EUROPEAN COMMISSION
DG Competition

CASE AT.39914 – Euro Interest Rate Derivatives

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 04/12/2013

EUROPEAN
COMMISSION

Brussels, 4.12.2013
C(2013) 8512 final

COMMISSION DECISION

of 4.12.2013

addressed to:
- Barclays plc
- Barclays Bank plc
- Barclays Directors Limited
- Barclays Group Holdings Limited
- Barclays Capital Services Limited
- Barclays Services Jersey Limited
- Deutsche Bank AG
- Deutsche Bank Services (Jersey) Limited
- DB Group Services (UK) Limited
- Société Générale
- The Royal Bank of Scotland Group plc
- The Royal Bank of Scotland plc
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.39914 - Euro Interest Rate Derivatives (EIRD) (Settlement))

(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 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 Article 7 and Article 23(2) thereof,

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

Having regard to Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[3], and in particular Articles 10a, 12(2) and 15(1a) thereof,

Having regard to the Commission decisions of 5 March 2013 and 29 October 2013 to initiate proceedings in this case,

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 participated in an infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. The infringement consisted of agreements and/or concerted practices covering at least the whole EEA that had the object of restricting and/or distorting competition in the sector of Euro Interest Rate Derivatives linked to the Euro Interbank Offered Rate ("EURIBOR") and/or the Euro Over-Night Index Average ("EONIA") (hereinafter "EIRD" or "EIRDs").

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

(a) Barclays plc, Barclays Bank plc, Barclays Directors Limited, Barclays Group Holdings Limited, Barclays Capital Services Limited and Barclays Services Jersey Limited (together referred to as "Barclays");

– Barclays plc has its registered offices at 1 Churchill Place, London E14 5HP, United Kingdom;

– Barclays Bank plc has its registered offices at 1 Churchill Place, London E14 5HP, United Kingdom;

– Barclays Directors Limited has its registered offices at 1 Churchill Place, London E14 5HP, United Kingdom;

– Barclays Group Holdings Limited has its registered offices at 1 Churchill Place, London E14 5HP, United Kingdom;

– Barclays Capital Services Limited has its registered offices at 1 Churchill Place, London E14 5HP, United Kingdom;

– Barclays Services Jersey Limited has its registered offices at La Motte Chambers, St Helier, Jersey JE1 1BJ, Channel Islands.

[3] OJ L 123, 27.4.2004, p. 18.

(b) Deutsche Bank AG, Deutsche Bank Services (Jersey) Limited and DB Group Services (UK) Limited (together referred to as "Deutsche Bank");

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

– Deutsche Bank Services (Jersey) Limited has its registered offices at PO Box 727, St Paul's Gate, New Street, St Helier, Jersey JE4 8ZB, Channel Islands;

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

(c) Société Générale;

– Société Générale has its registered offices at 29 boulevard Haussmann, 75009 Paris, France.

(d) The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc (together referred to as "RBS");

– The Royal Bank of Scotland Group plc has its registered offices at 36 St Andrew Square, Edinburgh EH2 2YB, United Kingdom;

– The Royal Bank of Scotland plc has its registered offices at 36 St Andrew Square, Edinburgh EH2 2YB, United Kingdom.

(3) This Decision is based on matters of fact as accepted only by Barclays, Deutsche Bank, Société Générale and RBS in the settlement procedure. In sections 2.2, 4 and 5, reference is made to three other parties, Crédit Agricole, HSBC and JPMorgan, which are not addressees of this Decision. Therefore, this Decision does not establish any liability of these non-settling parties for any participation in an infringement of EU competition law in this case.[4]

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product concerned

(4) The products which the infringement concerns in this case are Euro Interest Rate Derivatives linked to the Euro Interbank Offered Rate ("EURIBOR") and/or the Euro Over-Night Index Average ("EONIA").

[4] The administrative proceedings under Article 7 of Regulation (EC) No 1/2003 against the non-settling parties, this is to say JPMorgan, Crédit Agricole and HSBC are pending, see recital (15) and footnote 13. The conduct referred to in this Decision involving the non-settling parties is exclusively used to establish liability of the settling parties for an infringement of Articles 101 of the Treaty and Article 53 of the EEA Agreement. When reference is made in this Decision to "settling parties" this refers to Barclays, Deutsche Bank, Société Générale and RBS. All undertakings subject to the proceedings are commonly referred to as the "parties".

(5) The EURIBOR is a benchmark interest rate intended to reflect the cost of interbank lending in Euros which is widely used in the international money markets. The EURIBOR is defined as an index of *"the rate at which Euro interbank term deposits are offered by one prime bank to another prime bank within the euro zone"*[5] and it is based on the panel banks' individual quotes of the rates at which each of them believes that a hypothetical prime bank would lend funds to another prime bank[6]. Indeed, according to the European Banking Federation's Euribor Code of Conduct, "*panel banks provide daily quotes of the rate (…) that each panel bank believes one prime bank is quoting to another prime bank for interbank term deposits within the euro zone*".[7]

(6) The EURIBOR is calculated[8], at the relevant time, on the basis of 44 panel bank submissions sent on every trading day between 10.45 am and 11.00 am Brussels time to Thomson Reuters, which serves as the calculation agent to the European Banking Federation ("EBF"). Each panel bank has submitters which are responsible for proposing the quote submissions on their behalf. Submitters normally operate within the treasury department of the given panel bank. The EURIBOR is determined and published at 11.00 am each business day Brussels time (10.00 am London time). Each panel bank provides a contribution for each of the 15 different EURIBOR interest rates (one for each maturity ranging from one week to twelve months – referred to as "tenors").

(7) The EURIBOR does not have an overnight tenor. This role is taken by the EONIA which is an overnight interest rate computed with the help of the European Central Bank as a weighted average of all overnight unsecured lending transactions of certain banks in the interbank market. The banks which contribute to EONIA are the same as those panel banks which contribute to EURIBOR.

(8) The different EURIBOR tenors, for example 1 month, 3, 6 or 12 months, serve as pricing components for EURIBOR-based EIRDs. For EIRDs, the respective EURIBOR tenor which is maturing or resetting on a specific date may affect either the cash flow which a bank receives from the counterparty to the EIRD, or the cash flow which a bank needs to pay to the counterparty on that date. Depending on the trading positions/exposures entered into on its behalf by its traders, a bank may have either an interest in a high EURIBOR fixing (when it receives an amount calculated on the basis of EURIBOR), a low fixing (when it needs to pay an amount calculated on the basis of EURIBOR) or can be "flat" (when it does not have a significant position in either direction).

