Decision of the Competition and Markets Authority

Competition Act 1998

UK government bonds: Citi-Morgan Stanley Infringement

Case Number: 50601

21 February 2025

Competition & Markets Authority

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [✂]. Some numbers have been replaced by a range. These are shown in square brackets.

The names of individuals mentioned in the description of the infringements in the original version of this Decision have been removed from the published version on the public register. Names have been replaced by a general descriptor of the individual's role.

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ANNEX

1. INTRODUCTION AND EXECUTIVE SUMMARY

1.1 By this Decision, the Competition and Markets Authority (the '**CMA**') has concluded that the persons listed below (each a '**Party**' and together the '**Parties**') have infringed the prohibition in section 2(1) (the '**Chapter I prohibition**') of the Competition Act 1998 (the '**Act**'):

(a) Citigroup Global Markets Limited ('**Citigroup GML**')[1] and its ultimate parent company Citigroup Inc.[2] (together '**Citi**'); and

(b) Morgan Stanley & Co. International Plc[3] and its ultimate parent company, Morgan Stanley[4] (together '**Morgan Stanley**').

1.2 During the period 6 December 2011 to 15 February 2012 (the '**Citi-MS Relevant Period**'), both Citi and Morgan Stanley were active and competed variously in relation to:

(a) the purchase of conventional gilts (referred to as 'gilts') issued through auctions on behalf of the UK government ('**gilt auctions**');

(b) the trading of gilts and gilt asset swaps with various counterparties;[5] and

(c) the sale of gilts to the Bank of England through buy-back auctions ('**gilt buy-back auctions**').

1.3 The CMA has found that in the Citi-MS Relevant Period, Citi and Morgan Stanley infringed the Chapter I prohibition by participating in a concerted practice, which had as its object the restriction or distortion of competition within the UK.[6]

1.4 Specifically, and as described further in Chapter 7, the CMA has found that Citi and Morgan Stanley participated in a single and repeated infringement on the Citi-MS Specific Dates[7] in the form of a concerted practice which comprised the disclosure by one or both of Citi and Morgan Stanley to the other of commercially sensitive strategic information ('**commercially sensitive information**') in various

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[1] A private limited company registered in England and Wales with company number 01763297 and registered and trading address of Citigroup Centre, Canada Square, Canary Wharf, London, E14 5LB.
[2] A company incorporated in 1988 under the laws of the State of Delaware, with its registered office in The Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, USA and its headquarters in 388 Greenwich Street, 38th Floor, New York, NY 10013, USA.
[3] A public limited company registered in England and Wales with company number 02068222 and registered and trading address of Legal Department, 25 Cabot Square, Canary Wharf, London, E14 4QA.
[4] A company incorporated in 1981 under the laws of the State of Delaware, USA, with its registered office in The Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, USA, and its headquarters in 1585 Broadway, New York, NY 10036, USA.
[5] A gilt asset swap consists of a gilt and an interest rate swap (a derivative contract through which one stream of future payments (in this case, the cash payments made to holders of gilts) is exchanged for another payment stream (such as a floating rate), see paragraph 4.1(b)).
[6] For the avoidance of doubt, this Decision makes no finding as to whether or not the concerted practice had as its effect the prevention, restriction or distortion of competition within the UK.
[7] See the definition of Citi-MS Specific Dates in Chapter 7.

communications, through a bilateral Bloomberg 'chatroom',[8] in relation to one gilt auction, the trading of a certain gilt and a certain gilt asset swap and one gilt buy-back auction.[9]

1.5 By this Decision, the CMA is imposing a financial penalty on each of Citi and Morgan Stanley under section 36 of the Act, in accordance with the terms of settlement that each of Citi and Morgan Stanley has reached with the CMA.[10]

1.6 The CMA has indicated in **bold** at paragraphs 7.9, 7.16 and 7.19 and at Annex B the specific disclosures which it has found to comprise the infringing disclosures in the Citi-MS Infringement. For the avoidance of doubt, this Decision makes no findings of fact or infringement in relation to any other matters that have been the subject of the CMA's wider investigation (see Chapter 2).

1.7 A table of abbreviations and defined terms used in this Decision is provided at Annex A.

[8] The disclosures were made by certain traders employed by the Parties (each a '**Key Individual**' and together the '**Key Individuals**'), see Chapter 3.
[9] All references in this Decision to the Citi-MS Infringement are to the term as defined in Chapter 7.
[10] See Chapter 2.

2. THE INVESTIGATION

2.1 The CMA launched a formal investigation into suspected anti-competitive arrangements involving several banks, including the infringement which is the subject of this Decision, by carrying out inspections on 13 November 2018 under section 27 of the Act without notice at the premises of certain banks, including Citi and Morgan Stanley.[11] The case was allocated to the CMA under the concurrency framework,[12] and followed an application by Deutsche Bank for a Type A immunity marker under the CMA's leniency policy.[13]

2.2 Citi subsequently applied for, and was granted, a preliminary Type C leniency marker.[14]

2.3 The CMA's investigation after launch included gathering material from the Parties to the CMA's Investigation and third parties including: contemporaneous documents,[15] interviews of individuals previously employed by the Parties to the CMA's Investigation,[16] and responses to informal information requests and/or notices issued under section 26 of the Act (together, '**Requests for Information**').[17] The CMA also considered certain published documents.[18]

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[11] See B-URN-000500733; and B-URN-000500731. In addition to Citi and Morgan Stanley, the following were also party to the CMA's investigation: Deutsche Bank Aktiengesellschaft ('**Deutsche Bank**'); HSBC Bank Plc and its ultimate parent company HSBC Holdings Plc (together, '**HSBC**'); and RBC Europe Limited and its ultimate parent company Royal Bank of Canada (together '**RBC**') (the five parties to the CMA's investigation are each referred to as a '**Party to the CMA's Investigation**' and together as the '**Parties to the CMA's Investigation**'), in relation to other separate alleged infringements. For the avoidance of doubt, none of Deutsche Bank, HSBC and RBC is an addressee to this Decision, nor has the CMA made any findings of infringement in respect of Deutsche Bank, HSBC and RBC as regards the Citi-MS Infringement.

[12] Both the CMA and the Financial Conduct Authority (the '**FCA**') have concurrent powers to apply competition law in the financial services sector (see *The Competition Act 1998 (Concurrency) Regulations 2014, Regulated Industries: Guidance on concurrent application of competition law to regulated industries (CMA10)* and *Memorandum of Understanding between the Competition and Markets Authority and the Financial Conduct Authority – concurrent competition powers, July 2019*).

[13] *Applications for leniency and no-action in cartel cases (OFT1495).* Deutsche Bank subsequently entered into an immunity agreement with the CMA.

[14] Citi subsequently entered into a leniency agreement with the CMA, as part of which Citi admitted its involvement in, and liability for, the Citi-MS Infringement.

[15] Including contemporaneous communications between the Key Individuals sent in a 'persistent' bilateral Bloomberg chatroom ('**Bloomberg chats**') (see Annex B).

[16] Including transcripts of interviews with each of the Key Individuals (see B-URN-000502063; B-URN-000502064; B-URN-000502072; and B-URN-000502073). Each interviewed individual signed a statement of truth confirming the accuracy of their interview transcripts (including B-URN-000503127; B-URN-000503002; and B-URN-000503013).

[17] The CMA obtained material from Citi, including as part of its obligation to cooperate as a leniency applicant in response to a number of Requests for Information (including B-URN-000500737; B-URN-000500782; B-URN-000501071; B-URN-000501168; B-URN-000501543; B-URN-000501755; and B-URN-000502165). The CMA also obtained material from Morgan Stanley in response to a number of Requests for Information (including B-URN-000500735; B-URN-000501019; B-URN-000501075; B-URN-000501164; B-URN-000501761; and B-URN-000502157). The CMA also issued, and received responses to, Requests for Information to the Debt Management Office (an executive agency of HM Treasury) (the '**DMO**') (see B-URN-000501301) and the Bank of England (see B-URN-000501516).

[18] Including the version of the DMO's guidebook that was applicable during the Citi-MS Relevant Period (see B-URN-000503294) and versions of the Bank of England's market notices that were applicable during the Citi-MS Relevant Period (see B-URN-000503304; B-URN-000503305, B-URN-000503306; B-URN-000503307; and B-URN-000503308).

2.4 The CMA issued a Statement of Objections and Draft Penalty Statement to Citi and Morgan Stanley on 24 May 2023.[19]

2.5 Morgan Stanley provided written representations on the Statement of Objections and Draft Penalty Statement in August 2023 and an oral hearing was held in November 2023.

2.6 The CMA and Citi reached a settlement before the Statement of Objections was issued,[20] which was replaced with a settlement on 19 February 2025, after the Statement of Objections was issued. The CMA and Morgan Stanley reached a settlement on 19 February 2025, after the Statement of Objections was issued.[21] As part of their respective settlements, each of Citi and Morgan Stanley admitted its involvement in, and liability for, the Citi-MS Infringement and agreed that a streamlined administrative procedure would apply to it for the remainder of the investigation. Morgan Stanley also agreed to withdraw its written and oral representations in relation to the Statement of Objections and Draft Penalty Statement to the extent that any such representations are not consistent with its admission of participation in, and liability for, the Citi-MS Infringement as part of its settlement.

[19] Under section 31 of the Act and Rules 5 and 6 of the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014, SI 2014/458 (the '**CMA Rules**').
[20] A draft Statement of Objections and Draft Penalty Calculation were provided to Citi in September 2022. As part of the settlement process, Citi provided limited representations on the draft Statement of Objections and Draft Penalty Calculation, consistent with the conditions for leniency under the CMA's leniency policy. Citi also agreed that a streamlined administrative procedure would apply to it for the remainder of the investigation. Citi did not provide written or oral representations on the Statement of Objections or Draft Penalty Statement.
[21] The draft infringement decision, on the basis of which Citi and Morgan Stanley each reached a settlement, was provided to Citi and Morgan Stanley in February 2025.

3. PARTIES AND KEY INDIVIDUALS

3.1 This Chapter sets out the relevant legal entities within both Parties and details of the Key Individuals through whom the disclosures of the information set out in Chapter 7 were made.

A. Citi

3.2 Citi is a global bank '*whose businesses provide consumers, corporations, governments and institutions with a … range of financial products and services*'.[22]

3.3 The ultimate parent company of the undertaking is Citigroup Inc.

3.4 Citigroup GML is designated as a wholesale gilt-edged market maker ('**GEMM**')[23] and was a GEMM throughout the Citi-MS Relevant Period.[24] Citigroup GML is a wholly owned subsidiary of Citigroup Inc.[25]

A.I [Citi Trader] (Citi)

3.5 [Citi Trader] was employed by Citigroup GML, a subsidiary within Citi, from [✂] to [✂] ([✂]). [Citi Trader] was therefore an employee of Citi throughout the Citi-MS Relevant Period.[26]

3.6 During the Citi-MS Relevant Period, [Citi Trader] was a senior trader on Citi's [desk] as part of a team of [✂] individuals responsible for (among other things) gilts and gilt asset swaps, who sat together.[27] In this role, [Citi Trader] participated in gilt auctions, the trading of gilts and gilt asset swaps and in gilt buy-back auctions on behalf of Citi.[28]

3.7 Although [Citi Trader]'s role was primarily that of a gilt market maker, he said that he would have traded gilt asset swaps ('*a handful of times*') either directly or by

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[22] Citi Annual Report for the year ending 31 December 2023, page 4. Available from: https://www.citigroup.com/rcs/citigpa/storage/public/Citi-2023-Annual-Report.pdf [Accessed on 7 October 2024].
[23] See Chapter 4. During the Citi-MS Relevant Period, there were between 18 and 19 wholesale GEMMs, including each of the Parties (B-URN-000503297, pages 42 to 43; and B-URN-000503298, pages 49 to 51). The DMO also designated a small number of retail GEMMs, which typically traded with smaller investors (B-URN-000503301, page 17). Retail GEMMs are not the subject of the CMA's investigation, so are not considered further in this Decision.
[24] B-URN-000503297, page 42; B-URN-000503298, page 49; and the DMO's list of GEMMs available from https://www.dmo.gov.uk/responsibilities/gilt-market/market-participants/ [Accessed on 17 October 2024].
[25] Citi Annual Report for the year ending 31 December 2023, page 44. Available from: https://www.citigroup.com/rcs/citigpa/storage/public/Citi-2023-Annual-Report.pdf [Accessed on 7 October 2024].This was also the case throughout the Citi-MS Relevant Period.
[26] B-URN-000503292; and B-URN-000500152. Although [Citi Trader] (Citi) gave different dates for his employment (namely [✂] to [✂]) (B-URN-000502063, page 12), this does not affect the CMA's finding that he was employed by Citi throughout the Citi-MS Relevant Period. [✂].
[27] B-URN-000500841, pages 26 to 27; and B-URN-000502063, pages 21 to 22.
[28] B-URN-000500841, page 27; and B-URN-000502063, pages 13, 16 to 17, 21, 30 and 34.

working with the Citi swaps desk (ie those traders on the [desk] who were primarily responsible for trading interest rate swaps and gilt asset swaps).[29]

B. Morgan Stanley

3.8 Morgan Stanley is a global financial services firm that '*advises, and originates, trades, manages and distributes capital for governments, institutions and individuals*'.[30]

3.9 The ultimate parent company of the undertaking is Morgan Stanley.

3.10 Morgan Stanley & Co. International Plc is a GEMM and was a GEMM throughout the Citi-MS Relevant Period.[31]

B.I [MS Trader] (Morgan Stanley)

3.11 [MS Trader] was employed by a subsidiary within Morgan Stanley[32] and carried out trading activity on behalf of Morgan Stanley & Co. International Plc,[33] from [✂] to [✂] ([✂]), that is throughout the Citi-MS Relevant Period.[34]

3.12 [MS Trader] was a trader on Morgan Stanley's [desk],[35] working in the same [✂] as a number of other traders, [✂].[36] [MS Trader]'s role was primarily a market maker for interest rate swaps and gilt asset swaps;[37] however, he said in interview that he would also have traded gilts.[38] In this role, [MS Trader] therefore participated, on behalf of Morgan Stanley, in the trading of gilt asset swaps and occasionally participated in gilt auctions, the trading of gilts and gilt buy-back auctions.[39]

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[29] B-URN-000502063, pages 16 to 17 and 21. [Citi Trader] (Citi) also said that he was often consulted by Citi's swap traders in relation to how to price the gilt element of a gilt asset swap, because of his role in gilts (B-URN-000502064, pages 218 to 221).
[30] Morgan Stanley Annual Report for the year ending 31 December 2023, page 5. Available from: https://www.morganstanley.com/content/dam/msdotcom/en/about-us-ir/shareholder/10k2023/10k1223.pdf [Accessed on 3 October 2024].
[31] B-URN-000503297, page 43; and B-URN-000503298, page 50; and the DMO's list of GEMMs available from https://www.dmo.gov.uk/responsibilities/gilt-market/market-participants/ [Accessed on 17 October 2024]; see also B-URN-000501046, page 13.
[32] B-URN-000506474.
[33] Morgan Stanley Annual Report for the year ending 31 December 2023, page 87. Available from: https://www.morganstanley.com/content/dam/msdotcom/en/about-us-ir/shareholder/10k2023/10k1223.pdf [Accessed on 3 October 2024].
[34] B-URN-000500164, page 3; and B-URN-000502072, pages 11 to 13.
[35] B-URN-000501046, pages 45 and 46.
[36] B-URN-000502072, pages 27 to 28. [MS Trader] (Morgan Stanley) also said in interview that he would talk to these [✂] traders about the market '*a lot during the day*' (B-URN-000502072, pages 101 to 102).
[37] B-URN-000502072, pages 12 to 14 and 17.
[38] Specifically, [MS Trader] (Morgan Stanley) said in interview that he would have traded gilts through brokers if [✂] (B-URN-000502072, pages 24 to 27). Although [MS Trader] (Morgan Stanley) said that he did not typically quote prices to clients for gilts, he said that there may have been the odd occasions when he would have said he was a buyer or seller of a gilt for a client if [✂] (B-URN-000502072, page 27).
[39] B-URN-000501046, pages 45 to 46; and B-URN-000502072, pages 12, 24 to 27, 119 to 120 and 127 to 128.

