a whole.⁴⁵²
- (484) On the other hand, if an undertaking has participated directly in one or more of the aspects of anticompetitive conduct comprising a single infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other unlawful conduct planned or put into effect by those other participants in pursuit of the same objectives or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it participated directly and the conduct planned or put into effect by the other participants in pursuit of the same objectives as those pursued by that undertaking where it has been shown that the undertaking was aware of that conduct or could reasonably have foreseen it and was prepared to take the risk.⁴⁵³

5.1.3.2. Application to this case

- (485) In the present case, as explained in Section 5.1.2.2, the Commission considers that (i) the exchanges of commercially sensitive, current or forward-looking information, (ii) the occasional instances of coordination and (iii) the underlying understanding qualify as restrictions of competition by object in the sense of Article 101 of the Treaty and Article 53 EEA in relation to FX spot trading of G10 currencies.

⁴⁵¹ Judgment of 8 of July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92P, EU:C:1999:356, paragraph 83, and judgment of 7 November 2019, *Campine NV and Campine Recycling NV v European Commission*, T-240/17, EU:T:2019:778, paragraph 172.

⁴⁵² Judgment of 6 December 2012, *Commission v Verhuizingen Coppens NV*, C-441/11P, EU:C:2012:778, paragraph 43.

⁴⁵³ Judgment of 6 December 2012, *Commission v Verhuizingen Coppens NV*, C-441/11P, EU:C:2012:778, paragraph 44.

- (486) These three infringements present the characteristics of a single, complex and continuous infringement. The participating undertakings aimed to reduce normal market uncertainty in the FX spot trading of G10 currencies which enabled them to be comforted in their pricing and risk management decisions and not compete autonomously. Being a member of the private chatroom entailed such behaviour and each member could rely on the fact that the other members would act the same way and would comply with the terms of an underlying understanding. They were under the assumption that, by behaving recurrently in such way, they were increasing the knowledge with which they operated on the market and the probabilities to seize opportunities to their benefit.
- (487) Therefore, all three elements of the infringement described in this Decision, i.e. (i) the extensive and recurrent exchanges of information, (ii) the occasional instances of coordination and (iii) the underlying understanding, form together a single and continuous infringement joined by a common, overall plan in pursuit of a single anticompetitive aim during the whole duration of the infringement. Moreover, the modus operandi of the chatroom, including the type of content and frequency of the exchanges of information remained steady; and the individuals and undertakings participating in the chatroom showed a high degree of continuity.
- (a) Overall plan pursuing a single anticompetitive aim
- (a.1) *The participating undertakings shared the same common anticompetitive aim*
- (488) The Commission considers that the three types of restrictive agreements and/or concerted practices: (i) extensive and recurrent exchanges of information, (ii) occasional instances of coordination and (iii) underlying understanding, constituted an overarching complex infringement which had the same common anticompetitive aim and consisted of various interrelated actions by means of which the participating traders knowingly substituted practical cooperation between them for the risks of competition.
- (489) Evidence reveals that the same participating traders engaged in an interrelated string of actions – in the same framework, using the same means – which were inextricably linked by their common objective of reducing normal market uncertainty in the FX spot trading of G10 currencies so as to reduce risk and to comfort the participating undertakings in their pricing and risk management decisions and not to compete autonomously.
- (490) In the present case, the participating traders were recurrently in direct and extensive contact, making regularly available to each other in the STG Lads chatroom certain current or forward-looking commercially sensitive information on their commercial circumstances and plans. The increased transparency due to the information exchanges, provided the participating undertakings the opportunity to subtract themselves from competition on the merits.
- (a.2) *Modus operandi*
- (491) As the evidence shows and as described in Section 4.1.3, the modus operandi of the chatroom, including the type of content and frequency of the exchanges of information remained steady through the duration of the infringement.
- (492) Throughout the whole duration of the infringement, the same mean of communication was used to engage in or facilitate the three anticompetitive conducts.

- (493) The evidence shows that the participating undertakings consistently and repeatedly used the same multilateral chatroom, the STG Lads chatroom. Participation in this chatroom was by “invitation only”, which implied an expectation that all participants disclosed sensitive information allowing each other to mutually benefit from these exchanges. The participating undertakings joined it, via their traders who received individual invitations on the basis of personal relationships with other members of the chatroom.
- (494) The participating traders joined the STG Lads chatroom in almost daily communications, during the whole duration of the infringement.
- (a.3) *Continuity of the individuals and undertakings participating in the chatroom*
- (495) As the evidence shows and as described in Section 4.1.1, a stable group of individuals acting on behalf of the same group of banks put the conduct in place.
- (496) The participation of the participating traders covered parallel or adjacent periods, without there being any interruption of the infringement from its inception in 25 May 2011 to its end on 12 July 2012 (see recitals (93) to (100)).
- (497) In February 2012, by the moment that Credit Suisse joined, all participating undertakings had at least one stable participating trader in the chatroom trading on their behalf: [non-addressee], [non-addressee] and [non-addressee] since 25 May 2011 and [non-addressee] since 5 August of the same year. Credit Suisse’s participation was triggered by the fact that [employee of Credit Suisse] re-joined the chatroom on 7 February 2012 in his new capacity as Credit Suisse’s trader (see recitals (98) and (100)). The fact that [employee of Credit Suisse] had already been a participating trader on [non-addressee’s] behalf between 25 May 2011 and 4 November 2011 (see recital (94)) shows again the high degree of continuity of participation of the individuals involved.
- (498) Credit Suisse’s participation in the infringement overlaps with the participation of all the other undertakings. [Non-addressee]’s participation ended on 26 June 2012 (see recital (95)), while all other participating undertakings remained in the chatroom with Credit Suisse until the last day of the infringement (see recitals (93) to (100), (573)).
- (499) In light of the above, taking into account recitals (488) to (497), the three types of restrictive agreements and/or concerted practices which the Commission has found have occurred in this case (see Sections 4.1.3 and 5.1.1.2) formed part of a single overall plan pursuing an anticompetitive common objective.
- (b) Intention to contribute to the common objective and awareness
- (500) [Employee of Credit Suisse], while trading on behalf of Credit Suisse, intended to contribute and effectively contributed to the participating undertakings’ common objective, which was to reduce normal market uncertainties on the market for FX spot trading of G10 currencies. [Employee of Credit Suisse], trading on behalf of Credit Suisse, was present in the multilateral STG Lads chatroom. He was receiving and providing sensitive information and thus directly participated in the exchanges of certain current or forward-looking commercially sensitive information.
- (501) While trading on behalf of Credit Suisse, [employee of Credit Suisse] was aware of the exchanges of information and the underlying understanding, (a) since the conduct took place via a multilateral chatroom in which all information exchanges were

recorded and accessible to all members (see recitals (88) and (89)) and (b) given that those elements of the single and continuous infringement persisted throughout the whole period of the infringement, including during the period of Credit Suisse's participation.

- (502) Moreover, in light of the evidence cited at recitals (136) to (141), (204) to (206) and (503), [employee of Credit Suisse] was fully aware of the identity of the administrator and membership, as well as of the purpose and rules governing the functioning of the STG Lads chatroom while he participated as a trader on behalf of Credit Suisse. He had acquired this knowledge throughout his personal membership to the chatroom whilst he was employed by [non-addressee] and that was in fact the reason why he requested to re-join the chatroom when he moved employment to Credit Suisse. Apart from the knowledge acquired by all the traders concerned of what joining as members entailed, in [employee of Credit Suisse]'s case, when he re-joined the chatroom he must at least have been ready to take the risk that the chatroom continued to have the same purpose and follow the same rules. Evidence shows that, upon re-joining the chatroom on Credit Suisse's behalf, he must have realised and confirmed from the first day that the chatroom purpose, exchanges and rules remained unchanged.
- (503) Indeed, on 7 February 2012 ([...] after having started working for Credit Suisse), [employee of Credit Suisse] re-entered the Sterling Lads chatroom on behalf of Credit Suisse at 14:49:23, after receiving an invitation from the administrator. Following the same usual behaviour pattern, later on, between 15:28:19 and 16:13:03, the participating traders exchanged information on their orders for the upcoming fix. Throughout the day, they kept revealing information on their outstanding customer orders and risk positions in order to make sure that the information they disclosed was up to date. For instance, [employee of non-addressee] revealed he did not have any position for the fix at 15:29:09 and updated the information on his position at 15:41:42 (*'rhs in acle at the fix'*). The participating traders ended their information exchanges late in the afternoon (see recital (206)). Accordingly, the fact that [employee of Credit Suisse] decided to re-join the chatroom on behalf of Credit Suisse implied his acceptance of the rules of the STG Lads chatroom that he was already aware of, in view of his first period of membership on [non-addressee]'s behalf.
- (504) Furthermore, evidence shows that, even when [employee of Credit Suisse] was not actively participating in the conversations in the chatroom, he was aware of the discussions that were ongoing between the other members of the chatroom. For example, on 5 August 2011, [employee of Credit Suisse], trading on behalf of [non-addressee], joined the chatroom at 6:30:36, and left at 15:31:53. As from 11:23:17, [employee of non-addressee] jokes with [employee of non-addressee] about [employee of Credit Suisse] being very active in the chatroom. Although [employee of Credit Suisse] was not actively participating in the discussions that morning, he immediately reacted to that comment (*"bore off [employee of non-addressee]"*), which shows that he was aware of those discussions:

"08/05/2011 11:23:17 [employee of non-addressee] Says i warn you tho, don't get [employee of Credit Suisse] started, once he starts chatting, its very difficult to shut him up

08/05/2011 11:23:33 [employee of non-addressee] Says hahaha

08/05/2011 11:23:39 [employee of non-addressee] Says he on holiday

08/05/2011 11:23:41 [employee of non-addressee] Says u know that

08/05/2011 11:23:53 [employee of Credit Suisse] Says bore off [employee of non-addressee]

08/05/2011 11:23:58 [employee of non-addressee] Says hahaha”⁴⁵⁴

- (505) In addition, [employee of Credit Suisse] was aware (or should have reasonably foreseen) of the fact that the exchanges of information allowed the participating traders, among others, to identify possible opportunities for coordination, because they had already taken place in his presence during the period he participated on [non-addressee]’s behalf (see recitals (286) to (299)), without there having been any manifestation from his part to exclude future coordination or any change in the nature and extent of information exchanged in the later period, where he traded on Credit Suisse’s behalf. However, since there were no instances of coordination during the period of Credit Suisse’s participation in the infringement, the Commission does not attribute awareness of this element of the single and continuous infringement to Credit Suisse.
- (506) In conclusion, in light of the above, taking into account recitals (500) to (505), the Commission considers that Credit Suisse intended to contribute to an overall plan pursuing the common objective of restricting and/or distorting competition in the FX spot trading of G10 currencies and was aware of the full scope of the infringement, with the exception of the occasional instances of coordination that occurred prior to Credit Suisse’s period of participation in the infringement.