(9) EURIBOR rates are, inter alia, reflected in the pricing of EIRDs, which are globally traded financial products used by corporations, financial institutions, hedge funds, and other undertakings to manage their interest rate risk exposure (hedging, for both

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5 http://www.euribor-ebf.eu/euribor-org/about-euribor.html.

6 The details of the panel composition and submission procedural rules are described in the European Banking Federation's Euribor Code of Conduct (http://www.euribor-ebf.eu/assets/files/Euribor_code_conduct.pdf).

7 The European Banking Federation's Euribor Code of Conduct, p. 17.

8 The highest and lowest 15% of all the panel bank submissions collected are eliminated. The remaining rates are averaged and rounded to three decimal places.

borrowers and investors) or for speculation purposes.[9] The most common basic EIRDs are: (i) forward rate agreements, (ii) interest rate swaps, (iii) interest rate options and (iv) interest rate futures. EIRDs may be traded over the counter ("OTC") or, in the case of interest rate futures, through exchanges.

(10) Barclays, Deutsche Bank, Société Générale, , JPMorgan, Crédit Agricole and HSBC were EURIBOR panel banks during the whole period of their respective involvement in the infringement. The RBS group included a panel bank from 17 October 2007 onwards following the implementation of the take-over of parts of ABN Amro.

2.2. The undertakings subject to the proceedings

Parties to the settlement procedure

2.2.1. Barclays

(11) Barclays is a major global financial service provider engaged in retail and commercial banking, credit card services, investment banking, wealth management and investment management services which has its headquarters in the United Kingdom. Barclays plc is the ultimate parent/holding company of the Barclays group. Trading financial derivative products based on Euro interest rates is conducted in the name of Barclays Capital, which is the trading name of the Investment Banking division of Barclays Bank plc. Barclays Capital Services Limited and Barclays Services Jersey Limited have been the entities employing the traders and submitters involved in the anticompetitive conduct in this case.

2.2.2. Deutsche Bank

(12) The Deutsche Bank group is a global investment bank with a private client franchise which has its headquarters in Germany. Deutsche Bank AG is the ultimate parent company of the Deutsche Bank group. Deutsche Bank AG has been carrying out the business of trading financial derivative products based on Euro interest rates and the setting of EURIBOR. Traders involved in the anticompetitive conduct were employed by Deutsche Bank Services (Jersey) Limited and by DB Group Services (UK) Limited.

2.2.3. Société Générale

(13) Société Générale is a financial services provider covering retail banking in France, international retail banking, corporate and investment banking, specialised financial services, insurance and private banking. Its headquarters are in France.

2.2.4. RBS

(14) The Royal Bank of Scotland group is a global banking and financial services group whose holding company, The Royal Bank of Scotland Group plc, is incorporated in

[9] According to the Bank of International Settlements, the gross market value of outstanding EIRDs (http://www.bis.org/statistics/dt21a21b.pdf) was USD 9 067 billion in December 2012 and represent the largest segment or 48% of the OTC interest rate derivatives the market.

the United Kingdom. The responsibility of trading of financial derivative products based on Euro interest rates lies with The Royal Bank of Scotland plc.

Other parties subject to the investigation

(15) In addition to the settling parties, JPMorgan, Crédit Agricole and HSBC are also parties to the investigation.

2.2.5. JPMorgan

(16) The JPMorgan Chase group is a financial services provider which has its headquarters in the United States. The ultimate parent company of the JPMorgan Chase group is JPMorgan Chase & Co. The responsibility for trading financial derivative products based on Euro interest rates has been lying with JPMorgan Chase Bank, N.A. while J.P. Morgan Services LLP (known as J.P. Morgan Markets LLP until 2009) was the employing entity of the traders/submitters relevant for this case.

2.2.6. Crédit Agricole

(17) The Crédit Agricole group is a financial services provider which has its headquarters in France. Crédit Agricole SA is the ultimate parent company of the Crédit Agricole group. The responsibility for trading financial derivative products based on Euro interest rates and the setting of EURIBOR within the Crédit Agricole group lies with Crédit Agricole Corporate and Investment Bank (named Calyon until 2010).

2.2.7. HSBC

(18) The HSBC group is a financial services provider which has its headquarters in the United Kingdom. HSBC Holdings plc is the ultimate holding company of the HSBC group. The responsibility for trading financial derivative products based on Euro interest rates and setting of EURIBOR within the HSBC group lies with HSBC France.

3. PROCEDURE

(19) On 14 June 2011, Barclays applied for a marker by informing the Commission of the existence of a cartel in the EIRD sector and expressing its willingness to cooperate with the Commission under the terms of the Commission Notice on Immunity from fines and reduction of fines in cartel cases ("2006 Leniency Notice").[10] Following the perfection of the marker within the meaning of point 15 of the 2006 Leniency Notice, Barclays was granted conditional immunity on 14 October 2011.[11]

(20) Between 18 and 21 October 2011 the Commission carried out unannounced inspections at the premises of Deutsche Bank, JPMorgan, Société Générale, Crédit Agricole, HSBC and RBS in London or Paris. The electronic data brought back to Brussels was subsequently searched in the presence of representatives of the

[10] OJ C 298, 8.12.2006, p. 17.
[11] **[…]**.

respective undertakings at the Commission's premises in November and December 2011.

(21) Since the start of the inspections, the Commission sent a series of requests for information under Article 18 of Regulation (EC) No 1/2003 and point 12 of the 2006 Leniency Notice […].

(22) Following the inspections, the Commission received leniency applications from RBS on […], Deutsche Bank on […] and Société Générale on […]. In accordance with point 29 of the 2006 Leniency Notice, the Commission came to the preliminary conclusion that the evidence submitted by RBS, Deutsche Bank and Société Générale constituted significant added value within the meaning of points 24 and 25 of the 2006 Leniency Notice and that the undertakings have so far met the conditions of points 12 and 27 of the 2006 Leniency Notice. Therefore, the Commission informed RBS, Deutsche Bank and Société Générale by letter of […] of its intention to apply a reduction of a fine within a specified band as provided for in point 26 of the 2006 Leniency Notice.[12]

(23) By decisions of 5 March 2013 and 29 October 2013, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 […]. By letters of 6 March 2013, the Commission fixed a deadline pursuant to Article 10a(1) of Regulation (EC) No 773/2004 […].