4. INDUSTRY BACKGROUND

A. Products

4.1 The Citi-MS Infringement[40] relates to the following two products:[41]

(a) **Gilts**:[42] sterling-denominated UK government bonds, pursuant to which the UK government guaranteed to pay the holder of the gilt an annual cash payment (the coupon) in two equal semi-annual payments until the gilt's maturity date, at which point the UK government would pay the holder the final coupon payment and the principal amount ('**gilts**');[43] and

(b) **Gilt asset swaps**: a product consisting of a gilt and an interest rate swap, typically with the same or similar maturity date as the gilt ('**gilt asset swaps**').[44] An interest rate swap was a derivative contract through which one stream of future payments (in this case, the gilt's fixed coupon payments) was exchanged for another payment stream (such as a floating rate).[45] A dealer would use a gilt asset swap to, for example, hedge interest rate risk.[46]

B. Parties' role as GEMMs

4.2 In relation to gilts, each of the Parties was designated as a GEMM during the Citi-MS Relevant Period. GEMMs were subject to a number of obligations,[47] and were entitled to certain privileges,[48] in relation to the issuance and trading of gilts. The Parties played a similar, but informal, role as dealers of gilt asset swaps.[49]

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[40] This Decision uses the past tense to denote that the relevant description refers to matters as they pertained during the Citi-MS Relevant Period.
[41] These products were interrelated. For example, their prices were linked (see footnotes 93 and 94), and gilt asset swaps could be bought and sold through a single trade or through two separate trades (referred to as legs): (i) an outright trade of a gilt; and (ii) an interest rate swap (see B-URN-000502072, page 96).
[42] References to 'gilts' in this Decision are to conventional gilts. Since no other sub-categories of gilts are the subject of the Citi-MS Infringement, they are not addressed further in this Decision. On occasion, Parties and/or the Key Individuals would refer to a gilt as a 'bond' (see B-URN-000502063, page 83).
[43] B-URN-000503300, page 4. When referring to individual gilts, each Party often used a shorthand referring to the annual coupon (with a letter replacing the decimal figure ('q' for .25, 'h' for .5 and 't' for .75)) and the last two digits of the gilt maturity year. On occasion, this was further shortened to just the last two digits of the gilt maturity year. A Party would also have referred to a gilt by reference to its remaining maturity (for example, a reference to a gilt switch consisting of five-year and ten-year gilts in 2010 would have been a reference to a gilt switch between gilts maturing in 2015 and 2020 (see B-URN-000502063, page 124 and Annex B).
[44] A gilt asset swap would also have been referred to by a number of other names, including 'asset swap', 'asw' and 'swap' (see B-URN-000502063, page 77; and B-URN-000502072, pages 19 to 20 and 145 to 146).
[45] B-URN-000502073, pages 159 to 160.
[46] B-URN-000502072, pages 33 to 34.
[47] Including, in relation to gilt auctions, to participate '*in a meaningful way in the auction process*' and to purchase a certain percentage of gilts at gilt auctions over a rolling period and, in relation to the trading of gilts, to make '*continuous and effective bid and offer prices*' to clients and maintain a specific market share in gilts over a rolling period (B-URN-000503294, paragraphs 15 to 17 and 19).
[48] Including, in relation to gilt auctions, being the only institutions eligible to submit competitive bids directly and, in relation to the trading of gilts, having exclusive trading and viewing access to the services of inter-dealer brokers ('**IDBs**') (see B-URN-000503294, paragraphs 24 and 29).
[49] B-URN-000502072, page 39.

4.3 The Parties were therefore active in the following (among other matters), as set out in more detail below:

(a) gilt auctions;[50]

(b) the trading of gilts and gilt asset swaps with various counterparties (that is, GEMMs, other dealers and clients); and

(c) gilt buy-back auctions.

B.I Gilt auctions

4.4 Gilts were issued on behalf of HM Treasury by the DMO, which was responsible for raising finance for the UK government and minimising its financing cost over the long-term.[51]

4.5 Each gilt auction related to either a single new gilt or an issuance of additional volumes of a single, specific gilt already in issue (known as a '**tap auction**').[52]

4.6 At any time during a gilt auction window (which typically opened at 08:00 and closed at 10:30), each of the Parties (and other GEMMs) could submit as many bids (referred to as a '**bid**', '**bids**' or '**bidding**') as it wished. Each bid would specify a volume (the '**bid volume**') of the gilt being issued (the '**auction gilt**') and the price for that bid volume (the '**bid price**').[53] GEMMs bid '*blindly*' (ie they could not see other GEMMs' bids).[54] A GEMM could amend or withdraw its bid(s) up to, or very close to, the close of the gilt auction window.[55]

4.7 After the end of the gilt auction window, the DMO determined the results of the gilt auction according to the bid prices submitted, which it would announce a few minutes after the end of the gilt auction window.[56]

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[50] In addition to gilt auctions, gilts were also issued through syndications, whereby the DMO selected certain GEMMs to act as lead managers who underwrote the majority of the gilts being issued, generated and recorded interest from investors and supported the DMO in the sale process in return for fees (B-URN-000500841, page 21; and B-URN-000501046, pages 30 to 32). The Citi-MS Infringement only relates directly to gilt auctions, so the Parties' roles in relation to syndication are not considered further in this Decision.
[51] B-URN-000503295, page 1 and paragraphs 1 and 2.
[52] B-URN-000501046, page 4.
[53] B-URN-000503294, paragraphs 45 to 47. Volumes of gilts (including bid volumes) were typically expressed as the nominal value (ie the face value) of the amount of the gilt (see B-URN-000503300, page 5).
[54] B-URN-000501382, page 8.
[55] B-URN-000503294, paragraph 46. [Citi Trader] (Citi) said in interview that he tended to finalise his bids in a gilt auction within the last '*90 seconds*' of the gilt auction (B-URN-000502063, page 91). The DMO stated '*[i]t is very common… for bids to be adjusted or fine-tuned very close to the bidding deadline in order to account for any changes in the prevailing… market at the last possible moment*' (B-URN-000501382, page 12).
[56] B-URN-000503294, paragraphs 55 to 59 and 63; and B-URN-000501382, page 8.

4.8 Since GEMMs were the only institutions eligible to bid directly in gilt auctions,[57] the Parties competed against each other, and other GEMMs, in relation to the bidding for gilts in gilt auctions.

B.II Trading of gilts and gilt asset swaps

4.9 The Parties' trading of gilts and gilt asset swaps included:

(a) in relation to gilts, the outright purchase or sale of an individual gilt (such trading is referred to in this Decision as the '**trading of gilts**'); and

(b) in relation to gilt asset swaps, the outright purchase or sale of a gilt asset swap (either as a single trade or in two separate legs) (such trading is referred to in this Decision as the '**trading of gilt asset swaps**').

4.10 The trading of gilts and the trading of gilt asset swaps, individually and collectively, is referred to in this Decision as '**trading**', and '**trade**' shall be interpreted accordingly.[58]

4.11 The vast majority of trading took place 'over-the-counter' throughout the trading day (which typically began at 07:30 (for gilt asset swaps) or at 08:00 (for gilts) and ended at 17:00).[59] The Parties and other dealers traded through a range of channels, including:

(a) with clients:[60] directly,[61] via agency brokers[62] and, in relation to gilts only, via electronic trading platforms (including Bloomberg and Tradeweb);[63] and

(b) with other counterparties: via brokers (including, for gilts, IDBs)[64] and directly (although such trading was not common).[65]

4.12 A dealer would typically trade for a range of strategic reasons, including to build relationships with clients,[66] manage risk,[67] and, in relation to the trading of gilts

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[57] B-URN-000503294, paragraph 24.
[58] Similarly, the price in relation to a trade or potential trade of gilts and gilt asset swaps by a dealer is referred to in this Decision as the '**trading price**'.
[59] In particular, the trading day began when the relevant futures market opened (ie 07:30 for interest rate futures or 08:00 for gilt futures) and ended at 17:00 when those markets closed (see B-URN-000502063, page 18; B-URN-000501046, page 47; and B-URN-000503294, paragraph 97).
[60] Subject to each GEMM's obligation continually to make bid and offer prices (see footnote 47).
[61] B-URN-000502063, page 31; and B-URN-000502072, pages 66 to 67.
[62] B-URN-000502073, pages 214 to 215.
[63] B-URN-000501198, page 5; and B-URN-000501214, pages 1 to 5.
[64] B-URN-000501198, page 6; B-URN-000501046, page 10; and B-URN-000502072, pages 64 to 66. GEMMs' obligation continually to make bid and offer prices applied only to clients, not with other GEMMs (see B-URN-000503294, paragraphs 94 to 95).
[65] B-URN-000501198, page 9; B-URN-000502063, pages 43 and 50 to 51; and B-URN-000501046, page 50. The CMA has not relied on the information disclosed by the Parties for the purpose of trading directly with each other as evidence of the Citi-MS Infringement (noting that such direct trades were uncommon).
[66] B-URN-000501046, page 8.
[67] B-URN-000502072, pages 33 to 34; and B-URN-000502073, pages 197 to 198.

only, to meet its obligations as a GEMM and to demonstrate a strong market presence to win a lead manager role in syndication.[68]

4.13 The Parties therefore competed with each other (and other dealers) in relation to trades with both clients and other counterparties. Typically, such competition was largely based on the level of the trading price.[69] Although the Parties had access to certain information about trading pricing,[70] when determining its own trading price in normal conditions of competition a Party would not be expected to know the trading price quoted to a client by any competing dealer.[71]

B.III Gilt buy-back auctions

4.14 GEMMs were eligible to participate in gilt buy-back auctions conducted by the Bank of England at certain times during the Citi-MS Relevant Period as part of its quantitative easing policy to stimulate the UK economy.[72]

4.15 At any time during the gilt buy-back auction window (typically between 14:15 and 14:45), the Parties (and other participants) could submit offers (referred to as an '**offer**', '**offers**' or '**offering**'),[73] which could be amended or withdrawn up to, or very close to, the close of the gilt buy-back auction window.[74]

4.16 Each offer would involve a specific volume (the '**offer volume**') of a specific gilt within the relevant maturity range[75] (the '**offer gilt**') and the price for selling that volume of that gilt (the '**offer price**').[76] Each Party's offer(s) were confidential.[77]

4.17 After the gilt buy-back auction window closed, the Bank of England allocated offers for the different gilts '*based on the attractiveness of offers for each [gilt] relative to market yields for the [gilts], as published by the DMO, at the close of the auction*'.[78]

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[68] See footnotes 47 and 50; and B-URN-000501046, page 31.
[69] B-URN-000500841, page 24; and B-URN-000501046, page 39.
[70] See paragraph 4.20 below.
[71] Although electronic trading platforms disclosed the (anonymous) second highest price to the successful GEMM, this would only be done after the trade had completed. See, for example, B-URN-000501198; pages 5 and 7 (where Citi stated that clients might disclose pricing information in certain circumstances); and B-URN-000501214, pages 3 to 5 (where Morgan Stanley stated that one electronic trading platform published anonymous details of trades after they were completed).
[72] B-URN-000500756, tab 'Info requests – responses'. GEMMs were under no obligation to participate and the obligations imposed, and privileges granted, by the DMO did not relate to gilt buy-back auctions.
[73] B-URN-000500756, tab 'Info requests – responses'; and B-URN-000503304, paragraphs 29, 32 and 42 to 43.
[74] B-URN-000500756, tab 'Info requests – responses' in which the Bank of England stated that '*it is in… counterparties[']interest to update pricing close to the end of the competitive auction, and counterparties have the ability in the Btender system to update pricing as many times as the counterparty would like while the auction is open*'. [MS Trader] (Morgan Stanley) confirmed in interview that offers could be amended or withdrawn '*up until 2.45*' (B-URN-000502072, page 117), however [Citi Trader] (Citi) said in interview that it was difficult to submit or amend offers in the last minute or two of the gilt buy-back auction window ('*… it takes a minimum of a minute to make changes… at this time it was taking even longer, so realistically, at 2:43 was when you would be able to put your prices in…*' at B-URN-000502063, page 174).
[75] B-URN-000503304, paragraph 22. The precise maturity ranges used by the Bank of England for gilt buy-back auctions varied during the Citi-MS Relevant Period (B-URN-000503308, paragraph 2).
[76] B-URN-000503304, paragraph 33.
[77] See the evidence provided in interview by [a trader previously employed by another party to the CMA's investigation] (B-URN-000502068, pages 130 to 131).
[78] B-URN-000503304, paragraph 23.

The results would be published a few minutes after the end of the gilt buy-back auction window.[79]

4.18 The Parties, as GEMMs, therefore competed with each other (and other participants) in relation to the selling of gilts to the Bank of England via gilt buy-back auctions.

C. The determination of pricing by a Party

4.19 Since the vast majority of trading took place over-the-counter (see paragraph 4.11), there was no single, agreed 'market' price for each product.[80] Each Party was therefore required to apply its own independent judgement to determine the price at which it would be willing to bid in a gilt auction, offer in a gilt buy-back auction or buy or sell a product through trades[81] by reference to a range of imperfect sources of available information.

4.20 There was a range of information available to each Party (and other dealers) about variously gilts and gilt asset swaps, including information made available by:

(a) the DMO, including composite and end-of-day mid-prices and the results of gilt auctions and syndications;[82]

(b) the Bank of England, including the results of gilt buy-back auctions;[83]

(c) electronic trading platforms, including composite mid-prices[84] and limited details of client trading;[85]

(d) IDBs and other brokers, including:

(i) in relation to gilts: trading prices available via that broker[86] and details of trades after they had completed (including the product(s) and price);[87]

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[79] B-URN-000503304, paragraph 42.
[80] Instead, every specific trade made by a Party would be negotiated and priced bilaterally between it and the trading counterparty (whether directly, through an electronic trading platform, or via a broker).
[81] Prices of gilts were typically quoted as a price per £100 nominal of the gilt (see B-URN-000503301, page 18). The Parties often only referred to the fractional part of the price (the pence or 'cents') (see B-URN-000502063, page 146). Prices could also have been expressed as a yield (reflecting the returns from a product as a percentage of the price), referred to in basis points or 'bps' (see B-URN-000502072, page 273). When considering a price for a product involving more than one leg (eg gilt asset swaps), the Parties typically referred to prices articulated as yields (see, for example, B-URN-000501198, page 12; and B-URN-000501214, page 19). There was [a mathematical relationship] between a price and a yield (see the DMO's formulae for converting prices to yields (and vice versa): https://www.dmo.gov.uk/media/1sljygul/yldeqns.pdf [Accessed on 18 October 2024]).
[82] See paragraph 4.7; and B-URN-000501382, pages 16 to 18; B-URN-000501198, page 8; and B-URN-000501214, page 10.
[83] See paragraph 4.17; and B-URN-000502063, pages 61 to 62.
[84] B-URN-000501198, page 5; and B-URN-000501214, pages 3 to 4.
[85] B-URN-000501198, page 7; and B-URN-000501214, page 4.
[86] B-URN-000501214, page 6.
[87] B-URN-000501198, page 6; and B-URN-000501214, page 7.