5.1.3.3. Arguments of Credit Suisse and assessment thereof by the Commission

- (507) First, Credit Suisse argues that it did not participate in a single and continuous infringement together with the rest of the undertakings.
- (508) To this end, Credit Suisse maintains that (i) the overall plan identified by the Commission is the alleged underlying understanding⁴⁵⁵ and (ii) that the Commission has not provided any evidence of standing down specifically during the period of [employee of Credit Suisse]’s employment with Credit Suisse.
- (509) Second, Credit Suisse states that it is insufficient to use evidence from [employee of Credit Suisse]’s previous time as a member of the chatroom whilst he was employed at [non-addressee].⁴⁵⁶ Credit Suisse holds that the Commission fails to explain why it concludes its participation in an overall plan of coordination when there would be clear differences in [employee of Credit Suisse]’s behaviour whilst employed by [non-addressee] and by Credit Suisse.
- (510) Third, Credit Suisse also argues that the Commission fails to prove that [employee of Credit Suisse]’s involvement in the STG Lads chatroom demonstrates his intention to contribute to an alleged common objective.⁴⁵⁷
- (511) Credit Suisse claims that mere presence in the chatroom alone does not meet the Commission standard of proof for awareness and that Credit Suisse cannot be held

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liable based solely on its membership of the chatroom.⁴⁵⁸ Credit Suisse claims that it is unsound to maintain that mere membership of the chatroom means that [employee of Credit Suisse] has accepted rules that remained unchanged during the whole duration of the infringement. According to Credit Suisse, this assumption would imply that mere membership of a chatroom is problematic.⁴⁵⁹

- (512) Fourth, Credit Suisse maintains that it was not necessary for [employee of Credit Suisse] to take “*excessive or unrealistic steps*” to distance himself from the infringement considering the legitimacy of the vast majority of information exchanges within the chatroom. Credit Suisse cites the *Eturas* judgment⁴⁶⁰ to hold that public distancing is not the only way to rebut the presumption of participation in a cartel. It asserts that this presumption is rebuttable as [employee of Credit Suisse]’s behaviour is inconsistent with the rules of the underlying understanding.⁴⁶¹
- (513) Fifth, Credit Suisse claims that the explanation in the SO of its liability under the single and continuous infringement and distancing case law is inadequate to be able to exercise its rights of defence and that it must have an opportunity to rebut the Commission’s findings that it was aware of the single and continuous infringement.⁴⁶²
- (514) For the reasons set out below, the Commission disagrees with Credit Suisse’s arguments.
- (515) First, with regard to Credit Suisse’s participation in a single and continuous infringement, as indicated in recital (487), based on the evidence taken as a whole, the Commission considers that the overall plan covers all the conducts described in Section 4.1.3 and not only the underlying understanding, as suggested by Credit Suisse.
- (516) It is common ground between Credit Suisse and the Commission that Credit Suisse did not directly participate in the occasional instances of coordination that occurred in the STG Lads chatroom prior to its participation in the infringement. During the period when [employee of Credit Suisse] traded for Credit Suisse, the circumstances of the market did not require any of the participating traders (not only [employee of Credit Suisse]) to stand down in order not to interfere with another trader. Hence, for the reasons specific to Credit Suisse, Credit Suisse is not held liable for coordination in the form of standing down (see recitals (544) to (545)).
- (517) According to the case law stated in recital (482), the fact that the undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it of responsibility for the aspects of the infringement of Article 101(1) of the Treaty it has directly participated in or was aware of or could have reasonably foreseen. However, this fact will not prevent all the arrangements reached within the STG Lads chatroom (i.e. (i) extensive and recurrent exchanges of information, (ii) occasional instances of coordination and (iii) underlying understanding) from constituting one single and continuous agreement/concerted

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460 Judgment of 21 January 2016, “*Eturas*” *UAB and Others v Lietuvos Respublikos konkurencijos taryba*, C-74/14, EU:C:2016:42.

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practice for the purposes of Article 101 of the Treaty from an objective point of view.

- (518) Such a conclusion is not at odds with the principle that responsibility for such infringements is personal in nature, nor does it neglect individual analysis of the evidence adduced, in disregard of the applicable rules of evidence, or infringe the rights of defence of the undertakings involved.⁴⁶³
- (519) Second, with regard to [employee of Credit Suisse]’s involvement, [employee of Credit Suisse]’s previous employment is part of the context and the Commission can take this into account to establish Credit Suisse’s awareness of the infringement. In the present case, the evidence of [employee of Credit Suisse]’s participation to the infringement before he was working for Credit Suisse is not provided to establish Credit Suisse’s liability for the period preceding 7 February 2012 (see Section 4.1.2.1) but to enable Credit Suisse to exercise its rights of defence fully regarding its participation in a single and continuous infringement. Credit Suisse is held responsible only for the extensive and recurrent anticompetitive exchanges of information for its respective period of involvement (i.e. for the period when [employee of Credit Suisse] was trading on Credit Suisse’s behalf).
- (520) Moreover, contrary to Credit Suisse’s claims, the analysis of the evidence does not show any material difference between the behaviour of [employee of Credit Suisse] within the STG Lads chatroom during his two respective periods of employment. The pattern of behaviour among the participating traders (including [employee of Credit Suisse]) and the type and frequency of the exchanges remained constant during the whole duration of the infringement, including the period when [employee of Credit Suisse] traded on behalf of Credit Suisse.
- (521) Third, there is no argument in Credit Suisse’s reply or evidence in the file to support the contention that [employee of Credit Suisse] trading on behalf of Credit Suisse would have participated in the infringement with a different objective than the other traders. As explained in recitals (136) to (141) and (503), when re-joining the chatroom [employee of Credit Suisse] engaged in the same practices as before, he had the same pattern of conduct as all the other participating traders during the two different periods of his participation and the type and frequency of the exchanges remained constant during the whole duration of the infringement.
- (522) [employee of Credit Suisse]’s active participation in the STG Lads chatroom on behalf of Credit Suisse, receiving and providing current or forward-looking commercially sensitive information, which may have facilitated occasional coordinated behaviour, shows that he intentionally contributed to the common objective of reducing normal market uncertainty in the FX spot trading of G10 currencies so as to reduce risk and to comfort the participating undertakings in their pricing and risk management decisions and not to compete autonomously.
- (523) Furthermore, it is settled case law that liability derives from the fact that the undertaking was aware or should reasonably have been aware of the scope of the infringement and was ready to take the risk.⁴⁶⁴ In that regard, it should be noted that

⁴⁶³ Judgment of 12 December 2007, *BASF AG and UCB SA v Commission*, T-101/05 and T-111/05, EU:T:2007:380, paragraph 160 and the case law cited therein.

⁴⁶⁴ Judgment of 6 December 2012, *Commission v Verhuizingen Coppens NV*, C-441/11P, EU:C:2012:778, paragraph 44.

conduct imputed to Credit Suisse took place via a multilateral chatroom in which all exchanges were recorded and accessible to all the participating traders.

- (524) [Employee of Credit Suisse] was a founding member of the STG Lads chatroom when he was working as a trader for [non-addressee]. By the time that [employee of Credit Suisse] re-joined the chatroom in his capacity as Credit Suisse trader, he had experience and knowledge of what membership to the chatroom entailed because of his previous participation.
- (525) There is evidence that, at the very least, from the first day after re-joining the chatroom on Credit Suisse's behalf, [employee of Credit Suisse] must have realised and confirmed that the chatroom purpose, exchanges and rules remained unchanged (see recitals (136) to (141) and (503)). The day when [employee of Credit Suisse] re-joined the chatroom, the conversation shows that he knew whom to contact to get a personal invitation (“[employee of non-addressee]... can you pls do the honours and invite young [employee of Credit Suisse] back into the groove”) ([employee of non-addressee]). It is also clear that the traders involved remembered very well that [employee of Credit Suisse] was re-joining after a previous participation: “back into the groove” ([employee of non-addressee]), “return of [employee of Credit Suisse]” ([employee of non-addressee]), and so did [employee of Credit Suisse], “hope u don't mind me re joining” ([employee of Credit Suisse]). [Employee of Credit Suisse] was cheered and called by his nickname, which is a sign of the close relationship between the members. He was welcomed back without any need to introduce any member to him or vice-versa.
- (526) In addition, the Court of Justice stated in *Eturas* that the mere dispatch of a message sent via a personal electronic mailbox does not constitute sufficient evidence of awareness⁴⁶⁵ but this situation is at odds and, therefore, not comparable with that of being actively, deliberately and purposefully logged in a multilateral chatroom exchanging information with the other participating traders on an almost daily basis, as [employee of Credit Suisse] actually did during the period when he was trading on behalf of Credit Suisse.
- (527) All these elements show that [employee of Credit Suisse] was fully aware of the identity of the administrator and members of the chatroom when he re-joined. Moreover, there was no need to update him on the purpose or mutual expectations regarding the on-going cartel, of which he had been a founding member in full awareness of the implications of its membership (see recitals (155) and (156)). Likewise, [employee of Credit Suisse] did not ask any question to verify what re-joining meant, he did not declare that he would not participate in some types of information exchanges or in actions of the kind he had witnessed or taken part in during his past participation. The exchanges simply resumed in his presence and with his participation in the same way as they had been before with or without him. Therefore, Credit Suisse must adduce evidence to deny that [employee of Credit Suisse] was aware of the contents and purposes of the STG Lads chatroom when he re-joined it on Credit Suisse's behalf.
- (528) Upon his appointment as a trader on behalf of Credit Suisse, [employee of Credit Suisse] immediately took the necessary steps to be invited to re-join the STG Lads

⁴⁶⁵ Judgment of 21 January 2016, “*Eturas*” *UAB and Others v Lietuvos Respublikos konkurencijos taryba*, C-74/14, EU:C:2016:42, paragraphs 43-45.

chatroom. In fact, [employee of Credit Suisse] re-joined the chatroom [...] after having started working for Credit Suisse and immediately resumed the same pattern of conduct he had had in his previous period as a participating trader to the chatroom (see recitals (136) to (141), (204) to (206) and (503)). Therefore, at the very least, he should have reasonably been aware that the scope of the infringement was the same as before he left the chatroom on behalf of [non-addressee] (comprising the same undertakings, same chatroom and the same pattern of behaviour), and since he did not distance himself from the conduct, he must have been ready to take the risk.