(24) Settlement meetings with the [settlement parties] took place […]. At these meetings the Commission informed the [settlement parties] about the objections it envisaged raising against them and disclosed the main pieces of evidence in the Commission file relied on to establish the potential objections.

(25) The [settlement parties] were also given access […]. The Commission further provided the [settlement parties] with an estimate of the range of the likely fines to be imposed.

(26) Each [settlement party] expressed its view on the objections which the Commission envisaged raising against them. The [settlement parties'] comments were carefully considered by the Commission and, where appropriate, taken into account.

(27) At the end of the settlement discussions, all of the parties except for Crédit Agricole, HSBC and JPMorgan considered that there was a sufficient common understanding between each of them and the Commission regarding the potential objections as well as the estimate of the range of likely fines in order to continue the settlement process.

(28) Between 18 September 2013 and 11 October 2013 Barclays, Deutsche Bank, Société Générale and RBS submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 ("settlement submissions").[13] The settlement submissions of each [settlement party] contained:

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12 **[…]**.

13 **[…].**

(a) an acknowledgement in clear and unequivocal terms of its liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including the individual [settlement party]'s role and the duration of its participation in the infringement in accordance with the results of the settlement discussions;

(b) an indication of the maximum amount of the fine each [settlement party] foresees to be imposed by the Commission and which it would accept in the framework of a settlement procedure;

(c) each [settlement party]'s confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;

(d) each [settlement party]'s confirmation that it does not envisage requesting access to the file or requesting to be heard in an oral hearing, unless the Commission does not reflect its settlement submission in the Statement of Objections and the Decision;

(e) each [settlement party]'s agreement to receive the Statement of Objections and the final Decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(29) Each of the settling parties made the above-mentioned submission conditional upon the imposition of a fine which would not exceed the amount as specified in the respective settlement submission.

(30) On 29 October 2013 the Commission adopted a Statement of Objections addressed to Barclays, Deutsche Bank, Société Générale and RBS. All the [settling parties] to which the Statement of Objections was addressed replied by confirming clearly and unequivocally that it reflected the contents of their settlement submissions and that therefore they remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

(31) Having regard to the facts of the case established on the basis of the body of evidence on the file and the settling parties' clear and unequivocal acknowledgement of these facts, the Commission holds the addressees of this Decision liable for the conduct described below.

4.1. Description of the conduct

(32) The settlement parties] through the conduct of certain of their employees, have participated in arrangements in the EIRD sector which consisted of the following practices between different [settlement parties]:

(a) On occasion, certain traders employed by different [settlement parties] communicated and/or received preferences for an unchanged, low or high fixing of certain EURIBOR tenors. Those preferences depended on their trading positions/exposures.

(b) On occasion, certain traders of different [settlement parties] communicated and/or received from each other detailed not publicly known/available information on the trading positions or on the intentions for future EURIBOR submissions for certain tenors of at least one of their respective banks.

(c) On occasion, certain traders also explored possibilities to align their EIRD trading positions on the basis of such information as described above in (a) or (b).

(d) On occasion, certain traders also explored possibilities of aligning at least one of their banks' future EURIBOR submissions on the basis of such information as described above in (a) or (b).

(e) On occasion, at least one of the traders involved in such discussions approached the respective bank's EURIBOR submitters, or stated that such an approach would be made, to request a submission to the EBF's calculation agent towards a certain direction or at a specific level.

(f) On occasion, at least one of the traders involved in such discussions stated that he would report back, or reported back on the submitter's reply before the point in time when the daily EURIBOR submissions had to be submitted to the calculation agent or, in those instances where that trader had already discussed this with the submitter, passed on such information received from the submitter to the trader of a different [settlement party].

(g) On occasion, at least one trader disclosed to a trader of another [settlement party] other detailed and sensitive information about his bank's trading or pricing strategy regarding EIRDs.

(33) In addition, on occasion certain traders employed by different [settlement parties] discussed the outcome of the EURIBOR rate setting, including specific banks' submissions, after the EURIBOR rates of a day had been set and published.

(34) Each [settlement party] participated in at least some of these forms of conduct. This occurred throughout the period of the settling parties' respective involvement in the infringement, although not every settling party participated in all instances of the collusion and the intensity of the collusive contacts varied over the period of the infringement.

(35) The collusive activity occurred through bilateral contacts, mainly through on-line chats, e-mails and on-line messages or over the telephone.

4.2. Individual involvement in the conduct

(36) Between 29 September 2005 and 30 May 2008, Barclays engaged in bilateral practices falling under at least some of the practices enumerated in recital (32) with [parties]

(37) Between 29 September 2005 and 30 May 2008, Deutsche Bank engaged in bilateral practices falling under at least some of the practices enumerated in recital (32) with [parties][14] [15]

(38) Between 31 March 2006 and 30 May 2008, Société Générale engaged in bilateral practices falling under at least some of the practices enumerated in recital (32) with [parties][16] [17]

(39) Between 26 September 2007 and 30 May 2008, RBS engaged in bilateral practices falling under at least some of the practices enumerated in recital (32) with parties][18] [19] [20]

(40) Regarding the non-settling parties, the bilateral contacts referred to in recitals (36) and (37) took place between 16 October 2006 and 19 March 2007 for […] 12 February 2007 and 27 March 2007 for […]; 27 September 2006 and 8 February 2007 for[…]. This Decision does not establish any liability of these non-settling parties for any participation in an infringement of EU competition law in this case (see already recital (3)).

4.3. Geographical scope

(41) The anticompetitive conduct has covered at least the whole EEA.

5. LEGAL ASSESSMENT

(42) Having regard to the facts as described in Section 4 and the settling parties' clear and unequivocal acknowledgement of their legal qualification, the Commission holds the addressees of this Decision liable for the infringement described below.

5.1. Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement

5.1.1. Legal basis

(43) Article 101(1) of the Treaty prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase

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14 […]
15 […]
16 […]
17 […]
18 […]
19 […]
20 […]

or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.