(ii) in relation to gilt asset swaps: trading prices available via that broker[88] and details of trades after they had completed (including the product(s) and price);[89] and

(e) a client on an *ad hoc* basis.[90]

4.21 Each Party (and other dealers) would typically have interpreted the available information, including the information listed above, in order to determine its internal mid-prices (sometimes referred to as '**mid**' or '**middle**')[91] for each gilt and gilt asset swap, which were intended to represent where the Party/dealer considered it '*should be priced*', given '*current market conditions*'.[92]

4.22 The Parties each took broadly the same approach to determining their respective gilt mid-prices regardless of the context in which such mid-prices were to be applied.[93] To determine such mid-prices, in addition to and in combination with the information and approach referred to in paragraphs 4.20 and 4.21 above, the Parties will have used pricing software (also referred to as a '**pricer**').[94] A Party's pricer was proprietary or confidential[95, 96] and a Party's mid-prices for both gilts and gilt asset swaps were not ordinarily available to other GEMMs and dealers.[97]

4.23 There could be differences between two dealers' respective internal mid-prices, for example because certain information would only be disclosed to specific dealers (eg between counterparties to a trade), dealers could give different weight to

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[88] B-URN-000502072, pages 51 to 52.
[89] B-URN-000502072, pages 52 to 53.
[90] B-URN-000501214, pages 13 and 19.
[91] Morgan Stanley's responses to the Requests for Information refer to its '*internal view on price*' (see, for example, B-URN-000501214, page 13), which the CMA understands to be the same as the mid-price (for example, Morgan Stanley separately referred to its pricing methodology involving determining '*the current mid-price on the market*' (B-URN-000501214, page 10) and [MS Trader] (Morgan Stanley) referred to relying on his colleagues that [✂] to provide him the '*correct mid*' for the gilt (B-URN-000502072, page 83)).
[92] In a response to a Request for Information, Citi stated that '*pricers/internal mid-prices substantially reflect observations on current market conditions in addition to Citi's judgment about where a gilt should be priced*' (see B-URN-000501198, page 11). Similarly, [MS Trader] (Morgan Stanley) in interview described mid-prices as being '*where the market is*' (B-URN-000502072, page 84).
[93] B-URN-000501198, page 11; B-URN-000501567, page 2; and B-URN-000501214, pages 11 and 12. In addition, a Party's mid-price for a gilt asset swap derived from that Party's mid-price for the relevant gilt and a similar process undertaken for the relevant interest rate swap (B-URN-000502064, page 218; and B-URN-000501214, page 18).
[94] B-URN-000501198, pages 10 to 12; and B-URN-000501214, page 12. To change a gilt asset swap mid-price, an adjustment would need to be made to the gilt and/or interest rate swap pricer (B-URN-000502064, page 218; B-URN-000501214, page 18; and B-URN-000502072, pages 82 to 83).
[95] For example, although Citi did not specifically state whether or not it considered its pricer to be proprietary or confidential (B-URN-000501198, page 11), Morgan Stanley confirmed in its response to a Request for Information that the output from the '*price and position management system*' was proprietary (B-URN-000501214, page 14).
[96] Given the nature of each Party's equivalent gilt asset swap pricer (see footnote 93), the CMA infers that they would also be considered proprietary.
[97] B-URN-000502063, page 66; B-URN-000501214, page 14; and B-URN-000502072, page 84. Although Citi referred to pricing outputs from the gilt pricer (ie gilt mid-prices) being disclosed to clients (B-URN-000501198, page 11), given the evidence available, the CMA considers that such prices ordinarily remained confidential at least as between GEMMs and dealers.

information from certain sources or in certain contexts, and the available information changed frequently in response to market dynamics.[98]

4.24 A dealer would then determine its bid price(s) for a gilt auction, its trading price(s)[99] and/or its offer price(s) for a gilt buy-back auction[100] by reference to:[101]

(a) its mid-price for the relevant product; and

(b) the amount (if any) by which the dealer considered the relevant price ought to differ from that mid-price in order to reflect the dealer's interest in the gilt auction, trade or gilt buy-back auction in question, having had regard to a range of information including that specified in paragraph 4.20.

4.25 In determining a bid price for a gilt auction, a trading price or offer price for a gilt buy-back auction, in addition to the mid-price, a dealer would therefore also consider a range of other factors including, for example, its trading position, and the levels of current and future demand, in the relevant, and similar, products.[102]

[98] Morgan Stanley informed the CMA that '*each trader would typically have a marginally different view on where the mid-market indication was, depending on what trading activity they had knowledge of (i.e. because they had recently traded the relevant Gilt or could infer from client or Inter-dealer Broker requests)*' (B-URN-000501214, page 9). See also B-URN-000502063, page 57; and B-URN-000501198, page 11.
[99] Given the similarities in how gilts and gilt asset swaps were priced and traded (see paragraphs 4.11 and 4.22), the CMA has inferred that a dealer would typically have considered certain similar factors when determining a trading price for gilts and gilt asset swaps (except factors that relate to their obligations as GEMMs, which did not apply to gilt asset swaps).
[100] Given the similarities between the processes for gilt buy-back auctions and gilt auctions (see paragraphs 4.5 to 4.7 and 4.15 to 4.17), the CMA has inferred that a dealer would typically have considered certain similar factors when determining offer prices for gilt buy-back auctions as when determining bid prices for gilt auctions.
[101] B-URN-000501198, pages 10 to 11; B-URN-000502063, page 58; B-URN-000502064, pages 214 to 216; B-URN-000501214, pages 11 to 15; and B-URN-000502072, pages 83 to 86. [Citi Trader] (Citi) said in interview that his internal mid-price '*would be my reference for making a price to clients*' (B-URN-000502063, page 63).
[102] B-URN-000500841, pages 14, 27 and 29 to 30; B-URN-000502063, pages 83 to 86; B-URN-000502064, page 199; B-URN-000501046, pages 47 to 48; B-URN-000502072, pages 87 to 88 and 120 to 122.

5. MARKET DEFINITION

5.1 In the present case, it is not necessary to reach a definitive view on the relevant market, since it is possible, without such a definition, to determine whether there has been an infringement of the Chapter I prohibition.[103] Nor is it necessary for the CMA to set out the precise relevant market definition in order to assess the appropriate level of the penalty.[104]

5.2 The CMA has considered the two focal products for the Citi-MS Infringement (gilts and gilt asset swaps). For the reasons set out below, the CMA has treated the relevant market for the purposes of calculating the relevant turnover to establish the level of any financial penalty (see Chapter 8), as comprising bidding for gilts in gilt auctions, trading of gilts and gilt asset swaps, and offering of gilts in gilt buy-back auctions globally (the '**Relevant Market**').

5.3 In relation to the relevant product market, the CMA has concluded that gilts and gilt asset swaps (of all maturities and across all market segments[105]) formed part of the same product market, since:

(a) there is evidence of demand-side substitutability,[106] albeit that such substitutability was potentially limited and dependent on the circumstances;[107]

(b) in relation to supply-side substitutability, there were several key similarities in the conditions of competition between the Parties across gilts and gilt asset swaps, regardless of their maturity, and across market segments;[108] and

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[103] Case T-216/13 *Telefónica, SA v Commission*, EU:T:2016:369, paragraph 214; Case T-62/98 *Volkswagen AG v Commission*, EU:T:2000:180, paragraph 230; Case T-29/92 *SPO and Others v Commission*, EU:T:1995:34, paragraph 74.

[104] Argos *and Littlewoods v OFT* and *JJB Sports v OFT* [2006] EWCA Civ 1318, paragraphs 169 to 173 and 189 and *Argos and Littlewoods v OFT* [2005] CAT 13 at [178]. CMA, *Guidance as to the appropriate amount of a penalty*, CMA73, 16 December 2021 ('**Penalty Guidance**'), paragraph 2.10. Rather, the CMA must be '*satisfied on a reasonable, and properly reasoned basis, of what is the relevant product market affected by the infringement*' (Penalty Guidance, paragraph 2.10, *Argos and Littlewoods v OFT* and *JJB Sports v OFT* [2006] EWCA Civ 1318, paragraph 170). The CMA considers that this principle also applies when assessing the relevant geographic market.

[105] For the purposes of the CMA's investigation, the market segments are gilt auctions, trading and gilt buy-back auctions.

[106] Since GEMMs were involved in two-way trading (see paragraph 4.11 and footnote 47), the CMA has considered 'demand-side substitutability' from the perspective of clients (see paragraph 4.3(b)) and 'supply-side substitutability' and conditions of competition from the perspective of the Parties and their competitors.

[107] For example: (i) gilts and gilt asset swaps were interrelated (see footnote 41), but they exposed holders to different risks (see B-URN-000501373, page 7); (ii) although clients typically specified the maturity of the gilt or gilt asset swap product they were looking to trade (see B-URN-000501291, page 2; and B-URN-000501373, page 8), a client's trading strategy could have involved considerations of the liquidity and pricing of similar products (eg those with similar maturities) (see B-URN-000501373, pages 3 to 7); and (iii) there was some demand-side substitutability between gilt auctions and trading, since clients could participate indirectly in gilt auctions by placing a bid through a GEMM (see B-URN-000500841, page 3; and B-URN-000501046, page 8).

[108] For example: (i) the Parties' activities across focal products, maturities and market segments were highly interrelated (see Chapter 4) and were undertaken by traders working on the same, or very closely connected, desks (see Chapter 3; and B-URN-000502063, pages 21 to 22; and B-URN-000502072, pages 27 to 28); (ii) the Parties (as GEMMs) competed against each other for all maturities of the relevant products through similar trading processes for gilts and gilt asset

(c) the Parties have highlighted limitations in their abilities to retrieve, and provide the CMA with, income information that specifically relates to the focal products, such that the CMA's determination of relevant turnover either includes income that falls outside, or excludes income that falls within, the focal products.[109]

5.4 In relation to the relevant geographic market, the CMA has for the purposes of this Decision treated the relevant market as global (notwithstanding that the CMA's findings relate to a restriction or distortion of competition within the UK) since:

(a) although each Party's GEMM entity was designated by the DMO in the UK and registered in England and Wales (see Chapter 3), the CMA is not aware of any obligations requiring GEMMs or their counterparties to have been located in the UK; and

(b) the Parties traded with both UK and non-UK counterparties through the same processes,[110] which were not tied to any particular physical location.

swaps and auction processes in gilt auctions and gilt buy-back auctions (see Chapter 4); and (iii) each Party's closest competitors for gilts and gilt asset swaps were GEMMs (each of the Parties identified other dealers designated as GEMMs as their closest competitors for gilts and gilt asset swaps (see B-URN-000501291, pages 2 to 3 (although Citi did not specify its top ten competitors, it only refers to GEMMs in this response); and B-URN-000501373, pages 9 to 10 (Morgan Stanley applied a proxy of interest rate swap trade data in order to prepare its list of competitors in relation to gilt asset swaps)).

[109] See Chapter 8.

[110] See footnote 108. The customer information provided by the Parties identified both UK and non-UK customers, although neither included information about gilt asset swaps specifically (see B-URN-000501315; and B-URN-000501373, pages 10 to 12).

6. THE LAW

6.1 This Chapter sets out the key legal principles applicable to the CMA's assessment of the Citi-MS Infringement.[111]

A. The Chapter I prohibition

6.2 The CMA's findings are made by reference to the Chapter I prohibition which prohibits (among other matters) agreements between undertakings and concerted practices which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK,[112] unless they are excluded under, or exempt in accordance with, the Act.[113]

B. Undertakings

6.3 The concept of an 'undertaking' covers every entity engaged in economic activity, regardless of its legal status and the way in which it is financed.[114] An entity is engaged in '*economic activity*' where it conducts an activity '… *of an industrial or commercial nature by offering goods and services on the market* …'.[115]

C. Concerted practices

6.4 A concerted practice is '*a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition*'.[116]

6.5 Each undertaking must determine independently the policy that it intends to adopt on the market.[117] This principle precludes '*any direct or indirect contact'* between undertakings of which *'the object or effect … is either to influence the conduct on*

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[111] Following the UK's exit from the European Union (EU), the UK no longer has jurisdiction to apply Article 101 of the Treaty on the Functioning of the European Union (European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020). However, EU competition law principles (and European Commission decisions and statements) which predate the UK's exit from the EU remain relevant to the extent provided by section 60A of the Act.
[112] References to the UK are to the whole or part of the UK (section 2(7) of the Act).
[113] Section 2(1) of the Act, as applicable in relation to (among other matters) agreements between undertakings made, and concerted practices engaged in, before the coming into force (on 1 January 2025) of amendments made to section 2 of the Act (section 119 of the Digital Markets, Competition and Consumers Act 2024 and the Digital Markets, Competition and Consumers Act 2024 (Commencement No. 1 and Savings and Transitional Provisions) Regulations 2024, S.I. 2024/1226.
[114] C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraph 21.
[115] C-118/85 *Commission v Italian Republic*, EU:C:1987:283, paragraph 7.
[116] C-48/69 *ICI v Commission*, EU:C:1972:70, paragraph 64. See also C-8/08 *T-Mobile Netherlands and Others* EU:C:2009:343 ('*T-Mobile*'), paragraph 26 and *JJB Sports plc v Office of Fair Trading* [2004] CAT 17 at [151]. An agreement requires '*a concurrence of wills between at least two parties, the form in which it is manifested being unimportant, so long as it constitutes the faithful expression of the parties' intention*' (Cases T-44/02 etc *Dresdner Bank v Commission*, EU:T:2006:271, paragraph 55, citing T-41/96 *Bayer v Commission,* EU:T:2000:242, paragraph 69 and T-7/89 *Hercules Chemicals v Commission*, EU:T:1991:75, paragraph 256).
[117] C-40/73 *Suiker Unie v Commission*, EU:C:1975:174 ('*Suiker Unie'*), paragraph 173.

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'.[118]

6.6 It is in this context that the caselaw has emphasised that, in a properly functioning competitive market, competitors should not know how their competitors are likely to behave. A reduction of uncertainty is therefore a key part of the concept of a concerted practice.[119]

6.7 Information exchange can constitute a concerted practice. A situation in which only one undertaking discloses its future intentions or conduct to its competitor can constitute a concerted practice where '*the latter requests it or, at the very least, accepts it*'.[120] Therefore, the mere receipt of information is sufficient to give rise to a concerted practice.[121] An exchange of information on a single occasion can give rise to a concerted practice.[122]

6.8 The mere receipt by an undertaking of price information, including pricing intentions, from a competitor is also capable of removing, or at least reducing, strategic uncertainty about future conduct on the market in question.[123] Information may be commercially sensitive even if it is capable of being obtained from other sources or inaccurate.[124]

6.9 Where an undertaking participating in a concerted practice remains active on the market, there is a presumption that it will take account of information exchanged with its competitors when determining its conduct on the market.[125]

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[118] *Suiker Unie*, paragraph 174. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4 at [206(v)]; *Balmoral Tanks Limited v CMA* [2017] CAT 23 at [38] and *T-Mobile*, paragraph 33.
[119] C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184 ('*Dole*'), paragraph 121; *T-Mobile*, paragraph 35; C-194/99 P *Thyssen Stahl v Commission*, EU:C:2003:527, paragraph 81; Case C-7/95 *John Deere Limited v Commission*, EU:C:1998:256, paragraph 90; Joined cases T-25/95 etc. *Cimenteries CBR SA and Others v Commission of the European Communities*, EU:T:2000:77, paragraph 1852, and *Balmoral Tanks Limited v CMA* [2017] CAT 23 at [39] (upheld on appeal in *Balmoral Tanks Ltd & Anor v CMA* [2019] EWCA Civ 162).
[120] Joined cases T-25/95 etc. *Cimenteries CBR SA and Others v Commission of the European Communities,* EU:T:2000:77, paragraph 1849; *Balmoral Tanks Limited v CMA* [2017] CAT 23 at [39]. The Court of Justice has held that this principle also applies in situations where a party receives information via email, rather in the context of a meeting: *Eturas UAB and Others v Lietuvos Respublikos konkurencijos taryba,* EU:C:2016:42, paragraph 50.
[121] *JJB Sports plc and Allsports Limited v OFT* [2004] CAT 17 at [159] and *Argos Limited and Littlewoods Limited v OFT* [2004] CAT 24 at [155] citing Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle a.o v Commission,* EU:T:2001:185 paragraphs 54-58 ('*Tate & Lyle*'), and T-1/89 *Rhone-Poulence v Commission*, EU:T:1991:56, paragraphs 122-123.
[122] *Lexon (UK) Limited v CMA* [2021] CAT 5 at [187(8)] citing *T-Mobile*, paragraph 59, *Balmoral Tanks Limited v CMA* [2017] CAT 23 at [46] (upheld on appeal to the Court of Appeal in *Balmoral Tanks Ltd & Anor v CMA* [2019] EWCA Civ 16, paragraph 18).
[123] T-240/17, *Campine NV and Others v Commission*, EU:T:2019:778, ('*Campine*'), paragraph 186.
[124] Joined cases C-204/00 P etc *Aalborg Portland and Others v Commission,* EU:C:2004:6, paragraphs 281-282 ('*Aalborg*'); *Dole,* paragraph 295; T-762/14 *Koninklijke Philips NV v Commission*, EU:T:2016:738 ('*Philips*'); paragraph 91; *Tate & Lyle*, paragraph 60; and, *Lexon (UK) Limited v CMA* [2021] CAT 5 at [187(7)] citing *Balmoral Tanks Limited v CMA* [2017] CAT 23 at [43] and [122].
[125] Case C-49/92 P *Anic Partecipazioni SpA v Commission*, EU:C:1999:356, paragraph 121. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4 at [206(x)]. The burden is on the parties concerned to adduce evidence to rebut this presumption: T-105/17 *HSBC Holdings plc a.o v Commission,* EU:T:2019:675 ('*HSBC'*) paragraph 67 referring to *T-Mobile*, paragraph 51, and *Dole*, paragraph 127. Where an undertaking receives strategic data from a competitor it will be presumed to have accepted the information and adapted its market conduct accordingly unless it rebuts that

D. Restriction of competition by object

D.I Key principles

6.10 The Chapter I prohibition prohibits (among other matters) concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition within the UK. The term 'object' in this regard refers to the 'aim', 'purpose' or 'objective' of the coordination between the undertakings.[126]

6.11 The caselaw has held that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects.[127] That caselaw arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.[128]

6.12 When determining whether a concerted practice reveals a sufficient degree of harm such as to constitute a restriction of competition by object, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part.[129] When determining that context, it is also necessary to consider the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.[130]

6.13 A concerted practice may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim.[131]

D.II Information exchange as a 'by object' infringement

6.14 It is settled law that the exchange of information between competitors is liable to be incompatible with competition law if '*it reduced or removed the degree of*

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presumption, for example by publicly distancing itself through responding with a clear statement that it does not wish to receive such data, or reporting it to the administrative authorities – see CMA Guidance on Horizontal Agreements, August 2023 at paragraph 8.62 and the caselaw cited.