- (529) Fourth, [employee of Credit Suisse] took no steps whatsoever to distance himself from the infringement. His behaviour was similar to that of the other participating traders during the period concerned and the type and frequency of the exchanges remained constant during the whole duration of the infringement. Not only did he not explicitly distance himself from the conduct when re-joining the chatroom upon becoming a trader for Credit Suisse but, on the contrary, he resumed the conduct in full knowledge of what it entailed acquired from his previous experience as a trader on behalf of [non-addressee].
- (530) In order to distance himself from the anticompetitive conduct taking place in the STG Lads chatroom, [employee of Credit Suisse] could have warned the other participating traders upon re-joining that he did not want to disclose or receive certain types of information or that he intended to avoid interfering with the others or expect others to avoid interfering with him. If these exchanges continued, [employee of Credit Suisse] could have left the chatroom in order to distance himself from them. It would have been impossible to distance himself from the disclosures he received while being in the chatroom and the other participating undertakings would have not accepted making them if he would not have reciprocated with similar disclosures and attitude. Contrary to what Credit Suisse implies, this would have been neither excessive nor unrealistic with respect to settled case law requirements on public distancing.⁴⁶⁶ In the absence of this, all participating undertakings could safely assume that [employee of Credit Suisse] participated in the chatroom in the same way as he did before and in the same way as the other participating undertakings. This assumption was then confirmed by his actual behaviour.
- (531) According to the *Eturas* judgment, there are three ways of rebutting the presumption of participation in an infringement: public distancing, reporting to the administrative authorities or adducing other evidence, which clearly counteracts the presumption of participation.⁴⁶⁷ Credit Suisse has not been able to rebut the presumption by any of these means. It neither distanced itself from the conduct nor reported it to the administrative authorities. In that regard, it is settled case law that it is for the undertaking invoking the benefit of a defence against a finding of an infringement to demonstrate that the conditions for applying such defence are satisfied, so that the authority will then have to resort to other evidence.⁴⁶⁸

⁴⁶⁶ See, for example, judgment of 28 March 2019, *Pometon SpA v. Commission*, T-433/16, EU:T:2019:201, paragraph 307 and case law cited.

⁴⁶⁷ Judgment of 21 January 2016, “*Eturas*” *UAB and Others v Lietuvos Respublikos konkurencijos taryba*, C-74/14, EU:C:2016:42, paragraph 46.

⁴⁶⁸ Judgment of 17 December 1998, *Baustahlgewebe v Commission*, C-185/95P, EU:C:1998:608, paragraph 58; judgment of 7 January 2004, *Aalborg Portland and Others v Commission*, C-204/00P, C-205/00P,

- (532) Regarding the alleged limited participation of [employee of Credit Suisse] in the relevant chats, during the roughly five months of duration of Credit Suisse participation in the infringement (see recital (308)), the Commission has put forward more than 100 pieces of evidence to support its case. Out of these, Credit Suisse has raised concerns over just 26 of these⁴⁶⁹ (the instances of coordination and the chats cited to show the underlying understanding), not contesting the truth of all the other pieces of evidence. For this reason, the Commission rejects the limited participation of Credit Suisse in the infringement.
- (533) In accordance with the case law cited for instance in recital (483), the fact that Credit Suisse would not have taken part in all aspects of the anticompetitive conduct or even that it would have played only a minor role in the aspects in which it did participate does not alter or invalidate the finding relating to its participation in the extensive and recurrent exchanges of information, nor of the finding that the conduct as a whole was a single and continuous infringement.
- (534) Fifth, with regard to the rights of defence, the principle of observance of the right of defence requires, in particular, that the SO which the Commission sends to an undertaking on which it envisages imposing a penalty for an infringement of the competition rules contain the essential elements used against it, such as the facts, the characterisation of those facts and the evidence on which the Commission relies, so that the undertaking may submit its arguments effectively in the administrative procedure brought against it.⁴⁷⁰
- (535) Credit Suisse had the opportunity to rebut the Commission's findings in its reply to the SO (after having access to the file) and during the first Oral Hearing. In fact, the Reply to the SO and the arguments given by Credit Suisse during the first Oral Hearing showed that Credit Suisse had understood the points made by the Commission. The SO contained a detailed account of the facts, the legal assessment of those facts and the evidence on which the Commission provisionally relied against Credit Suisse, including the reasons supporting [employee of Credit Suisse]'s awareness with reference to the relevant evidence.
- (536) Moreover, the issuance of an SSO (together with a new access to file and a second Oral Hearing) provided Credit Suisse a new opportunity to exercise its rights of defence and rebut, through its reply to the SSO, the Commission's findings.
- (537) Hence, the Commission has fulfilled its legal duty and provided all the information required by the party to exercise its rights of defence.
- (538) In light of the above, the Commission rejects Credit Suisse's arguments and finds that Credit Suisse participated in a single and continuous infringement and that it intended to contribute and was aware of the overall plan and the common objective pursued by the extensive and recurrent exchanges of information.

C-211/00P, C-213/00P, C-217/00P and C-219/00P, EU:C:2004:6, paragraph 78; and judgment of 16 November 2006, *Peróxidos Orgánicos, SA v Commission*, T-120/04, EU:T:2006:350, paragraph 50.

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⁴⁷⁰ Judgment of 2 February 2012, *Dow Chemical v Commission*, T-77/08, EU:T:2012:47, paragraph 110 and the case law cited.

5.1.3.4. Single and continuous infringement and Credit Suisse's liability

- (539) The Commission considers that the arrangements within the STG Lads chatroom as described in Section 4.1.3 of this Decision, that is (i) the extensive and recurrent exchanges of information, (ii) the occasional coordination facilitated by the exchanges of information and (iii) the underlying understanding, constitute separate agreements and/or concerted practices each of which are restrictive of competition by object. They constitute a single, complex and continuous infringement by object of Article 101 of the Treaty and Article 53 of the EEA Agreement, covering the entire EEA, in relation to FX spot trading of G10 currencies.
- (540) With regard to the exchanges of information, evidence shows that Credit Suisse directly participated in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information described in Section 4.1.3.1. In other occasions, Credit Suisse was present in the chatroom at the time the exchanges happened or logged in later on that day, and therefore had access to these exchanges. This flow of information contributed to create mutually consistent expectations and to remove uncertainty between the participating traders as regards the timing, extent and details of the intended conducts to be adopted on the market.
- (541) Moreover, these exchanges of information allowed the participating undertakings to make their daily risk management decisions comforted by the knowledge of their competitors' trading behaviour, trading exposures and immediate plans.
- (542) Therefore, Credit Suisse intended to contribute an overall plan pursuing the common objective of restricting and/or distorting competition in the FX spot trading of G10 currencies and was aware of the extensive and recurrent exchanges of information.
- (543) Consequently, the Commission holds Credit Suisse liable for its participation in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information that took place in the STG Lads chatroom as part of the single and continuous infringement. As noted above at recital (341), this element of the single and continuous infringement also constitutes, by itself, concerted practices and/or agreements within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (544) With regard to the standing down, the instances of coordination documented within the STG Lads chatroom occurred before Credit Suisse joined it (see Section 4.1.3.2, in particular recital (300)). Evidence shows that the actual instances of coordination were occasional throughout the existence of the STG Lads chatroom and that during the period of participation of Credit Suisse in the infringement there was no effective instance of coordination. Standing down was not a separate objective of the cartel, but an action to implement an occasional objective (avoiding the risk of mutual interference) and during Credit Suisse' participation, none of the traders in that period – including [employee of Credit Suisse] – had to stand down or request others to stand down.
- (545) Consequently, Credit Suisse is not held liable in respect of the occasional instances of coordination, which are part of the single and continuous infringement.
- (546) With regard to the underlying understanding, as explained in Section 4.1.3.3 (in particular recital (302)), the underlying understanding can be inferred from the transcripts of the conversations held in the STG Lads chatroom during the relevant period as complemented by the admissions [...]. However, Credit Suisse has not acknowledged its participation in the underlying understanding and has disputed its

existence. [...]. These [...] admissions [...] supporting the existence of a set of tacit rules.

- (547) Nevertheless, although the existence of the underlying understanding is established as part of the single and continuous infringement, in the present case, bearing in mind that the Commission relies so prominently for the first time on settlement submissions against a non-settling party while their probative value as regards other undertakings has not been yet clarified by the Union Courts, the Commission has exceptionally decided, in its discretion, not to hold Credit Suisse liable for the underlying understanding.

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

5.1.4.1. Principles

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

- (549) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement is not, however, limited to that part of an undertaking's 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 undertaking, as opposed to the infringement as a whole, affected trade between the Member States⁴⁷¹ and between contracting parties to the EEA Agreement.

- (550) The Union Courts have consistently held that in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. Article 101 of the Treaty does not require that agreements have actually affected trade between Member States, but it does require that it be established that the agreements are capable of having that effect.⁴⁷²

5.1.4.2. Application to this case

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

- (552) FX spot trading services are routinely used by multinational undertakings such as banks, corporations, hedge funds, pension funds and investment banking firms within the EEA. The infringement covered the entire EEA and related to trade within the EEA and was therefore capable of having an appreciable effect upon trade between EU Member States and between contracting parties to the EEA Agreement.

⁴⁷¹ Judgment of 10 March 1992, *Imperial Chemical Industries v Commission*, T-13/89, EU:T:1992:35, paragraph 304.

⁴⁷² Judgment of 30 June 1966, *Société Technique Minière*, 56/65, EU:C:1966:38, paragraph 7 (summary); judgment of 11 July 1985, *Remia BV and Others*, 42/84, EU:C:1985:327, paragraph 22; judgment of 15 March 2000, *Cimenteries CBR and Others v Commission*, T-25/95, EU:T:2000:77, paragraph 46 12; and judgment of 21 January 1999, *Carlo Bagnasco and Others v Banca Popolare di Novara soc. coop. arl. (BNP) and Cassa di Risparmio di Genova e Imperia SpA (Carige)*, C-215/96 and C-216/96, EU:C:1999:12, paragraph 48.