(44) Article 53(1) of the EEA Agreement is modelled on Article 101(1) of the Treaty. However, the reference in Article 101(1) to trade "*between Member States*" is replaced by a reference to trade "*between contracting parties*" and the reference to competition "*within the internal market*" is replaced by a reference to competition "*within the territory covered by the … [EEA] Agreement*".[21]

5.1.2. The nature of the infringement

5.1.2.1. Agreements and concerted practices

(45) […] the various instances of collusive behaviour described in Section 4 form agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

(46) An agreement may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. The agreement may be express or implicit.[22] Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of concerted practices and that of agreements between undertakings, the object is to bring within the prohibition of those Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.[23] Thus, a conduct may fall under the provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement 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.[24]

(47) Although the concept of a concerted practice requires not only a 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 concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own

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21 The case law of the Court of Justice and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See recitals 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement and Case E-1/94 *Ravintoloitsijain Liiton Kustannus Oy Restamark* [January 1994-June 1995] EFTA Court Reports 15, at paragraphs 32-35. References in this text to Article 101 of the Treaty therefore apply also to Article 53 of the EEA Agreement.

22 Case T-9/99, *HFB Holding and others v Commission* [2002] ECR II-1487, at paragraphs 199-200; Case C-105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, [2006] ECR I-8725, at paragraphs 80, 94-100, 110-113, 135-142, 162.

23 Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, at paragraph 64.

24 Case T-7/89 *Hercules* v *Commission* [1991] ECR II-1711, at paragraph 256. See also Case 48/69 *Imperial Chemical Industries* v *Commission* [1972] ECR 619, at paragraph 64, and Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 *Suiker Unie and others* v *Commission* [1975] ECR 1663, at paragraphs 173-174.

conduct on the market. This is 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.[25]

(48) In the case of a complex infringement of long duration, it is not necessary to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. It would be analytically artificial to sub-divide a continuing common enterprise having one and the same overall objective into several different forms of infringement. An infringement may therefore be comprised of both agreements and concerted practices at the same time.[26]

5.1.2.2. Single and continuous infringement and intent

Principles

(49) According to settled case-law, the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged.[27] It follows, that an infringement of Article 101(1) of the Treaty may result not only from an isolated act but also from a series of acts or from a continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute, in themselves and taken in isolation, an infringement of Article 101(1) of the Treaty. When the different actions form part of an overall plan, because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.[28]

(50) When schemes are part of a series of efforts in pursuit of a single economic aim, it would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.[29]

(51) The concept of a single infringement covers a situation in which a number of undertakings have participated in an infringement consisting in continuous conduct

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25 Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraphs 115-122.

26 Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, at paragraph 264. See also Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij N.V. and others v Commission* [1999] ECR II-931, at paragraph 696.

27 Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 79.

28 Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and others v Commission* [2004] ECR I-123, at paragraph 258. See also Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at paragraphs 78-81, 83-85 and 203.

29 Case T-6/89 *Enichem Anic v Commission* [1991] ECR II-1623, at paragraph 204, upheld by the ECJ in Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 82.

in pursuit of a single economic aim designed to distort competition or, yet again, in individual infringements linked to one another by the same object (all the elements sharing the same purpose) and the same subjects (the same undertakings, which are aware that they are participating in the common object).[30]

(52) In order to establish that an undertaking participated in such a single infringement, the Commission must show that the undertaking intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of those same objectives, or that it could reasonably have foreseen it, and that it was prepared to take the risk.[31]

Application to this case

(53) The factual circumstances on the file such as the content of the contacts, the methods used and the objective of the various agreements and/or concerted practices in question,[32] show that the bilateral collusive contacts between the [settlement parties] were linked and complementary[33] in nature, since each of these actions was intended to deal with one or more consequences of the pattern of competition and, by interacting, contributed to a scheme having a single objective.[34] Indeed, the [settlement parties] shared a common purpose which was to distort the normal course of pricing components for EIRDs through the forms of conduct described in Section 4.[35] This object of the infringement remained the same throughout the whole infringement period. Each [settlement party] was involved in at least some of these forms of conduct and with varying degrees of intensity. The [settlement parties]' various collusive contacts followed comparable patterns[36] and covered overlapping topics.[37] A stable group of individuals from the [settlement parties] was involved in the anticompetitive activities during the respective period of each [settlement party]'s involvement. The different contacts between different pairs of [settlement parties] often took place in parallel or in close temporal proximity to each other.

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30 Case T-446/05 *Amann & Söhne GmbH & Co. KG a.o. v Commission* [2010] ECR II-1255, at paragraph 89.

31 Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and others v Commission* [2004] ECR I-123, at paragraph 83; Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at paragraph 87; Case T-208/06 *Quinn Barlo Ltd a.o. v Commission*, not yet reported, at paragraph 128.

32 See to this effect for instance Case T-410/09 *Almamet v Commission*, not yet reported, at paragraph 154 with further references.

33 Case T-587/08 *Fresh Del Monte Produce v Commission*, not yet reported, at paragraph 593.

34 Case T-54/03 *Lafarge v Commission* [2008] ECR II-120, at paragraph 482; Joined Cases T-101/05 and T-111/05 *BASF and UCB v Commission* [2007] ECR II-4949, at paragraph 179.

35 See footnotes **Error! Bookmark not defined.**, **Error! Bookmark not defined.**, **Error! Bookmark not defined.**, **Error! Bookmark not defined.**, **Error! Bookmark not defined.**, **Error! Bookmark not defined.**, **Error! Bookmark not defined.**, 15, 17.

36 Case T-587/08 *Fresh Del Monte Produce v Commission*, not yet reported, at paragraphs 358, 362, 367, 564, 576 or 594.

37 For example, there were instances where certain traders discussed in parallel bilateral discussions their preferences for future EURIBOR submissions of at least one of their banks for the same tenor following discussions about trading positions.

(54) The infringement described in Section 4 therefore qualifies as one single and continuous infringement as regards the respective periods of involvement of Barclays, Deutsche Bank, Société Générale and RBS.[38]

(55) For the period of their respective involvement in the infringement, Barclays,[39] Deutsche Bank,[40] Société Générale[41] and RBS[42] accepted that they were aware of the general scope and the essential characteristics of the infringement[43] or were able reasonably to foresee this conduct and prepared to take the risk.