[126] See, for example, respectively: Case 56/64 *Consten & Grundig v Commission*, EU:C:1966:41, at 343; Case 96/82 *IAZ and Others v Commission*, EU:C:1983:310, paragraph 25; C-209/07 *Competition Authority v Beef Industry Development Society*, EU:C:2008:643, paragraphs 32-33.

[127] C-67/13 P *Groupement des Cartes Bancaires v Commission* ('*Cartes Bancaires'*) EU:C:2014:2204, paragraphs 49 and 57 and the caselaw cited; *HSBC*, paragraph 53. *Ping Europe Ltd v CMA* [2020] EWCA Civ 13 at paragraph 37.

[128] *Cartes Bancaires*, paragraph 50 and the caselaw cited; *HSBC*, paragraph 54; *Ping Europe Ltd v CMA* [2020] EWCA Civ 13 at paragraph 37.

[129] *Carte Bancaires*, paragraph 53, citing C-32/11 *Allianz Hungaria v Commission*, EU:C:2013:160, paragraph 36 and the caselaw cited. See also C-373/14 P *Toshiba v Commission,* EU:C:2016:26, paragraph 27.

[130] *Cartes Bancaires*, paragraph 53.

[131] See, for example, joined cases 96-102, 104, 105, 108 and 110/82 *NV IAZ International Belgium and others v Commission of the European Communities*, EU:C:1983:310, paragraphs 22-25; C-209/07 *Competition Authority v Beef Industry Development Society and Barry Brothers*, EU:C:2008:643, paragraph 21. The principles arising from the caselaw in relation to agreements which are cited in this Decision also apply in relation to the concerted practice that is the subject of this Decision.

uncertainty as to the operation of the market in question, with the result that competition between undertakings was restricted'.[132]

6.15 In particular, the caselaw has held that an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anti-competitive object.[133]

6.16 The caselaw has also held that exchanges of information on factors relevant to pricing amount to a restriction of competition by object.[134] With specific regard to certain financial services products, this includes information relating to mid-prices.[135]

6.17 The Competition Appeal Tribunal has stated that '*[t]he strictness of the law in this regard reflects the fact that it is hard to think of any legitimate reason why competitors should sit together and discuss prices at all*'.[136] It has also held that unilateral disclosures of pricing information can infringe the Chapter I prohibition: *'[t]he fact of having attended a private meeting at which prices were discussed and pricing intentions disclosed, even unilaterally, is in itself a breach of the Chapter I prohibition, which strictly precludes any direct or indirect contact between competitors having, as its object or effect, either to influence future conduct in the market or to disclose future intentions*'.[137]

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[132] *HSBC*, paragraph 61 and the caselaw cited. *Balmoral Tanks Limited v CMA* [2019] EWCA Civ 162 at paragraph 17 and the caselaw cited; and *Lexon (UK) Limited v CMA* [2021] CAT 5 at [187(3)].
[133] *HSBC*, paragraph 62 citing *Dole*, paragraph 122; and *T-Mobile*, paragraph 41; and *Lexon (UK) Limited v CMA* [2021] CAT 5 at [187(4)].
[134] *Balmoral Tanks Limited v CMA* [2017] CAT 23, upheld on appeal in *Balmoral Tanks Ltd & Anor v CMA* [2019] EWCA Civ 162; *Lexon (UK) Ltd v CMA* [2021] CAT 5; *Dole*; and *Philips*, upheld on appeal to the Court of Justice in C-98/17 P *Koninklijke Philips NV v Commission*, EU:C:2018:774.
[135] *HSBC*, paragraphs 125 to 161. The General Court held, in the context of that case, that '*information relating to mids is relevant for pricing in the EIRD sector*' (paragraph 139) and that '*an exchange between competitors on a factor that is relevant for pricing and is not publicly available is all the more sensitive in terms of competition where it takes place between traders acting as 'market makers', in the light of the importance of such traders on the EIRD market*'. It continued that '*market makers are generally and continuously active on the EIRD market and therefore enter into a larger number of transactions than other market participants. From the point of view of competition on the market, it is particularly fundamental that prices be determined independently*' (paragraph 145).
On appeal, the Court of Justice upheld the General Court's finding on the merits of characterising the exchanges on EIRD mids as a restriction by object (C-883/19 P *HSBC Holdings and Others v Commission*, EU:C:2023:11, paragraphs 193 to 206). It is instructive to note also that the Court of Justice held that, even if it were established that a reduction in uncertainty as to the level of the market 'mid' enables traders to offer prices which are more favourable to those customers, '*such an assertion is insufficient to give rise to reasonable doubt as to whether the exchanges in question are sufficiently harmful to competition*' (paragraphs 198 and 199) and that in that case '*the HSBC companies' argument that those exchanges made it possible to offer prices which were more favourable to customers of the banks concerned does not give rise to any reasonable doubt as to the harmful nature of those exchanges with regard to competition on the market concerned*' (paragraph 205).
See also the Opinion of Advocate General Emiliou delivered on 12 May 2022 in Case C-883/19 P *HSBC Holdings plc a.o v Commission* EU:C:2022:384 at paragraphs 164 to 170, in which Advocate General Emiliou provided his opinion to dismiss the appellants' plea alleging a pro-competitive nature of the exchange of information on mid-prices in relation to the EIRD market.
[136] *Balmoral Tanks Limited v CMA* [2017] CAT 23, at [41].
[137] *JJB Sports v Office of Fair Trading* [2004] CAT 17, at [873] (cited with approval by the Competition Appeal Tribunal in *Balmoral Tanks Limited v CMA* [2017] CAT 23, at [41]).

D.III Subjective intention

6.18 Intention is not a necessary factor in determining whether a concerted practice is restrictive of competition.[138] However, there is nothing prohibiting a competition authority from taking the parties' intentions into account.[139]

D.IV Implementation

6.19 It is sufficient that a concerted practice is capable, having regard to the specific legal and economic context, of resulting in the prevention, restriction or distortion of competition.[140] The fact that a concerted practice is not implemented is not sufficient to preclude the existence of an infringement.[141] However, evidence of the parties' conduct demonstrating that the concerted practice was implemented may be taken into account.[142]

E. The burden and standard of proof

6.20 The burden of proving an infringement of the Chapter I prohibition falls on the CMA.[143] The standard of proof is the civil standard, that is the balance of probabilities.[144] The burden of proof does not preclude the CMA from relying, where appropriate, on inferences or evidential presumptions.[145]

6.21 The courts have confirmed that '*the evidence must be assessed not in isolation, but as a whole*'[146] and that '*the evidence must be assessed in its entirety, taking into account all relevant circumstances of fact*'.[147]

F. Single infringement

6.22 The caselaw has established several criteria as relevant for determining whether an infringement is single in nature, as distinct from constituting separate

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[138] *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4 at [250]. Nor is it relevant that the parties may not have considered the anti-competitive nature of their conduct (ibid. at [253]).
[139] *Cartes Bancaires*, paragraph 54 and the caselaw cited.
[140] *Philips*, paragraph 63 citing *T-380/10 Wabco Europe and Others v commission,* EU:T:2013:449, paragraph 78 and the caselaw cited (upheld on appeal to the Court of Justice in C-98/17 P *Koninklijke Philips NV v Commission*, EU:C:2018:774).
[141] Joined cases T-25/95 etc *Cimenteries CBR v Commission*, EU:T:2000:77, paragraph 2995 (see also paragraph 1389); and T-141/89 *Tréfileurope v Commission*, EU:T:1995:62, paragraph 60.
[142] *Cityhook Limited v OFT* [2007] CAT 18 at [268]. Joined cases 96/82 etc. *NV IAZ v Commission*, EU:C:1983:310, paragraph 23.
[143] *Tesco Stores Limited and Others v Office of Fair Trading* [2012] CAT 31 ('*Tesco*') at [88].
[144] *Ibid.*
[145] *Napp Pharmaceutical Holdings Ltd and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 at [110]; *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17 at [204]. See also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24 at [164] to [166]; and, *Aalborg*, paragraph 57, which states '*[i]n most cases, the existence of an anticompetitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules*'.
[146] T-56/99 *Marlines v Commission*, EU:T:2003:333, paragraph 28. See also C-48/69 *ICI v Commission*, EU:C:1972:70, paragraph 68 cited in *Tesco,* at [46].
[147] T-141/94 *Thyssen Stahl v Commission*, EU:T:1999:48, paragraph 175.

infringements. These criteria include: the identical nature of the objective of the practice(s) at issue; the identical nature of the goods or services concerned; and the identical nature of the undertakings which participated in the infringement.[148] Whether the natural persons involved on behalf of those undertakings are identical is also a factor that may be taken into account.[149]

6.23 Depending on the circumstances, a single infringement may be continuous or repeated. The way in which an infringement is committed determines whether it may be categorised as a single, continuous infringement or a single, repeated infringement.[150]

G. Appreciable restriction of competition

6.24 A concerted practice will not infringe the Chapter I prohibition if its impact on competition is not appreciable.[151] A concerted practice that has an anti-competitive object constitutes an appreciable restriction on competition by its nature and independently of any concrete effect that it may have.[152]

H. Effect on trade within the UK

6.25 The Competition Appeal Tribunal has held that the effect on trade test is a purely jurisdictional test to demarcate the boundary line between the application of EU competition law and national competition law, and that there is no requirement that the effect on trade within the UK should be appreciable.[153]

I. Exemptions and exclusions

6.26 The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of Schedules 1 to 3 (section 3), or is exempt in accordance with sections 6, 9 or 10 of the Act.[154]

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[148] *Campine*, paragraph 238 and the caselaw cited.
[149] *Campine*, paragraph 238 and the caselaw cited.
[150] *Campine*, paragraph 269 and the caselaw cited. If conduct constituting a single infringement is interrupted, the infringement cannot be classified as continuous, but it may be classified as a single, repeated infringement provided a single objective is pursued both before and after an interruption. If the infringement is single and repeated, a penalty may not be imposed for the period of the interruption. (T-147/09 *Trelleborg v Commission*, paragraphs 88 and 89; *Campine*, paragraph 273 and the caselaw cited).
[151] Case 5/69, *Franz Völk v S.P.R.L. Ets J. Vervaecke*, EU:C:1969:35. See also *North Midland Construction plc v OFT* [2011] CAT 14 at [45] and [52ff] and C-226/11 *Expedia Inc. v Autorité de la concurrence and Others*, EU:C:2012:795 ('*Expedia*'), paragraph 16.
[152] *Expedia*, paragraph 37; and European Commission Notice on agreements of minor importance [2014] OJ C291/01, paragraphs 2 and 3. See also *Carewatch Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch), paragraph 149.
[153] *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11 at [459] and [460] and the caselaw cited. The Competition Appeal Tribunal considered this point also in *North Midland Construction plc v. OFT* [2011] CAT 14 at [48] to [51] and [62], but considered that it was not necessary to reach a conclusion.
[154] Section 3 of the Act sets out the following exclusions: Schedule 1 covers mergers and concentrations; Schedule 2 covers competition scrutiny under other enactments; and Schedule 3 covers general exclusions. Section 6 of the Act

J. Attribution of liability

J.I Identification of the appropriate legal entity

6.27 For each Party which the CMA finds has infringed the Act, the CMA has first identified the legal entity directly involved in the Citi-MS Infringement. It has then determined whether liability for the Citi-MS Infringement should also be attributed to another legal entity forming part of the same undertaking, in which case each legal entity's liability will be joint and several.

J.II Direct personal liability

6.28 Liability for an infringement of the Chapter I prohibition rests with the legal person(s) responsible for the operation of the undertaking at the time of the infringement (the 'personal responsibility' principle).[155]

J.III Indirect personal liability

6.29 A parent company may be held jointly and severally liable for an infringement committed by its subsidiary – without the parent's knowledge or involvement[156] – where, as a matter of economic reality,[157] it exercised decisive influence over its subsidiary during its ownership period.[158] In such circumstances, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking.[159] This assessment turns not only on intervention in, or supervision of, the subsidiary's commercial conduct in the strict sense, but on the economic, organisational and legal links between the parent and subsidiary, which may be informal.[160]

6.30 Where a parent company holds, whether directly or indirectly,[161] 100% (or nearly 100%)[162] of the shares or voting rights[163] in a subsidiary, then the parent company is able to exercise decisive influence over the subsidiary and there is a rebuttable

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provides for block exemptions from the Chapter I prohibition. Section 9 sets out the cumulative criteria for an individual exemption. Section 10 of the Act provides for retained exemptions from the Chapter I prohibition.

[155] T-6/89, *Enichem Anic SpA v Commission*, EU:T:1991:74, paragraphs 236-237.

[156] C-90/09 P *General Química SA v Commission*, EU:C:2011:21, paragraph 102. See also C-97/08 *Akzo Nobel v Commission*, EU:C:2009:536 ('*Akzo*') paragraphs 59 and 77.

[157] C-293/13 P *Del Monte v Commission*, EU:C:2015:416, paragraphs 75-78.

[158] *Akzo*, paragraph 60; C-179/12 P *Dow v Commission,* EU:C:2013:605; *Allergan Plc v CMA* [2023] CAT 56 at [172].

[159] *Akzo*, paragraph 59; *Sainsbury's Supermarkets Ltd v MasterCard* [2016] CAT 11, at [363]; *Allergan Plc v Competition and Markets Authority* [2023] CAT 56 at [163] to [165].

[160] C-440/11 *Commission v Stichting Administratiekantoor Portielje and Gosselin Group NV,* EU:C:2013:514, paragraphs 66 to 68; C-595/18 P *Goldman Sachs v Commission*, EU:C:2021:73, paragraphs 93-95.

[161] C-508/11 P *Eni Spa v Commission*, EU:C:2013:289, paragraph 48; C-595/18 P, *Goldman Sachs v Commission*, EU:C:2021:73, paragraphs 32-33.

[162] T-217/06 *Arkema France, Altuglas International SA, Altumax Europe SAS v Commission*, EU:T:2011:251, paragraph 53.

[163] T-419/14 *Goldman Sachs v Commission*, EU:T:2018:445, paragraphs 50 to 52 and 64, upheld in C-595/18P *Goldman Sachs v Commission*, EU:C:2021:73, paragraphs 35-36.

presumption in law that the parent did in fact exercise decisive influence over the commercial policy of the subsidiary.[164]

[164] *Akzo* paragraphs 60 and 61, T-24/05 *Alliance One & Others v Commission*, EU:T:2010:453, paragraphs 126-130.