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

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

5.1.5.1. Principles

(554) The provisions of Article 101 of the Treaty and Article 53 of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

5.1.5.2. Application to this case

(555) There is no indication that the agreements and/or concerted practices, as referred to in Section 5.1.1.2 above, entailed any efficiency benefits or otherwise promoted technical or economic progress or benefitted consumers. Complex infringements amounting to secretly organised coordination between competitors in relation to essential parameters of competition such as price and risk management, like the one which is the subject of this Decision are, by definition, among the most detrimental restrictions of competition. It is incumbent upon Credit Suisse to invoke Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement and prove that the cumulative conditions for exemption are met, which it has not done in the present case.

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

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

(557) The Commission concludes that the arrangements within the STG Lads chatroom described in Section 4.1.3, that is (i) the extensive and recurrent exchanges of information, (ii) the occasional coordination facilitated by the exchanges of information and (iii) the underlying understanding, constitute separate agreements and/or concerted practices each of which are restrictive of competition by object and also constitute a single and continuous infringement by object of Article 101 of the Treaty and Article 53 of the EEA Agreement, covering the entire EEA, in relation to FX spot trading of G10 currencies for the reasons explained in Section 5.1.3.2.

(558) The Commission holds Credit Suisse liable for its participation in the extensive and recurrent exchanges of current or forward-looking commercially sensitive information that took place in the STG Lads chatroom and constitute concerted practices and/or agreements (within a wider single and continuous infringement), within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

6. ADDRESSEES

6.1. Principles

- (559) Union/EEA competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed.⁴⁷³
- (560) When such an entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. The conduct of the subsidiary can be imputed to the parent where the parent exercises a decisive influence over it, namely where that subsidiary does not decide independently upon its own conduct on the market. In effect, as the controlling company in the undertaking, the parent is deemed to have itself committed the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.⁴⁷⁴
- (561) The Commission cannot merely find that a legal entity is able to exert decisive influence over another legal entity, without checking whether that influence was actually exerted. On the contrary, it is, as a rule, for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the legal entities may have over the other.⁴⁷⁵
- (562) However, in particular in those cases, where one parent holds all or almost all of the capital in a subsidiary which has committed an infringement of Union/EEA competition rules, there is a rebuttable presumption that that parent company in fact does exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.⁴⁷⁶
- (563) In addition, when an entity which has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor which infringed the competition rules, when, from an economic point of view, the two entities are identical. Where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred. In particular, applying penalties in this way is permissible where those entities have been under the control of the same person and have therefore, given the close

⁴⁷³ Judgment of 13 June 2013, *Versalis v Commission*, C-511/11 P, EU:C:2013:386, paragraph 51.

⁴⁷⁴ Judgment of 10 September 2009, *Akzo Nobel NV and Others v Commission*, C-97/08P, EU:C:2009:536, paragraph 61; judgment of 29 September 2011, *Elf Aquitaine SA v Commission*, C-521/09P, EU:C:2011:620, paragraph 57; judgment of 19 July 2012, *Alliance One International and Standard Commercial Tobacco v Commission and Commission v Alliance One International and Others*, C-628/10 P and C-14/11P, EU:C:2012:479, paragraphs 43 and 46; judgment of 8 May 2013, *ENI SpA v Commission*, C-508/11P, EU:C:2013:289, paragraph 47; judgment of 16 November 2000, *Stora Kopparbergs Bergslags AB v Commission*, C-286/98P, EU:C:2000:630, paragraph 29; judgment of 23 January 2014, *Evonik Degussa et AlzChem v Commission*, T-391/09, EU:T:2014:22, paragraph 77; and judgment of 11 July 2013, *Commission v Stichting Administratiekantoor Portielje*, C-440/11P, EU:C:2013:514, paragraph 41.

⁴⁷⁵ Judgment of 27 March 2014, *Saint-Gobain Glass France and others v Commission*, T-56/09 and T-73/09, EU:T:2014:160, paragraph 311.

⁴⁷⁶ Judgment of 10 September 2009, *Akzo Nobel NV and Others v Commission*, C-97/08P, EU:C:2009:536, paragraph 60.

economic and organisational links between them, carried out, in all material respects, the same commercial instructions.⁴⁷⁷

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

6.2. Application to this case

- (565) Having regard to the body of evidence and the facts described in Section 4 and the legal qualification thereof, the Commission imputes liability to the following legal entities within the participating undertaking, as Addressees:

6.2.1. Credit Suisse

- (566) From 07 February 2012 until 12 July 2012, [employee of Credit Suisse] participated in the behaviours that took place in the STG Lads chatroom, of which he was a member. At that time, [employee of Credit Suisse] was employed by Credit Suisse Securities (Europe) Limited. He could also execute FX spot transactions on behalf of Credit Suisse AG for G10 currencies.⁴⁷⁸ Hence, Credit Suisse Securities (Europe) Limited and Credit Suisse AG directly participated in the STG Lads infringement, through [employee of Credit Suisse]'s participation within the chatroom, for the duration indicated in recital (573).
- (567) In addition, for the duration indicated in recital (573), Credit Suisse Group AG, directly or indirectly, owned 100 % of the shareholdings of Credit Suisse AG and Credit Suisse Securities (Europe) Limited.⁴⁷⁹ Therefore, for the reasons explained in recital (562), Credit Suisse Group AG is presumed to have had decisive influence over the conduct of the wholly-owned subsidiaries that are Credit Suisse AG and Credit Suisse Securities (Europe) Limited. Credit Suisse Group AG shall be jointly and severally liable for the conduct of its subsidiary Credit Suisse AG and Credit Suisse Securities (Europe) Limited for the whole duration of the latter's participation.
- (568) Therefore the Commission intends to hold Credit Suisse Group AG, Credit Suisse AG and Credit Suisse Securities (Europe) Limited jointly and severally liable for the period from 07 February 2012 until 12 July 2012.

6.3. Addressees of this Decision

6.3.1. Credit Suisse

- (569) This Decision is addressed to the following legal entities:
- (a) Credit Suisse Group AG, with registered offices at Paradeplatz 8, Zurich 8001, Switzerland;
 - (b) Credit Suisse Securities (Europe) Limited, with registered offices at One Cabot Square, London, E14 4QJ, United Kingdom; and
 - (c) Credit Suisse AG, with registered offices at Paradeplatz 8, Zurich 8001, Switzerland.

⁴⁷⁷ Judgment of 18 December 2014, *Commission v Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraphs 40-41.

⁴⁷⁸ [...]

⁴⁷⁹ [...]

7. DURATION OF THE INFRINGEMENT

- (570) The Commission considers that the overall single and continuous infringement relating to the STG Lads chatroom concerned the period from 25 May 2011 until 12 July 2012 (date in which the communications ceased).
- (571) As explained in recital (93), the STG Lads chatroom was created on 25 May 2011 and formally closed on 1 August 2012. The communications within the chatroom took place from 25 May 2011 to 12 July 2012.
- (572) The Commission has established Credit Suisse's participation in the collusive conduct on the basis of the participation of [employee of Credit Suisse], who acted on behalf of Credit Suisse, in the extensive and recurrent exchanges of information that were held in the STG Lads chatroom during the period in which the anticompetitive conduct took place. The Commission considers that once Credit Suisse's participation in the chatroom during a period of anticompetitive arrangements is thus proven, its continued involvement is established, irrespective of whether its trader, [employee of Credit Suisse]: (i) was an active participant in a given instance of the anticompetitive discussions, (ii) was simply present in the chatroom as those discussions were taking place between other participating traders or, (iii) had connected to the chatroom after an anticompetitive exchange had taken place, but was able to see its content. In this regard, the Commission takes into account that [employee of Credit Suisse] did not leave the chatroom in reaction to the anticompetitive arrangements that were taking place or did otherwise distance himself from them.
- (573) In view of the above, having regard to the period of involvement of [employee of Credit Suisse] in the STG Lad chatroom, as established at recital (307), the Commission finds that Credit Suisse participated in the infringement during the period from 7 February 2012⁴⁸⁰ to 12 July 2012.⁴⁸¹

8. REMEDIES

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

- (574) 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 1/2003.⁴⁸²
- (575) Although evidence shows that the agreements and concerted practices which are the object of these proceedings have ceased with the closing of the STG Lads chatroom, it is not possible to determine with absolute certainty that Credit Suisse has ceased all agreements or concerted practices which may have the same or a similar object or effect of those described in this Decision. The Commission therefore enjoins Credit Suisse to refrain from participating in any agreement, concerted practice or decision of an association, which may have the same or a similar object or effect.

⁴⁸⁰ Chat of 7 February 2012 ([...]).

⁴⁸¹ Chat of 12 July 2012 ([...]).

⁴⁸² Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1 of 4.1.2003, p. 1.

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

- (576) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, in fixing the amount of fine, the Commission shall have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in the Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to an infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.
- (577) In setting the fine to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003⁴⁸³ (hereinafter “the Guidelines on fines”).

8.2.1. Capacity to impose fines

- (578) Under Article 23(2) of Regulation (EC) No 1/2003,⁴⁸⁴ the Commission may, by decision, impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.
- (579) In the present case, the Commission considers that, based on the facts described in this Decision, the infringement has been committed intentionally. As explained in Section 5.1.2.2(a), the anticompetitive conduct required deliberate actions by Credit Suisse, who actively, privately, extensively and recurrently exchanged certain current or forward-looking commercially sensitive information with direct competitors.
- (580) The Commission therefore imposes fines in this case on the undertaking to which this Decision is addressed.

8.2.2. Calculation of the fines

8.2.2.1. The value of sales

- (581) In applying the Guidelines on fines, the basic amount of the fine for each party results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement directly or indirectly relates, in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking’s participation in that infringement. The additional amount is calculated as a percentage of between 15% and 25% of the same value of sales. The resulting basic amount can then be increased or reduced for each undertaking if aggravating or mitigating circumstances are retained.
- (582) In hybrid cases such as this one, involving the adoption of two decisions with different addressees and following two separate procedures, for participants in one and the same cartel, the principle of equal treatment applies, including for

⁴⁸³ OJ C 210, 1.9.2006, p. 2.