5.1.2.3. Restriction of competition

(56) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement expressly include as restrictive of competition agreements and concerted practices which directly or indirectly fix prices or any other trading conditions.

(57) Through the common objective of distorting the normal course of pricing components for EIRDs, the participating traders aimed at benefitting from trading positions entered into on behalf of their respective banks. Benchmark rates are an important component of the price of the interest rate derivatives products in question that banks buy and/or sell. The [settlement parties]' overall conduct that is described in Section 4 when taken as a whole is aimed at reducing in advance uncertainty that would have otherwise prevailed in the market about the future conduct of competitors. It enabled them to be aware of the market position and commercial strategy of other [settlement parties],[44] thus distorting rivalry on the market and enabling collusion. It also included, as part of the overall infringement, instances of monitoring of the behaviour agreed upfront (see recital (33)). The information disclosed between the [settlement parties] in bilateral pre-pricing discussions[45] and other exchanges of commercially sensitive information (see recital (32)(g)) was not generally available to other operators active in the relevant sphere, at least not in such detail, where such discussions went beyond what was necessary for the legitimate negotiation of EIRD trades or for the legitimate non-discriminatory dissemination of information to increase liquidity in the market.

(58) The various collusive arrangements and mechanisms adopted by the respective [settlement parties] were all ultimately aimed at influencing pricing components of

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38 Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland a.o. v Commission* [2004] ECR I-123, at paragraph 83; Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at paragraph 87; Case T-208/06 *Quinn Barlo Ltd a.o. v Commission*, not yet reported, at paragraph 128.

39 […]

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43 Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich a.o. v Commission* [2006] ECR II-5169, at paragraph 193.

44 See, to this effect, Case C-238/05 *Asnef-Equifax and others v Ausbanc* [2006] ECR I-11125, at paragraphs 58-61.

45 See, for example, Case T-588/08 *Dole Food Company v Commission*, not yet reported, at paragraphs 583-584.

products in the EIRD sector to their benefit.[46] This conduct by its very nature has the object of restricting competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. Article 101(1) of the Treaty, like the other competition rules of the Treaty, is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the structure of the market and thus competition as such.[47]

(59) Consequently, the complex of agreements and/or concerted practices described in Section 4 had as its object the restriction of competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

(60) For the purpose of application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement there is no need to consider any anti-competitive effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the internal market.[48]

5.1.3. Effect on trade between Member States and between EEA contracting parties

(61) Article 101(1) of the Treaty is applicable in cases where agreements and/or concerted practices may have an appreciable effect upon trade between Member States and/or, according to Article 53(1) of the EEA Agreement, between Contracting Parties to the EEA Agreement. This criterion is fulfilled in this case.

(62) EURIBOR and EONIA are among the most important financial benchmark rates[49] regarding the Euro which is the single currency of 17 Member States.

(63) In addition, various undertakings and public bodies within the EEA routinely enter into EIRD contracts. Moreover, there are significant trade flows within the EEA as the parties entering into EIRDs are often situated in different Member States.

(64) Article 101(1) of the Treaty is aimed at agreements and concerted practices which might harm the attainment of the internal market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the achievement of a homogenous European Economic Area.

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46 See Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich and others v Commission* [2006] ECR II-5169, at paragraphs 112, 115 and 121, where the General Court held that arrangements on a series of banking services, including on lending rates, formed an agreement to eliminate price competition.

47 Case C-8/08 *T-Mobile Netherlands BV a.o. v Raad van bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529, at paragraph 38.

48 Joined Cases 56 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299, at page 342; Case C-199/92 *P Hüls* v *Commission* [1999] ECR I-4287, at paragraphs 158-166.

49 According to the Bank of International Settlements, the gross market value of outstanding OTC interest rate derivatives denominated in EUR or EIRDs (http://www.bis.org/statistics/dt21a21b.pdf) was USD 9 067 billion in December 2012 and represent the largest segment or 48% of the OTC interest rate derivatives the market.

5.2. Application of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement

(65) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable under Article 101(3) and 53(3) of the EEA Agreement in the case of an agreement or concerted practice which contributes to improving the production or distribution of goods or to promoting technical or economic progress, 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.

(66) On the basis of the facts before the Commission, there is no indication that suggest that the conditions of Article 101(3) of the Treaty or 53(3) of the EEA Agreement could be fulfilled in this case.

5.3. Conclusion

(67) The facts described in Section 4 show that Barclays, Deutsche Bank, Société Générale and RBS participated in a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. The overall conduct consisted of agreements and/or concerted practices that had as their object the distortion of the normal course of pricing components in the EIRD sector.

6. DURATION OF THE ADDRESSEES' PARTICIPATION IN THE INFRINGEMENT

(68) The respective dates on which the settling parties started their participation in the infringement are (see Section 4.2):

(a) Barclays: 29 September 2005[50];

(b) Deutsche Bank: 29 September 2005[51];

(c) Société Générale: 31 March 2006[52];

(d) RBS: 26 September 2007[53].

(69) The respective dates which are retained in this Decision as the end date of the respective settling party's involvement in the infringement are (see Section 4.2):

(a) Barclays: 30 May 2008[54];

(b) Deutsche Bank: 30 May 2008[55];

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55 […]

(c) Société Générale: 30 May 2008[56];

(d) RBS: 30 May 2008[57].

7. LIABILITY

(70) Article 101 of the Treaty refers to activities of "undertakings". The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The concept of an undertaking must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.[58] The concept of undertaking is not identical with the notion of corporate legal personality in national commercial or fiscal law.

(71) When such an economic entity infringes Article 101(1) of the Treaty, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. The infringement must be imputed unequivocally to a legal person on whom fines may be imposed.[59] The same principles hold true, *mutatis mutandis*, for the purposes of the application of Article 53 of the EEA Agreement.

(72) The conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities. In such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of EU competition law. In such circumstances, a decision finding an infringement and imposing fines can be addressed to the parent company, without it being necessary to establish the personal involvement of the parent company in the infringement.[60]

(73) In the specific case where a parent company has a direct or indirect 100% shareholding or near 100% shareholding in a subsidiary which has infringed the Article 101(1) of the Treaty there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary.[61]

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58 Case C-97/08 P *Akzo Nobel and others v Commission* [2009] ECR I-8237, at paragraphs 54 and 55 and the case law referred to in those paragraphs.