7. ASSESSMENT OF THE CITI-MS INFRINGEMENT

A. Summary

7.1 For the reasons set out in this Chapter, the CMA has found that in the Citi-MS Relevant Period, Citi and Morgan Stanley infringed the Chapter I prohibition by participating in a concerted practice which had as its object the restriction or distortion of competition within the UK.

7.2 Specifically, the CMA has found that Citi and Morgan Stanley participated in a single and repeated infringement on specific dates[165] (referred to collectively as the '**Citi-MS Specific Dates**') in the Citi-MS Relevant Period in the form of a concerted practice which comprised the disclosure by one or both of Citi and Morgan Stanley to the other of pricing information (ie as applicable, current mid-price, future trading price as well as the parameters of the intended, or likely, bid price and offer price) in Bloomberg chats in relation to (as applicable) the bidding for a certain gilt in the context of one gilt auction, the trading of a certain gilt and a certain gilt asset swap and the offering of a certain gilt in the context of one gilt buy-back auction[166] (collectively the '**Citi-MS Communications**') which in the specific circumstances of each disclosure, involved the disclosure of commercially sensitive information (the '**Citi-MS Infringement**').[167]

7.3 The objective of the concerted practice was to assist one or both of the Parties in formulating and executing aspects of their respective bidding, trading and offering strategies in relation to (as applicable) the bidding for a certain gilt in the context of one gilt auction, the trading of a certain gilt and a certain gilt asset swap and the offering of a certain gilt in the context of one gilt buy-back auction.[168]

B. Assessment of evidence

7.4 In its assessment of the evidence, the CMA has taken into account its historical and technical nature and has generally placed greater weight on the natural reading of the contemporaneous documentary evidence (namely the Bloomberg chats[169]) in their proper context.

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[165] 6 December 2011, 13 December 2011 and 15 February 2012.
[166] See further paragraphs 7.9, 7.16 and 7.19.
[167] The CMA's findings in this Decision are made in respect of the conduct set out in this Chapter in relation to the Citi-MS Infringement. The CMA has also indicated **in bold** at paragraphs 7.9, 7.16 and 7.19 and at Annex B the specific disclosures which it has found to comprise the infringing disclosures in the Citi-MS Infringement.
[168] See further paragraphs 7.28 to 7.30.
[169] The chats comprised messages sent in a persistent bilateral Bloomberg chatroom (see Annex B). Such messages included technical, sector-specific jargon, abbreviations and shorthand. Discussions were often fast-paced (resulting in typographical errors and overlapping communications) and took place within the context of a range of available information (see Chapter 4), which the Key Individuals referenced on occasion in their communications.

7.5 In their respective interviews, the Key Individuals were able to explain the individual disclosures in the relevant Bloomberg chats put to them, including their relevant context, notwithstanding the passage of time since the Citi-MS Relevant Period and any lack of recall was mainly isolated to specific detailed points. At certain times and in relation to certain instances, the position taken by the Key Individuals was that the information disclosed was of minimal value. The CMA takes a different view.[170]

C. Undertakings

7.6 The CMA has found that each of Citi and Morgan Stanley constituted an undertaking for the purposes of the Chapter I prohibition during the Citi-MS Relevant Period, since each of them was engaged in economic activity which included bidding for gilts in gilt auctions, trading gilts and gilt asset swaps and offering gilts in gilt buy-back auctions. Each of Citi and Morgan Stanley continues to engage in economic activity.[171]

D. The Citi-MS Conduct as a concerted practice

7.7 The CMA has found that the disclosures on the Citi-MS Specific Dates were made in the context of variously:

(a) One gilt auction conducted by the DMO: both of Citi and Morgan Stanley disclosed to the other commercially sensitive information in relation to the bidding for a certain gilt in one gilt auction ('**Gilt Auction Conduct**');

(b) Trading: Citi disclosed to Morgan Stanley commercially sensitive information in relation to the trading of a certain gilt and a certain gilt asset swap ('**Trading Conduct**'); and

(c) One gilt buy-back auction conducted by the Bank of England: Citi disclosed to Morgan Stanley commercially sensitive information in relation to the offering a certain gilt in one buy-back auction ('**Gilt Buy-Back Auction Conduct**'),

(collectively the '**Citi-MS Conduct**').

7.8 In reaching its finding that the Citi-MS Conduct constituted a concerted practice, the CMA has relied on the following evidence in the Citi-MS Relevant Period:

[170] The CMA's view is based, in part, on the fact that such statements are internally inconsistent with other statements made by the Key Individual during the interview and/or contradicted by the contemporaneous evidence (see, for example, footnote 184).
[171] See paragraphs 3.2 to 3.4 and 3.8 to 3.10.

(a) That the Parties were competitors in (variously) bidding for gilts in gilt auctions, trading gilts and gilt asset swaps and offering gilts in gilt buy-back auctions in the Citi-MS Relevant Period (for example, see paragraphs 4.8, 4.13 and 4.18).[172]

(b) That the disclosures of certain conduct of a competitor in the context of a certain gilt auction, trading of a certain gilt and a certain gilt asset swap and a certain gilt buy-back auction constituted commercially sensitive information (see paragraphs 7.9 to 7.22 and set out more fully in Annex B).

(c) That the Parties remained active on the Relevant Market in the Citi-MS Relevant Period and that there is no evidence that the Key Individuals expressed any reservation or objection to, or sought to publicly distance themselves from, the disclosures of commercially sensitive information in relation to (as applicable) the gilt auction in question, the trading of a certain gilt and a certain gilt asset swap in question and the gilt buy-back auction in question (see further paragraph 7.23 below).

D.I Gilt Auction Conduct

7.9 The Citi-MS Conduct as it related to the Gilt Auction Conduct consisted of one or both of Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) disclosing to the other commercially sensitive information on its pricing (ie current mid-price and parameters of his intended, or likely, bid price) in the context of one gilt auction. The disclosures took place, in each case, during the relevant gilt auction window. In summary, and as set out more fully at Annex B, the disclosures occurred in the following communication, namely Bloomberg chat **Citi-MS, A-URN-000020** on 6 December 2011 (the '**Citi-MS Gilt Auction Communication**'):

(a) During the tap gilt auction of the 4.25% 2040 gilt, in response to Morgan Stanley ([MS Trader])'s request for Citi ([Citi Trader])'s view on the price to bid to be successful in the gilt auction ('*i guess today goes well' 'though i wonder how much u have to pay' 'last auction tailed, do you think u can get any below or too well wanted/' '?'* at 09:37:55 to 09:38:12), Citi ([Citi Trader]) stated that he thought that the gilt auction would close above the mid-price[173] and, approximately 20 minutes before the end of the gilt auction window, disclosed his **current mid-price** for the auction gilt and the **parameters of his** intended, or likely, **bid price** ('***i'm spotting a 117.8 mid right now. i***

[172] Though [Citi Trader] (Citi) was primarily involved in gilts and [MS Trader] (Morgan Stanley) was primarily a market maker for interest rate swaps and gilt asset swaps, the evidence shows that both traders participated in gilt auctions, the trading of gilts and gilt asset swaps and gilt buy-back auctions during the Citi-MS Relevant Period (see B-URN-000502063, pages 17 and 71 to 72; and B-URN-000502072, page 17). See **Citi-MS, A-URN-000020** on 6 December 2011 and **Citi-MS, A-URN-000025** on 13 December 2011. The evidence shows that in the Citi-MS Relevant Period, the Parties participated in the same gilt auction, discussed the same or similar trades and participated in the same gilt buy-back auction.

[173] Citi ([Citi Trader]): '*it gonna come thru mate*' at 09:40:36.

wud bid 89-91, I thibnk [think]' at 10:08:57). Morgan Stanley ([MS Trader]) then stated that he shared the same view ('***yeah me thinks so***' at 10:09:15), thereby effectively disclosing the **parameters of his** intended, or likely, **bid price**.

7.10 In normal conditions of competition, each Party would have had to determine its pricing strategy independently of the other and in the context of uncertainty as to the mid-prices and the parameters of the intended, or likely, bid prices of other GEMMs (see paragraphs 4.6 and 4.22):

(a) The information on the parameters of his intended, or likely, bid price was confidential to the disclosing Party. It was not in the public domain or otherwise available to the recipient Party at the time it was disclosed.[174]

(b) Although some information relating to pricing was available from a number of sources (as set out in paragraph 4.20), the CMA considers that this does not undermine its view that the information disclosed on the current mid-price in the specific context of the Citi-MS Gilt Auction Communication was confidential.[175, 176]

7.11 Moreover, the information disclosed on the current mid-price and the parameters of the intended, or likely, bid price was strategic in nature, including in that it provided insight into specific aspects of the disclosing Party's pricing strategy for a particular gilt auction in which both Parties were participating and/or was capable of influencing specific aspects of the recipient Party's bidding strategies including pricing for the gilt auction in question. In reaching this conclusion, the CMA has taken into account the nature of the information disclosed, the content and context of the Citi-MS Gilt Auction Communication and, where relevant, evidence from the Parties, the Key Individuals and third parties noting that:

(a) With regard to the parameters of the intended, or likely bid price, a key principle of the gilt auction process was that the Parties bid blindly against one another and other GEMMs.[177]

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[174] See paragraph 4.6, above. See also B-URN-000501382, page 8; B-URN-000500841, page 28; and B-URN-000501046, page 49.
[175] As set out in paragraph 4.22, a Party's internal mid-price for a gilt (or a gilt asset swap) was proprietary pricing information that was not available to other dealers.
[176] Notwithstanding [MS Trader] (Morgan Stanley)'s evidence in interview (see B-URN-000502073, page 72), the CMA infers that Citi ([Citi Trader]) was in fact referring to his internal mid-price ('*117.8*') and not, for instance, a composite mid-price that would have been available to other dealers. Consistent with the CMA's view that Citi ([Citi Trader]) was referring to his internal mid-price, [Citi Trader] (Citi)'s evidence in interview was that he was referring to his mid-price for the auction gilt, rather than eg a composite mid-price (see B-URN-000502064, page 130). That evidence is corroborated by [Citi Trader] (Citi)'s later explanation in the context of the same Bloomberg chat that the term '*spotting*' generally referred to where '*I think my mid is*' (see B-URN-000502064, page 131).
[177] See paragraph 4.6.

(b) With regard to the current mid-price, this was a pricing reference point in how that Party determined its bid price for a gilt auction.[178]

(c) The information on the parameters of the intended, or likely bid price and current mid-price that was disclosed was specific to the gilt auction in question and was expressed in such a way that the recipient Party would have understood that the information disclosed related (as applicable) to the disclosing Party's current mid-price or the intended, or likely, bid prices in relation to the gilt auction in question.

(d) The disclosures were made during the gilt auction window, being at a point in time at which the Parties were able to submit, amend or withdraw their bids up to, or very close to, the close of that gilt auction.[179, 180]

(e) The disclosures provided a form of reassurance, which was liable to give one or both of the Parties more confidence when formulating and executing their bidding strategies (including in relation to pricing). For example, [MS Trader] (Morgan Stanley) said in interview that he would '*try to bounce ideas off someone as a sounding board*' (also referred to as a '*sounding of ideas*')[181, 182] and [Citi Trader] (Citi) said in interview that when determining his strategies he would look at a wide variety of things and among others he would '*sometimes discuss them with other market participants*'.[183, 184]

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[178] See paragraphs 4.21 to 4.25.
[179] See paragraph 4.6.
[180] In this context, the CMA has not found it necessary to reach a view on whether [MS Trader] (Morgan Stanley) submitted a bid in this gilt auction. [MS Trader] (Morgan Stanley) disclosed and received information relevant to Morgan Stanley's bidding strategies, on pricing, in that gilt auction, and there is no evidence that [MS Trader] (Morgan Stanley) expressed any reservations or objections to the disclosures to him of commercially sensitive information or that he sought to publicly distance himself from those disclosures.
[181] [MS Trader] (Morgan Stanley) said in interview that '*certainly in a proprietary atmosphere you'd try to bounce ideas off someone as a sounding board*'. He also said that in a broad sense, for example, if he thought the stock market was going up and someone told him their thoughts on that '*I'd listen to them, and I'd decide whether they're -- I think their reasoning is right or wrong and that might give me a stronger conviction of what I originally thought, or it might make me hesitate, but it's -- it's just a, a sounding of ideas, I think*' (see B-URN-000502073, page 240).
[182] For example, in relation to Bloomberg chat **Citi-MS, A-URN-000025**, Morgan Stanley ([MS Trader]) asked for Citi ([Citi Trader])'s views on the gilt buy-back auction *('i think there is 500mm total out there in teh st to be sold today… but after that i'm not sure ya know?*' at 13:48:32 to 13:48:40), to which Citi responded with his view ('*ah….well, i am not thinking uncovered, but super high offers get lifted'* at 13:49:04).
[183] [Citi Trader] (Citi) said in interview: *'[…] and in respect of my strategies, er, I obviously look at a wide variety of things when determining my strategy, and would sometimes -- er, would often discuss them internally with my colleagues at Citi, er, would discuss them, er, oftentimes with clients, and sometimes discuss them with other market participants'* (B-URN-000502064, page 198).
[184] The CMA has reached this conclusion notwithstanding that [Citi Trader] (Citi) said in interview that the disclosures would have limited value because he would not normally have submitted his bid until 90 seconds prior to the close of the gilt auction and that information from one particular GEMM would '*not really*' factor into his actions as it related to '*1 of 20*' GEMMs (see B-URN-000502063, page 96; see also page 91; B-URN-000502064, page 141; and B-URN-000502072, pages 126 and 127), noting in particular that: (i) [MS Trader] (Morgan Stanley) requested this information during the gilt auction (at 09:37:55 to 09:38:12); and (ii) [Citi Trader] (Citi)'s evidence on this point is inconsistent as he acknowledged that he would have taken such information into account as a '*bit of a sense check*' and that *'[i]t would certainly be something that I would use to, er, challenge my own thoughts*' (see B-URN-000502063, page 96).

Conclusion – commercially sensitive information disclosed in relation to Gilt Auction Conduct

7.12 In view of the above, in relation to the Gilt Auction Conduct, the CMA has concluded that the information disclosed by each Party in the Citi-MS Gilt Auction Communication on its pricing (ie as applicable, current mid-price and the parameters of his intended, or likely, bid price) was commercially sensitive information the disclosure of which removed, or at least reduced, uncertainty as to the disclosing Party's pricing strategy in relation to the gilt auction in question and/or was capable of influencing aspects of the recipient Party's bidding strategy (including pricing) in relation to that gilt auction.

D.II Trading Conduct

7.13 The Citi-MS Conduct as it related to Trading Conduct consisted of Citi ([Citi Trader]) disclosing to Morgan Stanley ([MS Trader]) commercially sensitive information on its pricing of a certain gilt and a certain gilt asset swap, specifically, its current mid-price and future trading price. That information was both **confidential** and **strategic** in nature.

7.14 The information on pricing (ie as applicable, the current mid-price and future trading price) disclosed in the Citi-MS Trading Communications (as defined below) was in each case confidential to the disclosing Party. It was not in the public domain or otherwise ordinarily available to the recipient Party at the time it was disclosed. Although some information on pricing was available from a number of sources (as set out in paragraph 4.20), the CMA considers that this does not undermine its view that the information disclosed on current internal mid-prices and future trading prices in the specific context of the Citi-MS Trading Communications (as defined below) was confidential. In normal conditions of competition, each Party would have had to determine its pricing strategy independently of the other and in the context of uncertainty as to the current mid-prices or future trading prices of others (see paragraphs 4.13, 4.19, 4.22 and 4.23).[185]

7.15 Moreover, the information disclosed by the disclosing Party on pricing (ie as applicable, the current mid-price and future trading price) in the Citi-MS Trading Communications was strategic in nature, including in that it provided insight into specific aspects of the disclosing Party's pricing strategy for (as applicable) a certain gilt and a certain gilt asset swap and/or was capable of influencing specific aspects of the recipient Party's trading strategies (including pricing) in relation to (as applicable) a certain gilt and a certain gilt asset swap. In reaching this conclusion, the CMA has taken into account the nature of the information

[185] See B-URN-000500841, page 29; and B-URN-000501046, page 50.

disclosed, the content and context of the Citi-MS Trading Communications and, where relevant evidence from the Parties and Key Individuals, noting that:

(a) The information disclosed in the Citi-MS Trading Communications (as defined below) by the disclosing Party on pricing was specific, including that it related to a certain gilt and a certain gilt asset swap.[186]

(b) The disclosures were made during the trading day (typically between 07:30 and 17:00)[187] when the Parties were engaged in ongoing trading and each would have been considering its trading strategies, and in circumstances in which a Party could engage in or refrain from trading very quickly, if not immediately, upon receipt of the disclosed information.