⁴⁸⁴ Under Article 5.1 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area “*the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102] of the EC Treaty [...] shall apply mutatis mutandis*” (OJ L 305, 30.11.1994, p. 6).

determining the amount of the fine. In this case, the Commission will determine the applicable fine so that there is no discrimination between the participants in the same cartel with respect to the type of information, criteria and calculation methods which are not affected by the specific features of the settlement procedure, such as the 10% reduction of fine for settling parties.⁴⁸⁵

- (583) The basic amount of the fine to be imposed on the undertaking concerned should be set by reference to the value of sales,⁴⁸⁶ 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, the Commission takes the sales made by the undertaking during the last full business year of its participation in the infringement.⁴⁸⁷ There are circumstances, such as the last year of the infringement not being representative, in which another reference period might be considered to be more appropriate in view of the characteristics of the case or the available data.⁴⁸⁸ Moreover, according to the case law, the Commission is not required to apply a precise mathematical formula and has a margin of discretion when determining the amount of each fine.⁴⁸⁹
- (a) General point
- (584) The Commission considers it appropriate to apply a proxy for the value of sales as a starting point for its determination of the fines because the FX spot trading activities of G10 currencies concerned by the infringement do not generate sales in the traditional sense, which are directly traceable in the accounts of the participating undertakings.
- (585) Normally, in other sectors, the value of sales is traceable in the accounts of the companies or in the publicly available financial reports, because the sales concerned typically involve the exchange of goods or services against a certain amount of money, that is to say the selling price. In such cases, the value of sales is determined easily by multiplying the quantity of products sold by the selling price, which is then recorded.
- (586) In the present case, FX spot transactions of G10 currencies involve the exchange of a notional amount of money expressed in a certain currency into the equivalent notional amount expressed in another currency, to which the revenues made by the traders on those transactions are proportional. Besides, the revenues of such transactions are embedded in the bid-ask spread applied by the FX spot trader. Both factors – the notional amounts exchanged and the applied bid-ask spreads – are therefore considered by the Commission to be the most adequate factors to build a proxy for the value of sales related to the infringement. However, none of these two

⁴⁸⁵ Judgment of 20 May 2015, *Timab Industries and CFPR v Commission*, T-456/10, EU:T:2015:296, paragraphs 72-74; judgment of 28 March 2019, *Pometon SpA v Commission*, T-433/16, EU:T:2019:201, paragraphs 343-344.

⁴⁸⁶ Point 12 of the Guidelines on fines.

⁴⁸⁷ Point 13 of the Guidelines on fines.

⁴⁸⁸ Judgment of 16 November 2011, *Plásticos Españoles (ASPLA) v Commission*, T-76/06, EU:T:2011:672, paragraphs 111-113.

⁴⁸⁹ Judgment of 13 September 2010, *Trioplast Industrier AB v Commission*, T-40/06, EU:T:2010:388, paragraph 141; judgment of 29 June 2006, *Showa Denko v Commission*, C-289/04P, EU:C:2006:431, paragraph 36.

factors is recorded as such in the publicly available accounts of the trader's undertaking.

(587) Accordingly, as it will be explained in recitals (588) to (619), the relevant value of sales is determined by reference to a proxy resulting from multiplying a notional amount by a bid-ask spread, in the following way:

(a) Firstly, the Commission takes as reference amount the annualised notional amounts traded by Credit Suisse in the FX spot transactions of G10 currencies entered into with a counterparty located in the EEA⁴⁹⁰ during the full months corresponding to Credit Suisse's participation in the infringement.

(b) Secondly, those amounts are multiplied by an appropriate factor, uniform for all the parties, reflecting the applicable bid-ask spreads in the relevant FX spot transactions of G10 currencies.⁴⁹¹

(b) The notional amounts traded as the reference amount

(588) Regarding the notional amounts, as indicated in recital (87) and Section 6.2.1, participating traders engaged in trading activity on behalf of their own undertaking with respect to any G10 currency available in their portfolios, which they did to varying extents during the respective relevant periods. As regards the notional amounts traded, the evidence on file relating to the infringement supports that all G10 currencies were discussed⁴⁹², but that not all the 55 possible combinations of these currencies might necessarily have been discussed or implicated in the transactions in question.

(589) Taking into account that potentially all the 55 possible combinations could have been discussed or implicated in the transactions in question and that it is not possible to precisely distinguish those currency pairs from the others, the Commission considers it appropriate to determine the proxy for the value of sales of the infringement on the basis of the notional amounts corresponding to the top G10 currency pair most discussed and traded in the evidence of the infringement and the notional amounts corresponding to the G10 currency pairs involving any of the EEA currencies.⁴⁹³ As the most discussed category for this infringement (GBP/USD) already involves an EEA currency at the time of the infringement, it is therefore fully included into the category of G10 currency pairs involving any of the EEA currencies at the time of the infringement. Therefore, the Commission determines the value of sales for all participating undertakings to the infringement on the basis of the notional amounts traded of the FX spot transactions of G10 currencies involving at least one of the EEA currencies (EUR, GBP, NOK, SEK, DKK).

(590) The Commission does not calculate the proxy for value of sales on the basis of revenues made by the participating undertakings during the last full business year of

⁴⁹⁰ As the geographic scope of the infringement is EEA-wide, the proxy for the value of sales is based on the notional amounts traded against EEA-located clients, in line with the Request for Information sent by the Commission on 29 April 2016, which defined an EEA counterparty as any counterparty (legal entity) located in the EEA. This definition includes all subsidiaries located in the EEA of any parent companies, irrespective of whether their parent companies are located inside or outside the EEA.

⁴⁹¹ In particular, the revenues of such transactions are proportional to the bid-ask spread (intermediation margin) applied by the FX spot trader to the notional amounts exchanged.

⁴⁹² See [...].

⁴⁹³ EUR, GBP, NOK, SEK and DKK are the EEA currencies within the G10 currencies.

their participation in the infringement (see recital (583)). Having regard to the fact that the amounts traded in FX spot activities of G10 currencies vary significantly over the period of the infringement and of individual involvement, depending on the specific month and the specific participating undertaking, the Commission considers it more appropriate to base the proxy for the value of sales directly on the revenues made by the participating undertakings during the months corresponding to their respective participation in the infringement, which are subsequently annualised.⁴⁹⁴

- (591) Moreover, given that the infringement covered the entire EEA, the Commission considers it appropriate that the proxy for the value of sales is based on the FX spot transactions of G10 currencies entered into with counterparties located in the EEA (i.e. the notional amounts traded against EEA-located clients). The Commission defines an EEA counterparty as any counterparty (legal entity) located in the EEA. This definition includes all subsidiaries located in the EEA of any parent companies, irrespective of whether their parent companies are located inside or outside the EEA.
- (592) For Credit Suisse, the notional amounts retained for the full calendar months of its participation in the infringement (March 2012 to and including June 2012) equal to EUR [...]. On an annualised basis⁴⁹⁵, this amount equals to EUR [...].
- (593) It would not be appropriate to determine the proxy for the value of sales by reference to the 'net trading income' or 'net profit from financial operations' because these reflect the trading revenues netted against trading losses, and therefore provide for a measurement of profit rather than an appropriate proxy for the value of sales under the Guidelines on fines.
- (594) In contrast, the method applied by the Commission results in an appropriate proxy for the value of sales for each of the participating undertakings considering their entire economic activity covered by the scope of the cartel. Through the application of an adjustment factor, it reflects the value of their respective revenues earned from both the activities of (i) market making and (ii) trading on own account.
- (c) Adjustment factor related to market making activities
- (595) As FX spot transactions of G10 currencies involve the exchange of a specified notional amount⁴⁹⁶ from one currency to another, the revenues made by the traders on such transactions are proportionate to the notional amounts exchanged.⁴⁹⁷
- (596) Therefore, in the FX spot activities of G10 currencies, notional amounts serve as a basis for the calculation of the revenues made by the undertakings concerned when

⁴⁹⁴ In a first step (to get annualised figures), only full calendar months of participation in the infringement are taken into account in the proxy. For example, if one party's infringement begins on 12 February 2007 and ends on 21 October 2009, the relevant FX spot business activities of the months of March 2007 to September 2009 are taken into account (31 months) and subsequently annualised by multiplying the result by 12/31. For these purposes, the Commission has considered a period of partial immunity as a period during which the undertaking concerned had not participated in the infringement during such period (see judgment of 27 February 2014, *LG Display and LG Display Taiwan v Commission*, T-128/11, EU:T:2014:88, paragraph 201).

⁴⁹⁵ As four calendar months are considered in this calculation, the amount is multiplied by (12/4) to get an annualised amount.

⁴⁹⁶ See also recital (6). The notional amount can be recorded in the dealers' trading book in either of the currencies of the transaction.

⁴⁹⁷ In the calculation of the proxy for the value of sales, all notional amounts have been converted into euros.

acting as market makers.⁴⁹⁸ Normally, market makers simultaneously quote two prices to their counterparties, a bid price and an ask price; these are the prices at which they are ready to respectively buy or sell one particular pair of G10 currencies, one against the other. The difference between the two is called the bid-ask spread.

- (597) The revenues made on each transaction depend on the notional amount and the bid-ask spread. When a market maker finds two counterparties that are willing to take the opposite sides of the same FX spot transactions of G10 currencies, specifying the same notional amount and currency pair, the market maker can execute the transactions by, at the same time, buying at the bid price and selling at the ask price, the bid price being lower than the ask price. Conceptually, the revenues made by the market maker amount to the full bid-ask spread when considering the two transactions together. It follows that, when one considers each of the two transactions individually, the revenues from market making activities conceptually amount to the notional amount multiplied by half the bid-ask spread.
- (598) The Commission therefore determines the component of the proxy of the value of sales corresponding to market making revenues by multiplying the notional amount by [...] of an appropriate bid-ask spread (see recital (597)). The factor reflecting the appropriate bid-ask spread for market making revenues is based on the ranges of bid-ask spreads deriving from the transactions evidenced in the case file during the whole infringement period of the *Forex-Sterling Lads* case (see recital (604), below).
- (599) The level of bid-ask spreads depends on many factors, including the currency pair (in general the more liquid the currency pair, the tighter the bid-ask spread), the transaction size (in general the larger the transaction size the higher the bid-ask spread) and the type of client (see recitals (17) to (19) and (32)).
- (600) For any currency pair subject to an exchange, the first currency is known as the ‘base’ currency and the second currency is known as the ‘cross’ currency. The notional amount traded is conventionally expressed in the first currency of the currency pair (the ‘base’ currency), while the bid-ask spread taken as reference generates a revenue expressed in the second currency of the currency pair (the ‘cross’ currency). In practice, to calculate the factor reflecting the applicable bid-ask spread, both the bid-ask spread and the notional amount traded have to be expressed in the base currency. In order to arrive to this, two data are required:
- (a) The bid-ask spread level that generates a revenue expressed in the cross-currency. Such bid-ask spreads are retrieved from evidence on the file (see recital (604));
 - (b) The foreign exchange reference rate, available daily on the ECB website.⁴⁹⁹
- (601) To illustrate this, taking for example a EUR/USD currency pair, the EUR is the base currency and the USD is the cross currency. The bid-ask spread on a EUR/USD trade will generate a revenue expressed in USD. If the bid price is 1.1560 USD per EUR and the ask price is 1.1580 USD per EUR, then the bid-ask spread is the difference between the ask price and the bid price, being $(1.1580 - 1.1560) = 0.0020$, still expressed in USD per EUR. If a trader simultaneously buys and sells EUR 1 000 000

⁴⁹⁸ Since e-commerce transactions – as defined in footnote 9 – are out of the scope of the infringement, they are excluded from the basis of notional amounts to determine the proxy of the value of sales.