59 Case C-97/08 P *Akzo Nobel and others v Commission* [2009] ECR I-8237, at paragraphs 56 and 57 and the case law referred to in those paragraphs.

60 Case C-97/08 P *Akzo Nobel and others v Commission* [2009] ECR I-8237, at paragraphs 58 and 59 and the case law referred to in those paragraphs.

61 Case C-97/08 P *Akzo Nobel and others v Commission* [2009] ECR I-8237, at paragraph 60 and the case law referred to in that paragraph. See also Case T-174/05 *Elf Aquitaine SA v Commission* [2009] ECR II-183 (summary publication), at paragraphs 125 and 155-156 and the case law referred to in those paragraphs and Case T-168/05 *Arkema SA v Commission* [2009] ECR II-180 (summary publication), at

(74) In those circumstances, it is sufficient for the Commission to prove that the subsidiary is 100% or near 100% owned by the parent company in order to presume that the parent company exercises a decisive influence over the commercial policy of the subsidiary. The parent company can be held jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market.[62]

(75) Some [settlement parties] argued that the respective bank's management did not instruct its employees to participate in the infringement. In this regard and without prejudice to the undertaking's liability as set out in this case, the EU competition rules concern the conduct of the undertakings and not that of individuals and on this basis, no express instructions are necessary for an undertaking to be liable for the conduct of its employees.[63]

(76) Barclays Bank plc (as the legal entity in whose name EIRDs have been concluded) and Barclays Capital Services Limited and Barclays Services Jersey Limited (as the legal entities employing the relevant individuals at the time of the infringement) have directly participated in the infringement. Barclays plc, Barclays Bank plc, Barclays Directors Limited and Barclays Group Holdings Limited are presumed to have exercised decisive influence over the conduct of Barclays Capital Services Limited on the market as they have directly or indirectly been holding 100% of the shares in this legal entity. Barclays plc is presumed to have exercised decisive influence over the conduct of Barclays Bank plc and Barclays Services Jersey Limited on the market as it has been holding respectively directly and indirectly 100% of the shares in these legal entities.[64]

(77) On this basis and due to the acknowledgement of liability by Barclays plc, Barclays Bank plc, Barclays Directors Limited, Barclays Group Holdings Limited, Barclays Capital Services Limited, Barclays Services Jersey Limited, the Commission holds Barclays plc, as the ultimate parent company, jointly and severally liable with its wholly owned subsidiaries Barclays Bank plc, Barclays Capital Services Limited and Barclays Services Jersey Limited, for the infringement committed by the latter entities. On the same basis, the Commission holds Barclays Bank plc, Barclays Directors Limited and Barclays Group Holdings Limited, as parent companies, jointly and severally liable with Barclays Capital Services Limited.

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paragraphs 69-70 and the case law referred to therein, as well as paragraph 100 and Case C-441/11 P *Commission v Verhuizingen Coppens NV*, not yet reported, at paragraphs 40-42.

62 Case C-97/08 P *Akzo Nobel and others v Commission* [2009] ECR I-8237, at paragraph 61 and the case law referred to in that paragraph, Case T-174/05, *Elf Aquitaine SA v Commission* [2009] ECR II-183 (summary publication), at paragraph 156 and Case T-168/05 *Arkema SA v Commission* [2009] ECR II-180 (summary publication), at paragraph 70.

63 According to the case-law, to find that an agreement is restrictive of competition, it is not necessary to demonstrate personal conduct on the part of a representative authorised under the undertaking's constitution or the personal assent, in the form of a mandate, of that representative to the conduct of an employee of the undertaking who has participated in an anticompetitive meeting. (see Case C-68/12 *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, not yet reported, at paragraphs 26-28).

64 […]

(78) Deutsche Bank AG (as the legal entity in whose name EIRDs have been concluded and employing the relevant submitters) and Deutsche Bank Services (Jersey) Limited and DB Group Services (UK) Limited (as the legal entities employing the relevant traders at the time of the infringement) have directly participated in the infringement. Deutsche Bank AG is presumed to have exercised decisive influence over the conduct of Deutsche Bank Services (Jersey) Limited and DB Group Services (UK) Limited on the market as it has directly or indirectly been holding 100% of the shares in these legal entities.[65]

(79) On this basis and due to the acknowledgement of liability by Deutsche Bank AG, Deutsche Bank Services (Jersey) Limited, DB Group Services (UK) Limited, the Commission holds Deutsche Bank AG liable for the infringement committed by it and, as the parent company, jointly and severally liable with its wholly owned subsidiaries Deutsche Bank Services (Jersey) Limited and DB Group Services (UK) Limited, for the infringement committed by the latter entities.

(80) Société Générale (as the legal entity employing the relevant individuals at the time of the infringement) has directly participated in the infringement. On this basis and due to the acknowledgement of liability by it, the Commission holds Société Générale liable for the infringement.[66]

(81) The Royal Bank of Scotland plc has directly participated in the infringement. It is presumed that The Royal Bank of Scotland Group plc has exercised decisive influence over the conduct of The Royal Bank of Scotland plc on the market. This presumption is based on The Royal Bank of Scotland Group plc's 100% shareholding in The Royal Bank of Scotland plc.[67]

(82) On this basis and due to the acknowledgement of liability by The Royal Bank of Scotland Group plc, The Royal Bank of Scotland plc, the Commission holds The Royal Bank of Scotland Group plc, as the parent company, jointly and severally liable with its wholly owned subsidiary The Royal Bank of Scotland plc for the infringement committed by the latter.

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

(83) Where the Commission finds that there is an infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7(1) of Regulation (EC) No 1/2003.

(84) Given the secrecy in which the infringement was carried out, it is not possible to determine with absolute certainty that the infringement has ceased. It is therefore necessary to require the undertakings to which this Decision is addressed to bring the

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infringement to an end if they have not already done so and to refrain from any agreement, concerted practice or decision of an association which would have the same or a similar object or effect.

8.2. Article 23(2) (EC) of Regulation No 1/2003

8.2.1. Principles

(85) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose upon undertakings fines where, either intentionally or negligently, they infringe Article 101(1) of the Treaty and/or Article 53(1) of the EEA Agreement.[68] For each undertaking participating in the infringement, the fine cannot exceed 10% of its total worldwide turnover in the preceding business year. Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission shall, in fixing the amount of the fine, have regard to all relevant circumstances and in particular the gravity and duration of the infringement.