(c) The disclosures of future trading pricing provided the recipient Party with an insight into the disclosing Party's future pricing strategy for the relevant gilt or gilt asset swap and were therefore liable to assist the recipient Party to maintain or adjust its pricing for the gilt or gilt asset swap in question.

(d) The disclosures provided a form of reassurance, which was liable to give one or both of the Parties more confidence when formulating and executing their trading strategies (including in relation to pricing) (see paragraph 7.11(e)).

7.16 In summary, and as set out more fully at Annex B, the Trading Conduct consisted of the following communications (the '**Citi-MS Trading Communications**'), which were all confidential and strategic in nature:

(a) In Bloomberg chat **Citi-MS, A-URN-000020** on 6 December 2011:

(i) Citi ([Citi Trader]) disclosed his **current mid-price** for the 4.25% 2040 gilt ('***i'm spotting a 117.8 mid right now***…' at 10:08:57).

(ii) In light of the evidence set out at Chapter 4 and above, the CMA has found that a Party's current mid-price was strategic in nature as it was a pricing reference point in how a Party determined its trading price.[188]

(b) In Bloomberg chat **Citi-MS, A-URN-000036** on 15 February 2012:[189]

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[186] This includes the various combinations of gilt and gilt asset swap trades noted. The evidence shows that the information was expressed in such a way that the recipient Party would have understood that the information disclosed related (as applicable) to the disclosing Party's mid-price or future trading price in relation to the gilt or gilt asset swap.
[187] See paragraph 4.11.
[188] [Citi Trader] (Citi) said in interview that his mid-price '*would be your reference point if someone asked you to buy or sell something*' (see B-URN-000502063, page 58). Morgan Stanley stated that it operated '*a centralised price and position management system*' (ie a 'pricer'), which each trader could customise, but typically showed, among other things, Morgan Stanley's '*internal view on price*' (which the CMA understands was equivalent to a mid-price). See B-URN-000501214, pages 10 and 13. [MS Trader] (Morgan Stanley) said in interview that '*I'm not actively always checking how the little -- how all the bonds are trading; I'm more concerned with interest rate swaps. But I need to rely on them, like sometimes they're too busy to update it all the time and they don't show me the, the correct mid, you know.'* (B-URN-000502072, page 83). See also paragraphs 4.21 to 4.25.
[189] **Citi-MS, A-URN-000036** on 15 February 2012.

(i) Citi ([Citi Trader]) disclosed his **future trading price** in relation to the 2040 gilt asset swap ('*yeah, i hear ya.* ***I'm sitting on a 12.5 bid for 40s asw***', *'think these are the cheaper ones, but its worth like 1-1.5bp max ya know!*' at 11:20:18 and 11:20:35).

(ii) The future trading price was strategic in nature as it was the executable price at which a Party traded a gilt asset swap and was therefore a key parameter on which it competed for the gilt asset swap trade (see paragraph 4.13).

Conclusion – commercially sensitive information disclosed in relation to Trading Conduct

7.17 In view of the above, in relation to the Trading Conduct, the CMA has concluded that the information disclosed by Citi ([Citi Trader]) in the Citi-MS Trading Communications on its pricing (ie as applicable, current mid-price and future trading price) in relation to a certain gilt and a certain gilt asset swap (as applicable) was commercially sensitive information, the disclosure of which removed, or at least reduced, uncertainty as to the disclosing Party's pricing strategies in relation to the gilt and gilt asset swap in question and/or was capable of influencing aspects of the recipient Party's trading strategies (including pricing) in relation to the gilt and gilt asset swap in question.

D.III Gilt Buy-Back Auction Conduct

7.18 The Citi-MS Conduct as it related to Gilt Buy-Back Auction Conduct consisted of Citi ([Citi Trader]) disclosing to Morgan Stanley ([MS Trader]) commercially sensitive information on its offer price for one gilt buy-back auction during the gilt buy-back auction window.

7.19 In summary, and as set out more fully at Annex B the disclosure occurred in Bloomberg chat **Citi-MS, A-URN-000025** on 13 December 2011(the '**Citi-MS Gilt Buy-Back Auction Communication**'):[190] during the gilt buy-back auction, Citi ([Citi Trader]) disclosed the **offer price** for the 4.25% 2049 gilt he was offering the Bank of England in the gilt buy-back auction ('***i'm offering some 49s @ 125.09***' at 14:41:59).

7.20 The information on the offer price was **confidential** to the disclosing Party. It was not in the public domain or otherwise available to the recipient Party at the time it was disclosed.[191] Although the Parties had access to certain pricing information (see paragraph 4.20), the Parties would not have had access to another

[190] **Citi-MS, A-URN-000025** on 13 December 2011.
[191] See paragraph 4.16.

participant's offer price.[192] In a normal conditions of competition, each Party would have had to determine its pricing strategy independently of the other and in the context of uncertainty as to the offer prices of others.

7.21 Moreover, that information disclosed by the disclosing Party on the offer price in the Citi-MS Communications was **strategic** in nature, including in that it provided insight into specific aspects of the disclosing Party's pricing strategy for the gilt buy-back auction in question in which both Parties were participating and/or was capable of influencing aspects of the recipient Party's offering strategies (including pricing) for the gilt buy-back auction in question. In reaching this conclusion, the CMA has taken into account the nature of the information disclosed, the content and context of the Citi-MS Gilt Buy-Back Auction Communication and, where relevant, evidence from the Parties, the Key Individuals and third parties noting that:

(a) As the Parties competed in a gilt buy-back auction by submitting confidential offers consisting of the offer price (and offer volume and the offer gilt),[193] information regarding the disclosing Party's offer price was strategic in nature and provided an insight to the recipient Party on a key aspect on which the disclosing Party was competing in a specific gilt buy-back auction.

(b) The information on the offer price that was disclosed was specific to the gilt buy-back auction in question and was expressed in such a way that the recipient Party would have understood that the information disclosed related to the disclosing Party's offer price in relation to the gilt buy-back auction in question.

(c) The disclosure was made during the gilt buy-back auction window, being at a point in time at which the Parties were able to submit, amend or withdraw their offers up to, or very close to, the close of that gilt buy-back auction (see paragraph 4.15).

(d) The disclosures provided a form of reassurance, which was liable to give one or both of the Parties more confidence when formulating and executing their offering strategies (including in relation to pricing) – see paragraph 7.11(e).

Conclusion – commercially sensitive information disclosed in relation to Gilt Buy-Back Auction Conduct

7.22 In view of the above, in relation to the Gilt Buy-Back Auction Conduct, the CMA has concluded that the information disclosed by Citi ([Citi Trader]) in the Citi-MS Gilt Buy-Back Auction Communication on its offer price in relation to one gilt buy-

[192] See paragraph 4.16.
[193] See paragraph 4.16.

back auction was commercially sensitive information, the disclosure of which removed, or at least reduced, uncertainty as to the disclosing Party's pricing strategy in relation to the gilt in question and/or was capable of influencing aspects of the recipient Party's offering strategy (including pricing) in relation to the gilt in question.

D.IV The Parties remained active on the Relevant Market and did not publicly distance themselves from the disclosures of commercially sensitive information

7.23 In the Citi-MS Relevant Period the Parties remained active on the Relevant Market, through their participation in gilt auctions, trading and gilt buy-back auctions, and there is no evidence that either Citi ([Citi Trader]) or Morgan Stanley ([MS Trader]) expressed any reservation or objection to, or sought to publicly distance themselves from, the disclosures of commercially sensitive information in the Citi-MS Conduct on the Citi-MS Specific Dates.[194] Therefore, the recipient Party is presumed to have taken account of the commercially sensitive information on pricing (ie as applicable, the current mid-price, future trading price as well as the parameters of the intended, or likely, bid price and offer price) disclosed by the disclosing Party in determining the recipient Party's conduct in relation to (as applicable) the gilt auction in question, the trading of the gilt and gilt asset swap in question and the gilt buy-back auction in question.

Conclusion – concerted practice in relation to Gilt Auction Conduct, Trading Conduct and Gilt Buy-Back Auction Conduct

7.24 In view of the above, in relation to the Gilt Auction Conduct, the Trading Conduct and the Gilt Buy-Back Auction Conduct, taken individually and collectively, the CMA has concluded that the information disclosed by one or both of Citi and Morgan Stanley to the other in the Citi-MS Auction Communication, the Citi-MS Trading Communications and the Citi-MS Gilt Buy-Back Auction Communication on pricing information (ie as applicable, current mid-price, future trading price as well as the parameters of the intended, or likely, bid price and offer price) in relation to certain gilts and a certain gilt asset swap was confidential and strategic in nature. It was commercially sensitive information, the disclosure of which, having regard to the relevant context (a) removed, or at least reduced, uncertainty as to specific aspects of the disclosing Party's conduct and/or (b) was capable of influencing specific aspects of the recipient Party's conduct in relation to (as applicable) a certain gilt in the context of one gilt auction, the trading of a certain

[194] See paragraph 6.9. For example, neither recipient Party responded with a clear statement that it did not wish to receive the information in question. Nor has the presumption that the information disclosed was taken into account otherwise been rebutted.

gilt and a certain gilt asset swap, and the offering of a certain gilt in one gilt buy-back auction (as summarised above and set out in Annex B).

7.25 Each of the Parties is presumed to have taken account of the commercially sensitive information disclosed for the purposes of determining its conduct on the Relevant Market in relation to (as applicable) the gilt auction in question, the trading of the gilt and gilt asset swap in question, and the offering of a gilt in the gilt buy-back auction in question. Citi and Morgan Stanley thereby participated in a concerted practice by which they knowingly substituted practical cooperation between them for the risks of competition.

E. Object of restricting or distorting competition

7.26 For the reasons set out below, the CMA has found that the concerted practice consisting of the Citi-MS Conduct had as its object the restriction or distortion of competition within the UK.

E.I Content of the Citi-MS Conduct

7.27 The CMA has found that the content of the concerted practice consisting of the Citi-MS Conduct was the disclosure by one or both of Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) to the other of commercially sensitive information on their respective pricing (ie as applicable, the current mid-price, future trading price as well as the parameters of the intended, or likely, bid price and offer price) in relation to (as applicable) the gilt auction in question, trading the gilt and gilt asset swap in question, and the gilt buy-back auction in question.[195]

E.II Objective

7.28 The CMA has concluded that the objective of the Citi-MS Conduct was to assist one or both of the Parties in formulating and executing aspects of their respective bidding, trading and offering strategies in relation to (as applicable) the bidding for a certain gilt, the trading of a certain gilt and a certain gilt asset swap and the offering of a certain gilt in one gilt buy-back.[196]

7.29 Specifically, the disclosures provided a form of reassurance, which was liable to give one or both of the Parties more confidence when formulating and executing their bidding, trading and offering strategies (including in relation to pricing) (see paragraph 7.11(e)).

[195] See paragraphs 7.9 to 7.22.
[196] As the Parties' activities across bidding, trading and gilt buy-back auctions were interrelated (see paragraph 7.32 below), the CMA has concluded that the objective of the Citi-MS Conduct applied across the Gilt Auction Conduct, Trading Conduct and Gilt Buy-Back Auction Conduct.

7.30 In reaching this finding, the CMA has considered evidence about the nature[197] and context[198] of the exchanges.

Legal and economic context

7.31 For the purposes of the ensuing analysis, the CMA sets out below the key components of the legal and economic context that apply across all the conduct comprising the Citi-MS Conduct and those that are specific to each of the Gilt Auction Conduct, the Trading Conduct and the Gilt Buy-Back Auction Conduct.

7.32 The CMA's view, for present purposes, is that there was some relationship between the Parties' activities which are the subject of this Decision,[199] noting the available evidence from the Parties and Key Individuals regarding the way their respective bidding, trading and offering strategies were set[200] and how they traded.[201] The CMA also notes that the Parties used a single persistent Bloomberg chat room to disclose the commercially sensitive information in the Citi-MS Conduct.[202]

7.33 Both Parties were designated as GEMMs during the Citi-MS Relevant Period and were therefore amongst each other's closest competitors for gilts and gilt asset swaps.[203] GEMMs had an important role in relation to gilts in supporting the issuance of government debt and liquidity in gilts.[204]

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[197] Noting that certain types of pricing information (such as current mid-price, future trading price, offer price and the parameters of the intended, or likely, bid price) were relevant to the determination of (as applicable) a Party's bidding, trading and offering strategies (see paragraphs 7.36 and 7.37).

[198] See **Citi-MS, A-URN-000020** on 6 December 2011, Morgan Stanley ([MS Trader]) asked Citi ([Citi Trader])'s view on the price a GEMM would have to pay to be successful in the gilt auction (see paragraph 7.9). See also **Citi-MS, A-URN-000025** on 13 December 2011, in which Morgan Stanley ([MS Trader) sought Citi ([Citi Trader])'s views on the gilt buy-back auction: (Morgan Stanley ([MS Trader]) asked '*i think there is 500mm total out there in teh st to be sold today*'… *'but after that i'm not sure ya know?*' at 13:48:32 to 13:48:40). The CMA infers from the fact that [MS Trader] (Morgan Stanley) sought the view of [Citi Trader] (Citi) that he valued the latter's view. [Citi Trader] (Citi) stated in interview that he also sought and valued the view of [MS Trader] (Morgan Stanley): [Citi Trader] (Citi) said that he '*valued his [[MS Trader] (Morgan Stanley)'s] approach to thinking about the market. Er, and, of course, I wouldn't know many other GEMMs at that point; wouldn't -- you know, wouldn't have a relationship with them the way I did with him'* (see B-URN-000502064, page 121; see also B-URN-000502073, page 240).

[199] That is, their activities across gilt auctions, trading and gilt buy-back auctions (see paragraphs 4.4 to 4.18 and Chapter 5) and in relation to gilts and gilt asset swaps (see paragraph 4.1 and Chapter 5).

[200] Citi stated that the process and methodology used to determine the price of a gilt was '*[i]n general… largely the same*' when participating in a gilt auction or when trading (B-URN-000501198, pages 9 to 12). Morgan Stanley stated that the same '*broad pricing methodology*' was applied in both contexts (B-URN-000501214, pages 11 to 15).
[MS Trader] (Morgan Stanley) also said in interview that he was active in gilt auctions and gilt buy back auctions for the purpose of managing his trading book (see B-URN-000502072, pages 26, 38 and 89). See also B-URN-000502063, pages 61 to 62, 85, 176 to 177 and 211 to 214; and B-URN-000502073, page 228.

[201] See paragraph 4.22 and footnote 93. [Citi Trader] (Citi) said in interview that a gilt asset swap traded '*as a function of its components*', one of which was a gilt, and that he '*would not price*' a gilt '*any differently*' when it was a component of a gilt swap to how he would '*price a gilt normally*' (B-URN-000502063, pages 77, 78 and 79; see also B-URN-000502064, pages 218 to 219). [MS Trader] (Morgan Stanley) said in interview that gilt asset swaps and gilts were related instruments and that he relied on the gilt price when quoting a gilt asset swap. He said that as part of hedging his risk he might '*leg*' a gilt asset swap in that he might trade the gilt component on its own (see B-URN-000502073, pages 194 to 196; and B-URN-000502072, pages 83 and 95 to 97).

[202] See paragraph B.1, Annex B and the Citi-MS Communications set out in Annex B.

[203] See paragraph 4.2 and footnote 108.

[204] See Chapter 4 and B-URN-000503294, paragraphs 5 and 14.