⁴⁹⁹ See https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/.

against USD to two different counterparties, that trader will pay USD 1 156 000 for the first trade and receive USD 1 158 000 for the second one. Hence, the trader's revenue will be USD 2 000, a revenue expressed in USD (the cross-currency) for a notional amount traded of EUR 1 000 000, expressed in EUR (the base currency).

- (602) Assuming that on the day of the transaction, the EUR/USD foreign exchange reference rate is 1.1578 (this rate does not need to be equal to the mid-point of the transaction described above), the trader's revenue expressed in EUR will be $(2\,000 / 1.1578) = \text{EUR } 1\,727.41$. This revenue relates to a notional amount of EUR 1 000 000.
- (603) The bid-ask spread can now be expressed as a ratio between the revenue generated and the notional amount, both expressed in the same currency (EUR, the base currency). In the above example, the bid-ask spread is therefore equal to $(1\,727.41 / 1\,000\,000) = 0.173\%$ or 17.3 basis points.⁵⁰⁰
- (604) All the extracts within the STG Lads chatroom involving an exchange of information on bid-ask spreads have been examined.⁵⁰¹ Within that set of evidence, the Commission exercised its discretion to only select, for the purposes of calculating the proxy of the value of sales, the exchanges concerning transactions with a size expressed in the base currency of 500 million or below. Bid-ask spreads derived from chatroom extracts where the transaction size expressed in the base currency exceeds 500 million are not selected because they are considered as unrepresentative outliers.⁵⁰²
- (605) From the selected transactions, the minimum spread (the minimum quote mentioned by one of the traders) and the maximum spread (the maximum quote mentioned by one of the traders) provided the basis to calculate the following four metrics:
- (a) the average of the minimum spreads;
 - (b) the median of the minimum spreads;
 - (c) the average of the maximum spreads and
 - (d) the median of the maximum spreads.
- (606) To determine the bid-ask spread range within which the bid-ask spread that serves in the calculation of the proxy for value of sales is selected, the Commission sets the lower end of the bid-ask spread range at the lowest of the average (1) and the median (2) of the minimum spreads. The higher end of the range is set at the highest of the average (3) and the median (4) of the maximum spreads⁵⁰³.
- (607) The methodology described above, as applied to the bid-ask spreads from the transactions that result from the available evidence on file regarding currency pairs involving any combination of G10 currencies involving at least one EEA currency

⁵⁰⁰ One basis point is equal to 0.01%.

⁵⁰¹ See [...] for transaction sizes up to 500 million of the base currency. See [...] for transaction sizes above 500 million of the base currency.

⁵⁰² In that respect, if the extracts including transactions discussed having a size above 500 million of the base currency were to be taken into account, the bid-ask spreads would have been determined within significantly wider ranges than those the Commission uses.

⁵⁰³ Both metrics, the average and the median, are taken into account, as the data might be heterogeneous due, for example, to the presence of outliers. In case of heterogeneous data, the median is usually more representative than the average.

(EUR, GBP, NOK, SEK, DKK), yields bid-ask spreads ranging between [...] and [...] basis points for all the participating undertakings.

- (608) From this range, the Commission retains an applicable bid-ask spread of [...] basis points, a level that lies close to the middle of the aforementioned bid-ask spread range. [...].
- (609) As described in recital (597), the Commission considers that the appropriate adjustment factor related to the market making activities can be estimated at [...] of the applicable bid-ask spread, which results in an adjustment factor of [...] basis points ([...] of the applicable bid-ask spread of [...] basis points).
- (d) Adjustment factor related to trading on own account
- (610) The situation described in recital (597) is a theoretical situation where the market maker does not have any open risk position, as the currency amount bought from a first counterparty has been immediately matched by a sale of that currency amount to a second counterparty and therefore “passed through” to that second counterparty. However, the infringement involved notably the exchange by the participating undertakings of information on their open risk positions (see recitals (234) to (238)). Therefore, the participating undertakings were not only acting as market makers but also trading on their own account, by running open risk positions, that is to say devising certain strategies for seeking to obtain some benefit on their portfolio from the variation of the mid-point price⁵⁰⁴ of the currencies traded over time. This activity generates trading revenues in addition to the market making revenues⁵⁰⁵.
- (611) In determining the applicable proxy for the value of sales, the Commission takes into account the trading revenues that the traders running open risk positions have generated from trading on their own account.
- (612) As none of the participating undertakings has been able to provide the data necessary to estimate those trading revenues and given the technical challenges involved in the calculation of the proxy for revenues from trading on own account, the Commission exercises its margin of discretion and, in order not to overestimate revenues from trading on own account, considers appropriate to calculate it by multiplying the notional amount by [...] of an appropriate bid-ask spread. The factor of [...] is considered to reflect the additional revenues resulting from the trading on own account activities, which are separate from the market making revenues but depend on the trading opportunities procured by the currency positions held by traders following their market making operations.
- (613) Against this background, and considering that trading on own account mostly occurs via the interdealer market (and so not through trades with end-customers), the Commission bases the bid-ask spread level for the proxy for trading revenues on public sources related to interdealer trades.⁵⁰⁶ Based on such sources, the Commission considers it appropriate, in its discretion, to set the bid-ask spread at a level comprised between [...] and [...] basis points for all parties to the proceedings. On this basis the applicable bid-ask spread is set at [...] basis point.

⁵⁰⁴ The mid-point price or mid-price is the average between the bid price and the ask price.

⁵⁰⁵ See also recital (36) for a description of trading on own account.

⁵⁰⁶ See for instance *Understanding FX Liquidity*, The Review of Financial Studies, Volume 28, Issue 11, 1 November 2015, p. 3080.

- (614) The adjustment factor for revenues from trading on own account is therefore fixed at [...]basis point, which is [...] of the applicable bid-ask spread of [...] basis point.
- (e) Total adjustment factor
- (615) In view of the above, in determining the proxy for the value of sales for the infringement, the Commission applies to the notional amounts of each participating undertaking an adjustment factor of [...] basis points, being the sum of:
- (a) [...] basis point representing [...] of [...] basis points, the bid-ask spread level supported by the evidence on the file based on an objective methodology, as a proxy for market making revenues; and
 - (b) [...] basis point representing [...] of [...] basis point, the bid-ask spread level observed on the interdealer segment of the market based on public sources, as a proxy for trading on own account revenues.
- (616) The Commission considers that the concepts of market making revenues and trading on own account revenues are inherently interlinked. If not hedged immediately, a FX spot transactions of G10 currencies for which a market maker has earned half of the bid-ask spread generates an open risk position that can further generate additional trading revenues. Conversely, an open risk position generating trading revenues may be hedged by entering into a FX spot transactions of G10 currencies generating additional market making revenues.
- (617) The adjustment factors selected for both market making and trading activities are considered the most appropriate and reasonable because they follow the Commission's practice in previous decisions concerning the same financial activity, FX spot trading of G10 currencies, and adopted in the framework of the same file.⁵⁰⁷ Moreover, these adjustment factors were considered reasonable and therefore expressly accepted by all the settling parties in both those procedures and also in the settlement procedure followed in parallel to the procedure concerned by this decision.
- (f) Conclusion on the proxy for the value of sales
- (618) For all participating undertakings, the Commission takes into account an annualised proxy of value of sales. This proxy is obtained by applying to the notional amounts retained a factor of [...] basis points.
- (619) The resulting proxy of the value of sales for Credit Suisse is EUR [...] multiplied by [...] basis points or EUR [...].
- (620) As an information point, the fine ranges disclosed to [non-addressee], [non-addressee] and [non-addressee], who introduced three settlement submissions within Case AT.40135 – *Forex*, included reductions of fines distributed pro-rata amongst the infringements when the latter overlapped in terms of product scope and geographic area for a period. To avoid a potentially disproportionate outcome in such a scenario, the Commission in its discretion decided to apply an objective correction

⁵⁰⁷ Commission Decisions of 16 May 2019 in cases AT 40135 – *Forex (Essex Express)* and *Forex (Three Way Banana Split)*.

factor reflecting the degree of temporal overlap. As Credit Suisse is only involved in one Forex infringement, no overlap reduction is applicable to Credit Suisse.⁵⁰⁸

8.2.2.2. Arguments of Credit Suisse and assessment thereof by the Commission

- (621) Credit Suisse claims that the Commission has not demonstrated to the requisite standard that it is liable for an infringement of Article 101(1) of the Treaty. Credit Suisse alleges that the Commission is prevented from imposing a fine in the present case, since there is no basis for the information exchanges to be regarded as ‘by object’ restrictions of competition. If, nonetheless, the Commission would find Credit Suisse liable, Credit Suisse argues that either no fine should be imposed or only a fine of a symbolic nature because [employee of Credit Suisse] did not coordinate or intend to coordinate his trading activities with any of the other participating traders, and merely exchanged legitimate information consistent with industry norms.⁵⁰⁹
- (622) As set out in Section 5.1.2, the Commission has demonstrated to the requisite standard that Credit Suisse participated in a by object infringement of Article 101(1) of the Treaty. It has also been shown in Section 5.1.3, in accordance with the case law referred to therein⁵¹⁰, that Credit Suisse intended, through its own conduct (i.e. the extensive and recurrent exchanges of information), to contribute to the common objectives pursued by all the participating undertakings. Therefore those claims are dismissed.
- (623) Credit Suisse argues that the Commission has not adequately explained the following aspects of its intended fining methodology so that the company can understand whether the fine is justified:⁵¹¹
- (a) the reasons why annualised notional amounts has been selected as a proxy for the value of sales;
 - (b) the methodology used for identifying sales with an EEA nexus;
 - (c) the way the Commission selects the factor reflecting the applicable spreads to be applied to the notional amounts traded;

⁵⁰⁸ In the specific circumstances of the case, the Commission considers appropriate to apply a correction factor of 3/4 to the value of sales of the infringement when it overlaps with one other infringement and of 2/3 to the value of sales of the infringement when it overlaps with two other infringements. For the sake of clarity, no correction factor is applied to the value of sales that do not overlap with any alleged infringement identified in the other settlement submissions. Such value of sales is therefore counted at 100%. For example, the value of sales for party X is EUR 60 000 000 per month during 12 months. During the first 6 months, the value of sales does not overlap with any other alleged infringement; during the next 3 months, the value of sales overlaps with one other alleged infringement and, during the last 3 months, the value of sales overlaps with two other alleged infringements. The confirmed value of sales (before the application of a correction factor) would be 12 x EUR 60 000 000 = EUR 720 000 000. The retained value of sales (after the application of a correction factor) would be 6 x 60 000 000 + 3 x (60 000 000 x 3/4) + 3 x (60 000 000 x 2/3) = EUR 615 000 000. In this example, the average correction factor would amount to 1 - (615 000 000/720 000 000) = 14.6%.