(86) The principles used by the Commission to set fines are laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003[69] ("2006 Fining Guidelines"). The Commission determines a basic amount for each [settlement party]. The basic amount can then be increased or reduced for each undertaking if aggravating or mitigating circumstances are found. The Commission sets the fines at a level sufficient to ensure deterrence. The Commission assesses the role played by each undertaking party to the infringement on an individual basis. Finally, the Commission applies, as appropriate, the provisions of the 2006 Leniency Notice and of the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases ("Settlement Notice").[70]

(87) The basic amount results from the addition of a variable amount and an additional amount. Both components of the basic amount are set on the basis of an undertaking's value of sales of goods or services to which the infringement relates in a given year. The Commission normally uses as a proxy the sales made by an undertaking during the last full business year of their participation in the infringement.[71] If the last year is not sufficiently representative, the Commission may choose another proxy. The Commission will not take into account for the setting of any fines those sales that have been made to new Member States before their accession to the Union.

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68 Under Article 5 of Regulation (EC) No 2894/94 concerning arrangements of implementing the Agreement on the European Economic Area, OJ L 305, 30.11.1994, p. 6, the Community rules giving effect to the principles set out in Articles 101 and 102 of the Treaty apply *mutatis mutandis*.

69 OJ C 210, 1.9.2006, p. 2. According to point 37 of the 2006 Fining Guidelines the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in their point 21.

70 OJ C 167, 2.7.2008, p. 1.

71 Point 13 of the 2006 Fining Guidelines.

8.2.2. Intent or negligence

(88) The Commission considers that, based on the facts described in this Decision, the infringement was committed intentionally or at least negligently. The Commission therefore imposes fines on the undertakings to which this Decision is addressed.

8.2.3. The value of sales

(89) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the settling parties' respective value of sales,[72] that is to say, the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA.

(90) In this case, the Commission does not use the sales made by the settling parties during the last full business year of their participation in the infringement as a proxy. In view of the short duration of the infringement of some [settlement parties], of the varying market size of the EIRD business over the infringement period, and in view of the differences in the duration of the involvement of different [settlement parties], it is more appropriate to base the annualised sales proxy on the value of sales actually made by the undertakings during the months corresponding to their respective participation in the infringement.

(91) The Commission determines the annual value of sales for all settling parties on the basis of cash flows, that each bank received from their respective portfolio of EIRDs entered into with EEA-located counterparties, discounted by a factor to take account of the particularities of the EIRD industry, such as the netting inherent in this industry, meaning that banks both sell and buy derivatives so that the incoming payments are netted against outgoing payments, and the scale of price variations. On this basis, the settling parties' reported cash flows are reduced by a uniform factor applying equally to all settling parties.

(92) Accordingly, the Commission uses the proxies set out in Table 1 for the value of sales.

Table 1

Undertaking	**Proxy for value of sales (EUR)**
Barclays	[…]
Deutsche Bank	[…]
Société Générale	[…]
RBS	[…]

[72] Point 12 of the 2006 Fining Guidelines.

8.2.4. Determination of the basic amount

(93) The basic amount consists of an amount of up to 30% of the undertaking's value of sales in the EEA multiplied by the number of years[73] of the undertaking's participation in the infringement ('the variable amount'), and, where appropriate, an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration.[74]

8.2.4.1. Gravity

(94) The gravity of the infringement determines the percentage applied to set the variable amount. The Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented. The Commission bases its assessment on the facts described in this Decision.

(95) The Commission's assessment will in particular take into account that: (a) price-coordination arrangements are by their very nature among the worst kind of violations of Articles 101 of the Treaty and 53 of the EEA Agreement; (b) the cartel covered at least the entire EEA; (c) the affected benchmarks which are reflected in the pricing of EIRDs apply to all participants in the EIRD market, and (d) the affected rates have a paramount importance for the harmonisation of financial conditions in the internal market and for banking activities in the Member States.

(96) Given the specific circumstances of this case and taking the above factors into account, the proportion of the value of sales to be taken into account for setting the variable amount is 18%.

8.2.4.2. Duration

(97) The Commission takes into consideration the respective duration of each undertaking's participation in the infringement, as described in Section 6. The increase for duration is calculated on the basis of full months taking into account the actual duration of each undertaking's participation in the infringement on a rounded down monthly and *pro rata* basis. This leads to the duration multipliers set out in Table 2.

Table 2

Undertaking	**Duration multiplier**
Barclays	2.66
Deutsche Bank	2.66

[73] If appropriate under the circumstances of the case, the Commission may count periods of less than a year as the corresponding fraction of a year (for instance, 3 months as a factor 0.25 instead of 0.5).

[74] Points 19-26 of the 2006 Fining Guidelines.

Société Générale	2.16
RBS	0.66

8.2.4.3. Additional amount

(98) As the infringement concerned price coordination, the Commission intends to include an additional amount of between 15% and 25% of the annual value of sales to deter the undertakings from entering into such illegal practices[75] on the basis of the criteria listed above with respect to the variable amount.

(99) Taking into account the factors listed in Section 8.2.4.1, the percentage for setting the additional amount is 18%.

8.2.4.4. Conclusion

(100) Based on these considerations, the basic amount is set as follows in Table 3.

Table 3

Undertaking	**Basic amount (EUR)**
Barclays	[…]
Deutsche Bank	[…]
Société Générale	[…]
RBS	[…]

8.2.5. Adjustments to the basic amount: aggravating or mitigating circumstances

(101) The Commission may consider aggravating or mitigating circumstances resulting in an increase or decrease of the basic amount.[76] Those circumstances are listed in a non-exhaustive way in points 28 and 29 of the Guidelines on fines. In this case, the Commission does not apply any aggravating or mitigating circumstances.

8.2.6. Application of the 10% turnover limit

(102) The fine imposed on each undertaking participating in the infringement cannot exceed 10% of its total turnover relating to the last available business year preceding the date of the Commission decision.[77] In this case, none of the fines exceed 10% of the an undertaking's total turnover relating to the business year preceding the date of this Decision.

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75 Point 25 of the 2006 Fining Guidelines.