7.34 Since gilts and gilt asset swaps were traded over-the-counter through various channels and means, there was no single, agreed 'market' price for each product (see paragraph 4.19). Price-setting was therefore part of the role of a Party's trader requiring the application of independent judgement by reference to a range of imperfect sources of available information, including information that was accessible to all market participants (eg via brokers and electronic trading platforms).[205]

7.35 A Party's mid-price (which was internal and not in the public domain or otherwise ordinarily available to other dealers) was a pricing reference point in how a Party determined its price in the context of gilt auctions, trading and gilt buy-back auctions (see paragraphs 4.21 to 4.25, 7.11(b) and 7.16(a)(ii)).

7.36 In determining its bid price(s) in a gilt auction, its trading price(s) for a gilt or gilt asset swap or its offer price(s) in a gilt buy-back auction, a Party would have had regard to its mid-price for (as applicable) the auction gilt, the gilt or gilt asset swap being traded, or the offer gilt(s) and its view on the amount (if any) by which the Party considered the relevant price ought to differ from that mid-price alongside other publicly available information and commercially sensitive information relevant to its pricing and other aspects of its bidding, trading or offering strategies as applicable (see paragraphs 4.24 and 4.25).

7.37 Each Party's bid, trading and offer prices were important parameters of competition between them for gilt auctions, trading and gilt buy-back auctions, respectively.[206] Moreover, adopting the '*wrong*' price could undermine a trader's bidding, trading or offering strategy. For example, [MS Trader] (Morgan Stanley) said in interview that not having the '*right*' pricing would mean that *'most of the time it would be you lose money*'.[207]

7.38 As regards Gilt Auction Conduct, during the Citi-MS Relevant Period, a gilt auction was a competitive process whereby GEMMs competed to buy a gilt by submitting independent and confidential bids to the DMO to secure their desired allocation of the gilt to be issued.[208] GEMMs were the only institutions eligible to participate directly in gilt auctions. At no point before, during or after a gilt auction were an individual GEMM's bids ordinarily disclosed to other GEMMs, nor were they otherwise published or made available.

7.39 As regards Trading Conduct, during the Citi-MS Relevant Period, the Parties competed with each other (and other dealers) both in relation to trades with clients

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[205] See paragraphs 4.21 to 4.25.
[206] See paragraphs 4.7, 4.8, 4.13, 4.17 and 4.18.
[207] See B-URN-000502073, page 239. For example, [MS Trader] (Morgan Stanley) referred to the consequences of trading at the '*wrong level*' and how that might result in a trader locking in a loss and being '*picked off*' by a counterparty, meaning that they got a good deal at that trader's expense; he went also said that '*we were always trying in a sense to make sure that… you weren't dealing at a price you shouldn't be dealt with*' (B-URN-000502073, pages 176 and 189).
[208] See paragraphs 4.6 to 4.8.

and trades with other counterparties.[209] There was a range of strategic reasons a Party could look to trade, including to build relationships with clients, manage risk and, in relation to the trading of gilts only, to meet its obligations as a GEMM and to demonstrate a strong market presence to win a lead manager role in syndication.[210]

7.40 As regards Gilt Buy-Back Auction Conduct, during the Citi-MS Relevant Period, the Parties competed with each other (and other participants) in relation to the offering for sale and sale of gilts to the Bank of England via these gilt buy-back auctions.[211] At no point before, during or after a gilt buy-back auction were a participant's offers ordinarily disclosed to other participants, nor were they otherwise published or made available.

E.III Restriction or distortion of competition by object

7.41 In view of the foregoing analysis of the content, objective and legal and economic context in which the Citi-MS Conduct took place, and for the further reasons set out below, the CMA has concluded that the concerted practice consisting of the Citi-MS Conduct had as its object the restriction or distortion of competition.

7.42 As regards Gilt Auction Conduct and Gilt Buy-Back Auction Conduct, a fair and competitive auction process depended on the participating GEMMs submitting independently derived bids and offers, respectively.[212]

7.43 As regards Trading Conduct, the effective and competitive trading of gilts and gilt asset swaps involved participants setting their pricing and other aspects of their trading strategies independently of each other.[213]

7.44 The disclosures of commercially sensitive information in respectively, the Citi-MS Gilt Auction Communication and the Citi-MS Gilt Buy-Back Auction Communication, removed, or at least reduced, uncertainty as to the disclosing Party's pricing strategy in relation to the gilt in question and/or were capable of influencing the recipient Party's strategy (including pricing) in relation to the gilt in question.[214] They also resulted in an informational asymmetry between the Parties and other participants in the relevant gilt auction and gilt buy-back auction, respectively,[215] thereby placing one or both of the Parties at a competitive advantage compared to those other GEMMs bidding (on their own behalf or on

[209] See paragraph 4.13.
[210] See paragraph 4.12.
[211] See paragraph 4.18.
[212] See paragraphs 4.6, 4.16, 4.19, 4.22, 7.38 and 7.40.
[213] See paragraphs 4.13, 4.19, 4.22 and 7.39.
[214] See paragraphs 7.12 and 7.22.
[215] The informational asymmetry was that one or both of the Parties had better information relevant to competition than was otherwise lawfully available to other GEMMs.

behalf of their clients) in the gilt auction and to those other participants offering a gilt in the gilt buy-back auction, respectively.[216]

7.45 The disclosures of commercially sensitive information in the Citi-MS Trading Communications removed, or at least reduced, uncertainty on the relevant Citi-MS Specific Dates as to the disclosing Party's pricing strategies in relation to the gilt and gilt asset swap in question and/or were capable of influencing aspects of the recipient Party's trading strategies (including pricing) in relation to the trading of the gilt and the gilt asset swap in question.[217] They also resulted in informational asymmetry between the Parties and other participants in relation to the trading of the gilt and the gilt asset swap in question,[218] thereby placing one or both of the Parties at a competitive advantage compared to counterparties (which included each Party's clients) and competitors.

7.46 The disclosures provided the recipient Party with a form of reassurance and were liable to give one or both of the Parties more confidence regarding (as applicable) their bidding strategy (including pricing) for the relevant gilt auction, their trading strategies (including pricing) in relation to the gilt and gilt asset swap in question and their offering strategy (including pricing) for the relevant gilt buy-back auction.

7.47 Such conduct was not consistent with the Parties determining their bidding, trading and offering strategies (including pricing) independently. It did not correspond to the normal conditions of competition in (as applicable) a certain gilt auction, the trading of a certain gilt and a certain gilt asset swap and a certain gilt buy-back auction that would have been present in the absence of the disclosures. Moreover, the disclosures of commercially sensitive information were not necessary for the proper functioning of normal competition in the gilt auction in question, the trading of the gilt and the gilt asset swap in question and the gilt buy-back auction in question.

7.48 In view of the above, the disclosures of commercially sensitive information were, by their very nature, harmful to the proper functioning of normal competition.

E.IV Conclusion on the restriction or distortion of competition

7.49 For the reasons set out above, and having had regard to the content of the concerted practice, its objective and the economic and legal context of which it formed a part, the CMA has concluded that the Citi-MS Conduct revealed a sufficient degree of harm to competition in relation to the gilt auction in question, the trading of the gilt and the gilt asset swap in question, and the gilt buy-back

[216] Since GEMMs were the only institutions eligible to bid in a gilt auction, their clients could, therefore, only participate in gilt auctions indirectly by placing bids through a GEMM (see paragraph 4.8).
[217] See paragraph 7.17.
[218] The informational asymmetry was that one or both of the Parties had better information relevant to competition than was otherwise lawfully available to other participants.

auction in question such as to constitute a restriction or distortion of competition by object.

F. The Citi-MS Infringement as an appreciable restriction of competition

7.50 A concerted practice that has an anti-competitive object constitutes an appreciable restriction on competition by its nature and independently of any concrete effect that it may have.[219]

7.51 The CMA has found that Citi and Morgan Stanley participated in a concerted practice that had the object of restricting or distorting competition (see paragraphs 7.24, 7.25 and 7.49). The CMA has therefore found that the concerted practice constitutes, by its nature, an appreciable restriction of competition within the UK for the purposes of the Chapter I prohibition.[220]

G. Potential effect on trade within the UK of the Citi-MS Infringement

7.52 The CMA has found that the Citi-MS Infringement was capable of affecting trade within the UK given the geographical scope of the Citi-MS Infringement (which included the whole of the UK), the nature of the Citi-MS Infringement, and the Partes' activities in the Relevant Market within the UK (see footnote 220).

H. Exclusion or exemption

7.53 The CMA has found that none of the exclusions from the Chapter I prohibition apply to the Citi-MS Infringement.[221]

7.54 Concerted practices which have as their object the prevention, restriction or distortion of competition, are unlikely to benefit from individual exemption under section 9(1) of the Act as such restrictions generally fail (at least) the first two conditions for exemption: they neither create objective economic benefits nor do they benefit consumers. Moreover, such concerted practices generally also fail the third condition (indispensability).

[219] See paragraph 6.24.
[220] In any event, and in the alternative, the CMA has found that the Citi-MS Infringement constituted an appreciable restriction on competition within the UK for the purpose of the Chapter I prohibition based on the following: (i) the geographic scope of the Citi-MS Infringement covered conduct within the UK; (ii) the nature of the Citi-MS Infringement (see paragraphs 7.41 to 7.49); and (iii) the Parties' activities in the Relevant Market within the UK, including the nature of the Parties' roles as GEMMs.
[221] See paragraph 6.26.

7.55 However, each case ultimately falls to be assessed on its merits. Neither of the Parties has claimed that an exemption should apply in this case.[222] The CMA has therefore concluded that no exemption applies in this case.

I. Legal characterisation and duration of the Citi-MS Infringement

7.56 The CMA has found that, on the basis of the evidence taken as a whole, the Citi-MS Conduct constituted a single and repeated infringement comprising the specific disclosures of commercially sensitive information in the Citi-MS Communications on the Citi-MS Specific Dates, namely: 6 December 2011, 13 December 2011 and 15 February 2012.

7.57 The CMA has relied on the following evidence to conclude that the Citi-MS Conduct constituted a single infringement:

(a) the Citi-MS Conduct pursued a single objective, which was to assist one or both of the Parties in formulating and executing aspects of their respective bidding, trading and offering strategies in relation to (as applicable) the bidding for a certain gilt in one gilt auction, the trading of a certain gilt and a certain gilt asset swap and the offering of a certain gilt in the context of one gilt buy-back auction;

(b) the same two Key Individuals at the same two undertakings disclosed the commercially sensitive information in the Citi-MS Relevant Period using the same means of communication (a single persistent bilateral Bloomberg chatroom titled '*[MS Trader/Citi Trader]*'), which existed throughout the Citi-MS Relevant Period.[223]

(c) the products that were the subject of the Citi-MS Infringement, namely gilts and gilt asset swaps, were the same or similar throughout the Citi-MS Relevant Period and were traded in the same way or similar ways;[224] and

(d) there were certain similarities in how pricing of those products across gilt auctions, trading and gilt buy-back auctions was determined during the Citi-MS Relevant Period.[225]

7.58 Through its own conduct, each of Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) intentionally contributed to the Citi-MS Conduct and the single objective of that conduct. Furthermore, each of the Parties, having been a party to each Citi-

[222] In accordance with section 9(2) of the Act, any Party claiming the benefit of an exemption bears the burden of proving that the conditions in section 9(1) of the Act are satisfied.
[223] See Annex B.
[224] See paragraphs 4.9 to 4.10, footnote 41 and paragraph 5.3.
[225] See paragraphs 4.19 to 4.25.

MS Communication, and having understood its contents, was necessarily aware of the other's contribution to the Citi-MS Conduct in pursuit of the single objective.

7.59 In the specific circumstances of this case, the CMA has found that the disclosures of commercially sensitive information in the Citi-MS Communications between Citi and Morgan Stanley on the Citi-MS Specific Dates constitute a single and repeated infringement. The CMA has therefore found that the duration of the Citi-MS Infringement was 3 days.

J. Conclusion on the Citi-MS infringement

7.60 For the reasons set out in this Chapter, the CMA has found that in the Citi-MS Relevant Period, Citi and Morgan Stanley infringed the Chapter I prohibition by participating in a concerted practice which had as its object the restriction or distortion of competition within the UK.

K. Attribution of liability

7.61 The CMA has set out below in relation to each Party the relevant legal persons, including the legal entity directly involved in the Citi-MS Infringement and (if different) the ultimate parent company.

K.I Citi

7.62 [Citi Trader] was employed by Citigroup GML during the Citi-MS Relevant Period and his participation in the gilt auction, trading and the gilt buy-back auction described in this Chapter was on behalf of Citi.[226] Accordingly, the CMA has found that Citigroup GML was directly involved in, and is therefore liable for, the Citi-MS Infringement.

7.63 The CMA has also found that Citigroup Inc. is jointly and severally liable with Citigroup GML for the Citi-MS Infringement. That is because, throughout the Citi-MS Relevant Period, Citigroup GML was a wholly owned subsidiary of Citigroup Inc.,[227] which can therefore be presumed to have exercised decisive influence over Citigroup GML during the Citi-MS Relevant Period, and thereby formed part of the same undertaking.

7.64 This Decision is therefore addressed to Citigroup GML and Citigroup Inc.

[226] See paragraphs 3.5 to 3.7.
[227] See paragraph 3.3.

K.II Morgan Stanley

7.65 [MS Trader] was employed by a subsidiary of Morgan Stanley during the Citi-MS Relevant Period, and his participation in the gilt auction, trading and gilt buy-back auction described in this Chapter was on behalf of Morgan Stanley & Co. International Plc.[228] Accordingly, the CMA has concluded that Morgan Stanley & Co. International Plc was directly involved in, and is therefore liable for, the Citi-MS Infringement.

7.66 The CMA has also found that Morgan Stanley is jointly and severally liable with Morgan Stanley & Co. International Plc for the Citi-MS Infringement. That is because, throughout the Citi-MS Relevant Period, Morgan Stanley & Co. International Plc was owned and controlled by Morgan Stanley,[229] which can therefore be presumed to have exercised decisive influence over Morgan Stanley & Co. International Plc during the Citi-MS Relevant Period, and thereby formed part of the same undertaking

7.67 This Decision is therefore addressed to Morgan Stanley & Co. International Plc and Morgan Stanley.

[228] See paragraphs 3.11 and 3.12.
[229] See paragraph 3.9.

8. THE CMA'S ACTION

A. The CMA's decision

8.1 On the basis of the evidence set out in this Decision, the CMA has made a decision addressed to the Parties, finding them liable for infringing the Chapter I prohibition.

B. Directions

8.2 Where the CMA has made a decision that a concerted practice infringes the Chapter I prohibition, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.[230]

8.3 As the Citi-MS Infringement has come to an end, the CMA has decided not to issue directions in this case.

C. Financial penalties

8.4 On making a decision that a concerted practice has infringed the Chapter I prohibition, the CMA may require an undertaking which is a party to that concerted practice to pay the CMA a penalty in respect of the infringement.[231]

8.5 As part of their respective settlements,[232] each of Citi and Morgan Stanley has admitted its involvement in, and liability for, the Citi-MS Infringement as set out in this Decision. Under the terms of each settlement, Citi has agreed to pay a maximum total financial penalty of **£3,640,000** and Morgan Stanley has agreed to pay a maximum total financial penalty of **£6,300,000** in relation to the Citi-MS Infringement.

8.6 The CMA must have regard to the guidance on penalties in force at the time when setting the amount of a penalty,[233] which sets out a six-step approach for calculating the penalty to be imposed on an undertaking.[234]

8.7 The CMA has a discretion to impose financial penalties.[235] In assessing the appropriateness and proportionality of a penalty, the CMA is not bound by its

[230] Section 32(1), read together with section 2(5) of the Act.
[231] Section 36(1), read together with section 2(5) of the Act.
[232] See paragraph 2.6.
[233] Section 38(8) of the Act. In this Decision the CMA has had regard to the Penalty Guidance, as published on 16 December 2021 (CMA73).
[234] Penalty Guidance, paragraph 2.1.
[235] Penalty Guidance, paragraph 1.2.

previous decisions, but it should ensure that there is broad consistency in its approach.[236]

C.I Intention/negligence

8.8 The CMA may impose a penalty on an undertaking which has infringed the Chapter I prohibition only if it is satisfied that the infringement has been committed intentionally or negligently by the undertaking.[237]

8.9 In view of the objective of the conduct of the Parties in respect of the Citi-MS Infringement (see Chapter 7[238]) and the obligations the Parties, as GEMMs, were required to meet,[239] the CMA has concluded that the Parties must have been aware, or could not have been unaware, that their conduct had the object of restricting competition.[240] In the alternative, for the same reasons, the CMA has concluded that, at the very least, the Parties ought to have known that their conduct would result in a restriction or distortion of competition.