⁵⁰⁹ [...]

⁵¹⁰ Judgment of 6 December 2012, *Commission v Verhuizingen Coppens NV*, C-441/11P, EU:C:2012:778, paragraph 43.

⁵¹¹ [...]

- (d) the reasons why the Commission applies a percentage of [...] of selected bid-ask spreads (comprising [...] to capture market-making revenues and [...] to capture trading on own account) to multiply the notional amounts traded.
- (624) As regards the alleged inadequate explanation, on 18 March 2021, Credit Suisse received an SSO that explained in detail the reasoning behind all aspects of the calculation of the proxy for the value of sales. Additionally, all the arguments above have been explained in recitals (584) to (619) of this Decision.
- (625) Credit Suisse claims that the value of sales calculation should reflect and be limited to the specific FX trading activity relevant to interactions in the STG Lads chatroom, considering the notional amounts based on all G10 currency pairs would overstate the economic importance of the infringement. Credit Suisse thus argues that the notional amounts traded should therefore be limited to GBP currency pairs and to the trading of [employee of Credit Suisse] only and not to the trading of relevant currency pairs by other Credit Suisse traders.⁵¹²
- (626) As stated in Point 13 of the Guidelines on Fines, the value of sales must include all the sales which ‘directly or indirectly relate to the infringement’ in the relevant geographic area in the EEA. According to the case law, to this end, the Commission could take into account all sales by the undertaking in the goods or services concerned on the relevant market, and not limit itself to those sales for which it has specific evidence that they were covered or affected by the conduct. To impose such a limitation on the Commission would artificially minimise the economic significance of the infringement committed by a particular undertaking and lead to the imposition of a fine that would bear no actual relation to the scope of the infringement in question.⁵¹³ For that reasons, the value of sales calculation cannot be limited to the interactions that took place in one single chatroom (i.e. the STG Lads chatroom). Furthermore, when calculating the notional amounts traded, the Commission cannot be circumscribed to GBP currency pairs because [employee of Credit Suisse] executed FX spot transactions on behalf of Credit Suisse for all G10 currencies and not only for GBP.⁵¹⁴ Moreover, the Commission can neither be limited to the notional amounts actually traded by [employee of Credit Suisse] because, under Union competition law, any anticompetitive conduct by an employee is attributable to their employer, and it is the undertaking, which is held liable for the conduct. The Court of Justice has confirmed that anticompetitive conduct on the part of an employee is attributable to the undertaking to which he or she belongs and that undertaking is, as a matter of principle, held liable for that conduct.⁵¹⁵

⁵¹²

[...]

⁵¹³

Judgment of 28 June 2016, *Telefónica, SA v Commission*, T-216/13, EU:T:2016:369, paragraphs 303-305; judgment of 11 July 2013, *Team Relocations and Others v Commission*, C-444/11P, EU:C:2013:464, paragraphs 75-78; judgment of 12 November 2014, *Guardian Industries and Guardian Europe v Commission*, C-580/12P, EU:C:2014:2363, paragraphs 57-59; judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13P, EU:C:2015:184, paragraphs 148 and 149; and judgment of 23 April 2015, *LG Display and LG Display Taiwan v Commission*, C-227/14P, EU:C:2015:258, paragraphs 53-58 and 64.

⁵¹⁴

[...]

⁵¹⁵

Judgment of 21 July 2016, *SIA ‘VM Remonts’ v Konkurences padome*, C-542/14, EU:C:2016:578, paragraph 24; judgment of 15 July 2015, *voestalpine AG and voestalpine Wire Rod Austria GmbH v Commission*, T-418/10, EU:T:2015:516, paragraph 394; judgment of 14 March 2013, *Dole Food Company, Inc. and Dole Germany OHG v Commission*, T-588/08, EU:T:2013:130, paragraph 581 and the

- (627) Credit Suisse argues that the notional amounts relevant for the calculation of the proxy of value of sales include trades in which Credit Suisse bought liquidity instead of providing it. When a party buys liquidity, it does not quote or earn the bid-ask spread. In that case, the bid-ask spread is more closely associated with a cost of providing market-making services. Hence, Credit Suisse argues that the notional amounts associated with those transactions should therefore be excluded from the Commission's calculation.
- (628) This argument is not convincing. The way traders choose to hedge and manage the risk linked to the open positions in their portfolio should not be taken into account. Seeking liquidity, holding, increasing or offloading open positions is the essence of a trader's activity and is embedded in the bid and ask prices that traders will submit to their clients (see recitals (32) and (46)). If traders feel uncomfortable with filling a customer's order (for example, because of an already high open risk position in a specific currency or because of expected difficulties in offloading a specific currency position) they can quote a relatively unattractive price (a low bid price or a high ask price) that reflects those expectations and that takes their own portfolio risks into account. If accepting a customer order would put their portfolio beyond their authorised risk limits, traders can also refuse to quote. Traders are also not obliged to offload an open position immediately and completely⁵¹⁶. They can hold a specific currency position until they find another end-customer or another liquidity-seeking trader to trade with and so close their positions and earn the spread on both sides of the trade.
- (629) Credit Suisse claims that there is no evidence that the average revenue from proprietary trading is proportional to a bid-ask spread. According to Credit Suisse, for proprietary trading, the dealers will pay the bid-ask spread and not earn it. The Commission's reliance on a bid-ask spread to take into account revenues associated with proprietary trading is therefore entirely arbitrary. Credit Suisse further alleges that the Commission did not provide any explanation on how the study⁵¹⁷ mentioned in the SSO was used. Credit Suisse also claims that, as the spreads mentioned in the

case law cited. See also judgment of 7 June 1983, *SA Musique Diffusion française and others v Commission*, 100/80 to 103/80, EU:C:1983:158, paragraph 97; judgment of 20 March 2002, *Brugg Rohrsysteme v Commission*, T-15/99, EU:T:2002:71, paragraph 58 (according to which an employee is deemed to act on behalf of his employer so it is not necessary for there to have been action by, or even knowledge on the part of the management of the undertaking concerned. Action by a person who is authorized to act on behalf of the undertaking suffices), as well as *Suiker Unie* (judgment of 16 December 1975, *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission*, 40 to 48/73, 50, 54 to 56/73, 111, 113 and 114/73, paragraph 539) (according to which the undertaking remains liable for the anticompetitive conduct of its employees, irrespective of whether the management had authorized the employees to engage in such conduct, was aware of such conduct, or whether such conduct ran contrary to instructions provided. The Court of Justice has recognized that an employee does not exert an economic force on the market that is separate from that of the employing organization. As such the employee and the employing organization are part of the same economic entity).

⁵¹⁶ Depending on their overall currency exposure, traders can also decide to offload only a single leg of an open risk position arising from a transaction in a specific currency pair (for example buying GBP against USD, leading to a long GBP position and a short USD position) by trading only one of the two currencies against a third currency (for example selling GBP against JPY).

⁵¹⁷ *Understanding FX Liquidity*, The Review of Financial Studies, Volume 28, Issue 11, 1 November 2015, pages 3073-3108).

study relate to [...] data available at one of the most illiquid trading times, its use will lead to wider spreads.⁵¹⁸

- (630) The Commission disagrees with these arguments. In the first place, the bid-ask spread, which is used as basis for the estimate of revenues from proprietary trading, is not chosen arbitrarily. It relies on a study on Forex liquidity where spread data (called ‘high-frequency spreads’ in the study) are provided from EBS, a leading interdealer electronic Forex platform and data from the interdealer market are considered relevant, as proprietary trading mostly occurs via that market.⁵¹⁹ The bid-ask spread is also a relevant concept in the estimation of revenues from proprietary trading, as there is an inherent interlink between quoted bid-ask spreads and trading revenues. Indeed quoted bid-ask spreads reflect the banks’ expectation of the risk associated with an open exposure. Moreover, traders do not necessarily ‘pay the spread’ in proprietary trading. They do not necessarily initiate the trade on the interdealer market and so are not necessarily ‘price takers’, having to pay the ask price of another trader or only receiving that trader’s bid price. They can very well increase, decrease or close open risk positions by ‘earning the spread’ from other traders (or even from end-customer trades as part of their market making activities). This is indeed the essence of being a good market maker and trader in general and shows that market making and proprietary trading are intertwined (see also recital (628)).
- (631) In the second place, the Commission clarified during the second oral hearing that it has relied on the ‘high-frequency spreads’ and not on the [...] spreads mentioned in the study. A careful reading of the study shows that it defines what it calls the ‘Effective Cost’ which captures the cost of executing a trade and which is equivalent to half of the bid-ask spread, as explained in Formula (1) of the study.⁵²⁰ Table 2 of the study⁵²¹ shows Effective Costs (that is half spreads) for nine exchange rates, ranging from [...] basis point for EUR/USD (as noticed by Credit Suisse)⁵²² to [...] basis points for AUD/USD. Taking the Effective Costs from the exchange rates with at least one EEA currency (that is excluding AUD/USD, USD/CAD, USD/CHF and USD/JPY), a range of [...] to [...] basis point is obtained. When multiplied by two (because Effective Costs represent half of the bid-ask spreads) this range is equivalent to the spread range of [...] to [...] basis point provided in the SSO and in recital (613) of this Decision.
- (632) Credit Suisse alleges that the estimated market making spread would be too wide to be representative. Credit Suisse alleges that the chat sample size the Commission relied upon to estimate that spread is would be too small, and the trade size, the date and the currency pairs of those chat data extracts would not be representative of Credit Suisse transactions during the infringement period.⁵²³ Credit Suisse

⁵¹⁸ [...]

⁵¹⁹ This was already mentioned in [...]: “the Commission intends to base the bid-ask spread level for the proxy for trading revenues on public sources related to interdealer trades”.