76 Points 28-29 of the 2006 Fining Guidelines .

77 Point 32 of the 2006 Fining Guidelines and Article 23(2) of Regulation (EC) No 1/2003.

8.2.7. Application of the 2006 Leniency Notice

(103) Barclays was granted conditional immunity from fines in relation to the present infringement (see recital (19)). There are no indications that Barclays would not have fulfilled its cooperation obligations under point 12 of the 2006 Leniency Notice or would have taken steps to coerce other undertakings to join the cartel or to remain in it. Therefore, Barclays is granted immunity from fines in this case.

(104) The Commission also received applications for the reduction of fines from RBS, Deutsche Bank and Société Générale (see recital (22)). In accordance with point 29 of the 2006 Leniency Notice, the Commission came to the preliminary conclusion that the evidence submitted by RBS, Deutsche Bank and Société Générale constituted significant added value within the meaning of points 24 and 25 of the 2006 Leniency Notice and that the undertakings have so far met the conditions of points 12 and 27 of the 2006 Leniency Notice.

(105) RBS has submitted […]. For these reasons, RBS' application for a reduction of fines adds significant added value to the Commission's investigation in this case. RBS also meets the requirements of points 12 and 27 of the 2006 Leniency Notice. It has made a formal application for a reduction of fines and cooperated genuinely, fully, on a continuous basis and expeditiously from the time it has submitted its application. It has continued to provide further information and explanations […] and submitted new documentary evidence throughout the entire procedure and replied diligently to the Commission's requests for information. As a result the fine to be imposed on RBS is reduced by 50%.

(106) Deutsche Bank has submitted new evidence relating to the infringement that adds significant value to the evidence already in the possession of the Commission. In particular, […]. Deutsche Bank meets also the requirements of points 12 and 27 of the 2006 Leniency Notice. It has made a formal application for a reduction of fines and cooperated genuinely, fully, on a continuous basis and expeditiously from the time it has submitted its application. It has continued to provide further information and explanations […] and submitted new documentary evidence throughout the entire procedure and replied diligently to the Commission's requests for information. As a result the fine to be imposed on Deutsche Bank is reduced by 30%.

(107) Société Générale has submitted new evidence relating to the infringement that adds significant value to the evidence already in the possession of the Commission, even though this new evidence has been submitted at a very late stage and is quantitatively significantly less than that provided by the other two leniency applicants. Société Générale has submitted […]. For these reasons, Société Générale's application for a reduction of fines meets the minimum threshold that could be regarded as adding significant value to the Commission's investigation in this case. Société Générale also meets the requirements of points 12 and 27 of the 2006 Leniency Notice. It has made a formal application for a reduction of fines and cooperated genuinely, fully, on a continuous basis and expeditiously from the time it has submitted its application. As a result the fine to be imposed on Société Générale is reduced by 5%.

8.2.8. Settlement reduction

(108) In accordance with point 32 of the Settlement Notice, the reward for settlement is a reduction of 10% of the amount of the fine to be imposed on an undertaking after the 10% turnover cap has been applied. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement is added to their leniency reward. As a result, the amounts of the fines to be imposed on the settling parties are reduced by 10% and this reduction is added to any leniency reward.

8.2.9. Final amounts of the fines

(109) The fines imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 4.

Table 4

Undertaking	**Fines (EUR)**
Barclays	0
Deutsche Bank	465 861 000
Société Générale	445 884 000
RBS	131 004 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in a single and continuous infringement regarding Euro interest rate derivatives covering the entire EEA, which consisted of agreements and/or concerted practices that had as their object the distortion of the normal course of pricing components in the EIRD sector:

(a) Barclays plc, Barclays Bank plc, Barclays Directors Limited, Barclays Group Holdings Limited, Barclays Capital Services Limited and Barclays Services Jersey Limited, from 29 September 2005 until 30 May 2008;

(b) Deutsche Bank AG, Deutsche Bank Services (Jersey) Limited and DB Group Services (UK) Limited, from 29 September 2005 until 30 May 2008;

(c) Société Générale, from 31 March 2006 until 30 May 2008;

(d) The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc, from 26 September 2007 until 30 May 2008.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

(a) Barclays plc, Barclays Bank plc, Barclays Directors Limited, Barclays Group Holdings Limited, Barclays Capital Services Limited and Barclays Services Jersey Limited, jointly and severally liable: EUR 0;

(b) Deutsche Bank AG, Deutsche Bank Services (Jersey) Limited and DB Group Services (UK) Limited, jointly and severally liable: EUR 465 861 000;

(c) Société Générale: EUR 445 884 000;

(d) The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc, jointly and severally liable: EUR 131 004 000.

The fines shall be paid in euro within three months of the date of notification of this Decision, to the following 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: European Commission – BUFI / AT.39914

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date by either providing an acceptable bank guarantee or making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.[78]

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to

[78] OJ L 362, 31.12.2012, p. 1.

(a) Barclays plc, 1 Churchill Place, London E14 5HP, United Kingdom;

(b) Barclays Bank plc, 1 Churchill Place, London E14 5HP, United Kingdom;

(c) Barclays Directors Limited, 1 Churchill Place, London E14 5HP, United Kingdom;

(d) Barclays Group Holdings Limited, 1 Churchill Place, London E14 5HP, United Kingdom;

(e) Barclays Capital Services Limited, 1 Churchill Place, London E14 5HP, United Kingdom;

(f) Barclays Services Jersey Limited, La Motte Chambers, St Helier, Jersey JE1 1BJ, Channel Islands;

(g) Deutsche Bank AG, Taunusanlage 12, 60325 Frankfurt am Main, Germany;

(h) Deutsche Bank Services (Jersey) Limited, PO Box 727, St Paul's Gate, New Street, St Helier, Jersey JE4 8ZB, Channel Islands;

(i) DB Group Services (UK) Limited, Winchester House, 23 Great Winchester Street, London EC2P 2AX, United Kingdom;

(j) Société Générale, 29 boulevard Haussmann, 75009 Paris, France;

(k) The Royal Bank of Scotland Group plc, 36 St Andrew Square, Edinburgh EH2 2YB, United Kingdom;

(l) The Royal Bank of Scotland plc, 36 St Andrew Square, Edinburgh EH2 2YB, United Kingdom.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 4.12.2013

For the Commission
Joaquín Almunia
Vice-President