⁵²⁰ *Understanding FX Liquidity*, The Review of Financial Studies, Volume 28, Issue 11, 1 November 2015, p. 3076.

⁵²¹ This table was mentioned in [...]and was reproduced by Credit Suisse in the [...]

⁵²² [...]

⁵²³ [...]

subsequently proposes an alternative computation of the market making spread estimate based on spread data from [...], a public source (the BFIX spread data).⁵²⁴

- (633) Again, those arguments are not convincing. The methodology used for the estimation of the adjustment factor is not tailor-made for Credit Suisse but needs to be, and indeed is, applicable to all parties to the infringement, irrespective of whether parties settled or not, to ensure equal treatment. Having discussed the merits of the calculation method, [...]. Moreover, public spread data such as [...] BFIX data, come with limitations, specifically for Forex data. As acknowledged by [...] itself, BFIX data ‘*may not be representative of every use case. There is also inherent, though transparent, judgment in their construction (...)*’.⁵²⁵ There is therefore no guarantee that the spread data proposed by Credit Suisse would be more appropriate for the proxy of value of sales. Therefore, Credit Suisse’s arguments as to the calculation of the value of sales must be dismissed in the present case.

8.2.2.3. Determination of the basic amount

(a) Gravity

- (634) In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and to whether or not the infringement has been implemented.⁵²⁶
- (635) In its assessment, the Commission takes into account the fact that the infringement is, by its very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for the infringement is set at the higher end of the scale.⁵²⁷
- (636) The Commission also takes into account the fact that the infringement covered the entire EEA.
- (637) Accordingly, the Commission considers that the proportion of the value of sales to apply is 16%.
- (638) Credit Suisse claims that, irrespective of the overall chatroom infringement and the assessment of gravity for other participating undertakings, the gravity of the infringement for Credit Suisse should be assessed at the lower end of the scale because of its limited involvement. The proposed methodology should also take into account the small combined market share of the participating traders and the lack of evidence of a possible adverse market impact.⁵²⁸
- (639) Regarding Credit Suisse’s limited involvement, according to paragraph 22 of the Guidelines of 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. Moreover, as stated in recital (532), during the roughly five months of duration of Credit Suisse participation in the infringement, the Commission has put forward more than 100 pieces of evidence to support the case. Out of these, Credit Suisse has raised concerns over just 26 of these (the instances of coordination and the chats

⁵²⁴ [...]

⁵²⁵ See https://data.bloomberglp.com/notices/sites/3/2016/04/bfix_methodology.pdf, page 10.

⁵²⁶ Points 20-22 of the Guidelines on fines.

⁵²⁷ Point 23 of the Guidelines on fines.

⁵²⁸ [...]

cited to show the underlying understanding), not contesting the truth of all the other pieces of evidence. Credit Suisse claim in this respect must therefore be rejected. Finally, the fact that Credit Suisse is not held liable for standing down and the underlying understanding is taken into consideration as a mitigating circumstance (see recitals (654) to (656))

- (640) As for the small combined market share of the participating traders, paragraph 22 of the Guidelines on fines refers to the possible consideration of the parties' combined market share when assessing the applicable gravity percentage. However, the Court has recalled that there is no binding or exhaustive list of criteria to be taken into account when assessing the gravity of an infringement.⁵²⁹
- (641) Regarding the lack of evidence of a possible adverse market impact, the General Court has held, in substance, that the Commission is not required under the Guidelines on fines to take into account the actual impact of an infringement on the market when assessing the gravity of that infringement.⁵³⁰ The gravity percentage is not increased on account of the infringement being implemented. The assessment of the gravity of the infringement is aimed at taking into account factors that reflect the economic importance of the infringement on the market.⁵³¹ When assessing the gravity of an infringement of Article 101(1) of the TFEU, the Commission is thus only obliged to take into account the magnitude of any potential effects of the infringement. Credit Suisse's claim in this respect must therefore be rejected.
- (642) Therefore, Credit Suisse's arguments concerning the gravity of the infringement must be rejected.
- (b) Duration
- (643) In determining the fine to impose on Credit Suisse, 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 its participation in the infringement. The multipliers for duration are calculated on the basis of the number days of participation in the infringement (see recital (573)).
- (644) As indicated in recital (573), Credit Suisse participated in the infringement during the period from 7 February 2012 to 12 July 2012.
- (645) Based on the criteria explained above, the applicable duration multiplier to be taken into account for the purposes of calculating the fine to be imposed on Credit Suisse is 0.42 year.
- (c) Additional amount
- (646) 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.⁵³²

⁵²⁹ Judgments of 3 September 2009, *Prym and Prym Consumer v Commission*, C-534/07 P, EU:C:2009:505, paragraph 54, and judgment of 13 June 2013, *Versalis v Commission*, C-511/11 P, EU:C:2013:386, paragraph 82 and the case law cited.

⁵³⁰ Judgment of 14 May 2014, *Donau Chemie v Commission*, T-406/09, EU:T:2014:254, paragraphs 70-74.

⁵³¹ Point 6 of the Guidelines on fines.

⁵³² Point 25 of the Guidelines on fines.

(647) Taking into account the factors above, the percentage to be applied for the purposes of calculating the additional amount is 16% to the value of sales amount determined in recital (619).

(d) Calculations and conclusions on basic amounts

(648) Based on the criteria explained above, the basic amount for Credit Suisse is EUR [...].

8.2.2.4. Adjustment to the basic amount

(a) Aggravating or mitigating circumstances

(649) The Commission may consider aggravating or mitigating circumstances resulting in an increase/decrease of the basic amount,⁵³³ as listed in a non-exhaustive way in points 28 and 29 of the Guidelines on fines.

(b) Arguments of Credit Suisse and assessment thereof by the Commission

(650) Credit Suisse claims as a mitigating circumstance that [employee of Credit Suisse] was not involved in any coordinated trading and did not encourage it. His participation would have been limited to exchanging information legitimately. [Employee of Credit Suisse] would not have engaged in the information exchanges in order to manipulate trading and the exchanges were not capable of having such an effect. His conduct was consistent with the guidance provided in the FX Global Code during the relevant period. The vast majority of [employee of Credit Suisse]'s interactions would have been necessary and legitimate and his conduct was beneficial to the function of the relevant FX spot trading markets.⁵³⁴

(651) Point 29 of the Guidelines on fines specify that the Commission may reduce the basic amount where the undertaking's involvement in the infringement is substantially limited and the undertaking can thus demonstrate that, during the period in which it was a party to the unlawful agreement or practice, it actually avoided applying its terms and adopted competitive conduct on the market.

(652) According to the case law, the Commission is not required to recognise the existence of a mitigating circumstance consisting of non-implementation of a cartel unless the undertaking relying on that circumstance is able to show that it clearly and substantially opposed the implementation of the cartel, to the point of disrupting the very functioning of it, and that it did not give the appearance of adhering to the agreement and thereby incite other undertakings to implement the agreement in question.⁵³⁵

(653) However, the list of circumstances set out in point 29 of the Guidelines on fines is not exhaustive and specific circumstances of the case, in particular whether the undertaking participated in all the aspects of the infringement, could be taken into account.

(654) In this specific case, the conduct of [employee of Credit Suisse] when trading on behalf of Credit Suisse is substantially the same as that of other participating undertakings in the same period (see recital (529)) and there is no evidence that

⁵³³ Points 28-29 of the Guidelines on fines.

⁵³⁴ [...]

⁵³⁵ Judgment of 11 July 2019, *Huhtamäki Oyj v Commission*, T-530/15, EU:T:2019:498, paragraph 185 and the case law cited.

[employee of Credit Suisse] would have signalled any specific limits to his contribution or actually adopted any different conduct (see recitals (528) to (531)). However, the Commission does not hold Credit Suisse liable in respect of (i) the occasional instances of coordination in the form of “standing down” (see recitals (544) to (545)) and (ii) the underlying understanding [...] (see recitals (546) to (547)).

(655) Considering the above, and pursuant to point 29 of the 2006 Guidelines on fines, the specific circumstances of this case described in recitals (544) to (547), support the application of a reduction of the fine for of: (i) [...] % for lack of liability regarding standing down and (ii) [...] % for lack of liability regarding the underlying understanding.

(656) In conclusion, no aggravating circumstances apply to the present case; but Credit Suisse receives a reduction of its fine of 4% on account of the specific circumstances of this case described in recitals (544) to (547).

(c) Deterrence multiplier

(657) In determining the amount of the fines, the Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, the Commission may increase the fines to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.⁵³⁶ No deterrence multiplier is imposed on Credit Suisse.

(d) Application of the 10% turnover limit

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

(659) In this case, the fine does not exceed 10% of Credit Suisse’s total turnover relating to the business year preceding the date of this Decision.⁵³⁷

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

(660) The fine imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 is EUR 83 294 000.

HAS ADOPTED THIS DECISION:

Article 1

Credit Suisse Group AG, Credit Suisse Securities (Europe) Limited and Credit Suisse AG have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, from 7 February 2012 until 12 July 2012, in extensive and recurrent exchanges of current or forward-looking commercially sensitive information which constitute agreements and/or

⁵³⁶ Point 30 of the 2006 Guidelines on fines.

⁵³⁷ The Commission requested Credit Suisse to provide its total turnover on both a gross and a net basis. The fine imposed does not exceed 10% of Credit Suisse’s total turnover irrespective of the total turnover used (gross or net).

concerted practices (within a wider single and continuous infringement) having the object of restricting and/or distorting competition regarding foreign exchange spot trading of G10 currencies covering the entire EEA.

Article 2

For the infringement(s) referred to in Article 1, the following fine is imposed:

- (a) Credit Suisse Group AG, Credit Suisse Securities (Europe) Limited and Credit Suisse AG, jointly and severally liable: EUR 83 294 000.

The fine shall be credited, in euros, within six months from the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000
BIC: BCEELULL
Ref.: EC/ BUFI/AT.40135

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046.⁵³⁸

Article 3

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

⁵³⁸ Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, of 30.7.2018, p. 80).

Article 4

This Decision is addressed to:

- (a) Credit Suisse Group AG with registered offices at Paradeplatz 8, Zurich 8001, Switzerland;
- (b) Credit Suisse Securities (Europe) Limited with registered offices at One Cabot Square, London, E14 4QJ, United Kingdom; and
- (c) Credit Suisse AG with registered offices at Paradeplatz 8, Zurich 8001, Switzerland.

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

Done at Brussels, 2.12.2021

*For the Commission
Margrethe VESTAGER
Executive Vice-President*