8.10 The CMA has therefore found, for the purposes of determining whether to exercise its discretion to impose a penalty, that the Citi-MS Infringement was committed intentionally. In the alternative, for the same reasons, the CMA has found that the Citi-MS Infringement was committed at least negligently.

C.II Calculation of the penalties

Step 1 – starting point

8.11 The starting point for determining the level of financial penalty is calculated through a case specific assessment, having regard to the relevant turnover of the undertaking, the seriousness of the infringement and the need for general deterrence.[241]

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[236] Penalty Guidance, paragraph 1.4.
[237] Section 36(3) of the Act. The Competition Appeal Tribunal has defined the terms 'intentionally' and 'negligently' as follows: '*an infringement is committed intentionally for the purposes of section 36(3) of the Act if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition. An infringement is committed negligently for the purposes of section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition*' (*Argos Limited and Littlewoods Limited v OFT* [2005] CAT 13 ('*Argos and Littlewoods*') at [221]. See also *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 ('*Napp*') at [456]). The CMA is not obliged to specify whether it considers the infringement to be intentional or merely negligent for the purposes of determining whether it may exercise its discretion to impose a penalty (*Napp* at [453] to [457]).
[238] In particular, see paragraph 7.58 in relation to each Party's intentional contribution to the Citi-MS Conduct and its single objective, and also each Party's awareness of the other's contribution to the Citi-MS Conduct in pursuit of the single objective.
[239] See Chapter 4. Specifically, the DMO guidebook in force during the Citi-MS Relevant Period set out the DMO's view that '*liquidity in the gilt market is best maintained by the presence of* ***competing market makers***' (emphasis added) (B-URN-000503294, paragraph 5).
[240] It is not necessary to show that the undertaking also knew that it was infringing the Chapter I prohibition and, in some cases, the fact that certain consequences are plainly foreseeable is an element from which the requisite intention may be inferred (*Napp* at [456]).
[241] Penalty Guidance, paragraphs 2.2 to 2.13.

Determination of the Parties' relevant turnover

8.12 The CMA has calculated each of Citi's and Morgan Stanley's penalties using an income-based, rather than turnover-based, approach.[242]

8.13 Citi and Morgan Stanley each provided the CMA with the income information that it identified as most closely reflecting income derived from its activities within the Relevant Market (see Chapter 5),[243] which the CMA used to determine the categories of income that it considers appropriate to include within each Party's relevant turnover.[244]

8.14 The Penalty Guidance refers to relevant turnover in an undertaking's last business year (being the financial year preceding the date when the infringement ended).[245] However, to reduce the distortive effect of gains and losses year on year,[246] the CMA has taken an average of each Party's relevant turnover across:[247]

(a) the 'last business year', ie the financial year ending **31 December 2011**; and

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[242] Normally, the CMA will base relevant turnover on revenue figures that reflect the turnover of sales. However, banks record revenue generated from their activities on a basis which reflects the net of prices paid and received for the buying and selling of assets, together with trading gains and losses and certain trading costs. This revenue is referred to as 'income' in this document. This approach is consistent with the Penalty Guidance (paragraphs 2.11 and 2.12, citing the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309) (the '**Penalties Order**'), which states that figures other than turnover figures may better reflect the true scale of an undertaking's activity in the relevant market and with Paragraph 5 of the Schedule to the Penalties Order, which prescribes an income-based approach to calculating the maximum penalty that may be imposed on financial institutions.

[243] Namely, income relating to the issuance and trading of gilts and related derivative instruments (which the CMA notes is wider than income in relation to gilt asset swaps). Neither Citi nor Morgan Stanley separately recorded income derived from its activities within the Relevant Market and each Party highlighted limitations in its ability to retrieve, and provide the CMA with, income information that specifically relates to gilts and gilt asset swaps (that is, the products falling within the Relevant Market) (see, for example: B-URN-000501912, in particular page 2; B-URN-000502327, in particular, pages 1 and 10; B-URN-000502017; and B-URN-000502351, in particular, pages 1 to 6 and 10). As the closest comparator to income relating to gilts and gilt asset swaps, Citi provided the CMA with income information arising from its [desk]. Morgan Stanley was able to distinguish between income from gilts and income from gilt-related derivatives, but did not book trades as gilt-related or non-gilt-related, so could not provide revenue figures specifically for gilt-related derivatives (see B-URN-000502351), and the CMA has therefore included only gilt income in its determination of Morgan Stanley's relevant turnover.

[244] The CMA considers it appropriate to include syndication fees within relevant turnover, despite syndication not forming part of the Relevant Market, in order properly to reflect the way in which Citi and Morgan Stanley (and other GEMMs) were remunerated for their activities within the Relevant Market (see, for example, B-URN-000502327, page 11; and B-URN-000502351, page 7). Given the limitations on the information available and the ways in which revenues were generated in the Relevant Market, there is no perfectly accurate way to reflect the true scale of Citi's and Morgan Stanley's respective activities in the Relevant Market at Step 1 in this case.

[245] Penalty Guidance, paragraph 2.10.

[246] Reported income in relation to gilts and gilt asset swaps may also reflect external factors, which may vary considerably from year to year (eg gains and losses from holding assets and liabilities (see, for example, B-URN-000502351, pages 3 to 4)). A snapshot of one year's income therefore may not accurately reflect the true scale of an undertaking's activities in the Relevant Market in that financial year (for example, Citi reported negative income from its [desk] in the financial year ending 31 December 2011, despite actively participating in the markets covered by that desk, including in relation to gilts and gilt asset swaps, throughout the Citi-MS Relevant Period (see B-URN-000502327) and each of the Party's market share (by volume) was significantly more stable than is implied by its income data and relevant turnover (CMA calculations based on B-URN-000501386, see footnote 253 below)).

[247] The CMA has taken into account the information provided by Morgan Stanley in considering whether the use of an average of multiple years will better reflect the true scale of trading activity (see B-URN-000502351). Although there is no certainty that the fluctuations caused by external factors will in practice average out within the Citi-MS Relevant Period, the CMA considers that the use of averaging is appropriate in seeking to reduce the variability in income, and therefore provides a relevant turnover figure which more closely reflects the true scale of activity.

(b) any other financial year falling (in whole or in part) within the Citi-MS Relevant Period, ie the financial year ending **31 December 2012**.

8.15 The CMA has therefore determined that Citi's relevant turnover was **£14,951,139**[248] and Morgan Stanley's relevant turnover was **£59,548,100**.[249]

Assessment of the seriousness of the Citi-MS Infringement and the need for general deterrence

8.16 The CMA considers that the Citi-MS Infringement (as set out in Chapter 7) is, in terms of the Penalty Guidance, among '*the most serious types of infringement'*, as it was '*likely by [its] very nature to harm competition most*' and that it would be appropriate to apply a starting point of **23%**.[250]

8.17 In making this assessment, the CMA has considered the relevant circumstances of the case,[251] including the nature of the product,[252] the structure of the market,[253] the market coverage of the infringement,[254] and the potential harm from the Citi-MS Infringement for competitors and consumers, whether directly or indirectly.[255]

8.18 Finally, the CMA considers that a starting point of 23% is appropriate and sufficient for the purposes of general deterrence,[256] given the seriousness of the Citi-MS Infringement. A lower starting point would risk undermining the clear message for other businesses, both in the financial services sector and more broadly, that they should not engage in the same or similar conduct.

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[248] Based on the 'Grand Total' figures for 2011 and 2012 provided by Citi in Table 1 of B-URN-000502327 (£(2.0) million and £31.9 million respectively, converted from USD to GBP at prevailing exchange rates). Although negative income cannot reflect the true scale of Citi's activities in the Relevant Market, in the absence of more precise information, the CMA has included negative income figures in its calculation for the purposes of determining Citi's relevant turnover. As Citi was not able separately to identify income from gilts and gilt-related derivatives (see footnote 243), the CMA's determination of Citi's relevant turnover may include income that falls outside the Relevant Market (specifically, certain gilt derivative income, non-gilt fixed asset income and non-gilt derivative income).

[249] Based on the sum of the figures taken from rows 1 to 4 of the table in Question 1 of B-URN-000502351 for each of 2011 and 2012 (£68 million and £51.1 million respectively, converted from USD to GBP at prevailing exchange rates). This approach excludes certain gilt asset swap income that falls within the Relevant Market (see footnote 243).

[250] Penalty Guidance, paragraph 2.5; see also paragraphs 2.3 to 2.9.

[251] Penalty Guidance, paragraph 2.7.

[252] ie gilts and gilt asset swaps, which were interrelated to gilts (see footnote 41), which were issued as part of the UK government's debt management policy.

[253] Within which GEMMs (including Citi and Morgan Stanley) were each other's closest competitors for gilts and gilt asset swaps (see footnote 108) and had an important role in supporting the issuance and liquidity of gilts. GEMMs' activities took place within a multi-trillion pound 'market' for gilts and, in the financial year ending 31 December 2011, Citi and Morgan Stanley traded gilt volumes of over £[✂] billion and over £[✂] billion respectively (the CMA has calculated each Party's volumes traded based on quarterly data provided by the DMO in B-URN-000501386. The DMO data used by the CMA comprises the total 'secondary' market turnover volumes on a quarter-by-quarter basis and the percentage of volumes attributable to each Party for gilts, based on GEMMs' own submissions of turnover data to the DMO (see B-URN-000501382, questions 14, 15 and 16)).

[254] Including the fact that conventional gilts represented the vast majority of the UK's gilt portfolio (see B-URN-000503298, page 67) and the Relevant Market was global (see Chapter 5).

[255] See Chapter 7.

[256] Penalty Guidance, paragraph 2.8.

8.19 Therefore, at the end of Step 1 Citi's penalty is **£3,438,762** and Morgan Stanley's penalty is **£13,696,063**.

Step 2 – adjustment for duration

8.20 The CMA has found that the duration of the Citi-MS Infringement was less than one year (see paragraph 7.59), and there are no exceptional circumstances to warrant decreasing the starting point. The CMA has therefore treated the duration of the Citi-MS Infringement as a full year (ie the figure reached at the end of Step 1 will be **multiplied by 1**).[257]

8.21 Therefore, at the end of Step 2 Citi's penalty is **£3,438,762** and Morgan Stanley's penalty is **£13,696,063**.

Step 3 – adjustment for aggravating and mitigating factors

8.22 The amount of the penalty may be increased where there are aggravating factors, or decreased where there are mitigating factors.[258] In particular, the CMA may decrease the penalty at Step 3 for cooperation which enables the enforcement process to be concluded more effectively and/or speedily.[259]

8.23 In light of Morgan Stanley's cooperation,[260] the CMA has applied a reduction of 5% at Step 3. Morgan Stanley's penalty at the end of Step 3 is therefore **£13,011,260**.

8.24 As a Type C leniency applicant, Citi's cooperation with the investigation is not covered under this step as it is covered separately in accordance with the requirement of continuous and complete cooperation as a condition of leniency. Citi's penalty at the end of Step 3 therefore remains **£3,438,762**.

Step 4 – adjustment for specific deterrence

8.25 A penalty may be increased at this step to ensure that it is sufficient to deter the undertaking from breaching competition law in the future.[261]

8.26 An increase at this step will be appropriate where an undertaking has a significant proportion of its turnover outside the relevant market, or where the potential fine is

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[257] Penalty Guidance, paragraph 2.14.
[258] Penalty Guidance, paragraphs 2.15 to 2.17.
[259] Penalty Guidance, paragraph 2.17. For these purposes, what is expected is cooperation over and above respecting time limits specified or otherwise agreed (which will be a necessary but not sufficient criterion to merit a reduction at this step of the penalty calculation) (Penalty Guidance, footnote 31).
[260] During the investigation, Morgan Stanley agreed to a streamlined access to file process, provided the CMA with a limited amount of information and documents on a voluntary basis at an early stage of the investigation, and facilitated the separate legal representation for a former employee, [MS Trader], enabling the CMA to progress the investigation more effectively than would otherwise have been possible.
[261] Penalty Guidance, paragraph 2.19. Any penalty that is too low to deter an infringing undertaking is also unlikely to deter other undertakings that may be considering anti-competitive activities.

otherwise too low to achieve the objective of deterrence in view of the undertaking's size and financial position.[262]

8.27 In relation to each Party's specific size and financial position:[263]

(a) Citi's total worldwide revenue was US$78.5 billion (£63.1 billion) in the financial year ending 31 December 2023 and its average worldwide revenue was US$75.2 billion (£58.8 billion) for the three-year period ending 31 December 2023;[264] and

(b) Morgan Stanley's total worldwide revenue was US$54.1 billion (£43.5 billion) in the financial year ending 31 December 2023 and its average worldwide revenue was US$55.9 billion (£43.5 billion) for the three-year period ending 31 December 2023.[265]

8.28 Over 99% of each Party's worldwide revenue is therefore generated outside the Relevant Market. Moreover, the penalty at the end of Step 3 for each Party accounts for less than 0.03% of its total worldwide revenue for the financial year ending 31 December 2023 and less than 0.03% of its three-year average revenue.[266]

8.29 Each Party's relevant turnover (see paragraph 8.15 above) does not reflect the scale of its involvement in the Relevant Market and therefore the potential harm to competition, since it is more comparable to direct profit[267] and it is relatively small

[262] Penalty Guidance, paragraph 2.21. The CMA would expect to make more significant adjustments, both for general and specific deterrence, where an undertaking's relevant turnover is very low or zero with the result that the figure at the end of Step 3 would be very low or zero (Penalty Guidance, paragraph 2.23).
[263] Penalty Guidance, paragraph 2.19. The CMA will consider indicators of size and financial position at the time the penalty is being imposed and may consider three-year averages for turnover (Penalty Guidance, paragraph 2.20).
[264] The CMA has taken the undertaking's total worldwide turnover as the primary indicator of the size of the undertaking and its economic power (Penalty Guidance, paragraph 2.20). Unless otherwise stated, the CMA has based its assessment on publicly available financial information sourced from Citi's consolidated financial statements for the financial year ending 31 December 2023 (source: Citigroup Inc. 2023 10-K). Figures have been converted from US dollars into sterling using annual average exchange rates (source: Office of National Statistics). Averages have been calculated over the three-year period ending 31 December 2023.
[265] The CMA has taken the undertaking's total worldwide turnover as the primary indicator of the size of the undertaking and its economic power (Penalty Guidance, paragraph 2.20). Unless otherwise stated, the CMA has based its assessment on publicly available financial information sourced from Morgan Stanley's consolidated financial statements for the financial year ending 31 December 2023 (source: Morgan Stanley 2023 10-K). Figures have been converted from US dollars into sterling using annual average exchange rates (source: Office of National Statistics). Averages have been calculated over the three-year period ending 31 December 2023.
[266] In particular, £3,438,762 accounts for less than 0.01% of Citi's total worldwide revenue for the financial year ending 31 December 2023 and less than 0.01% of its three-year average revenue and £13,011,260 accounts for approximately 0.03% of Morgan Stanley's total worldwide revenue for the financial year ending 31 December 2023 and approximately 0.03% of its three-year average revenue.
[267] See paragraph 8.12.

compared to each Party's total traded gilt volumes.[268] A more significant adjustment is therefore necessary at Step 4.[269]

8.30 The CMA has also concluded that other specific features of this case are relevant circumstances to be taken into account,[270] including;

(a) the potential harm from the Citi-MS Infringement;[271] and

(b) the length of time that has passed since the end of the Citi-MS Infringement and the extensive compliance (and related monitoring and surveillance) measures that each of Citi and Morgan Stanley has introduced since then (some of which were in place well before the start of the CMA's investigation), which are highly unusual in their extent and followed significant changes in the regulatory and governance environment in the financial services sector that have occurred since the Citi-MS Infringement.[272]

8.31 Notwithstanding Citi's and Morgan Stanley's respective current compliance measures, the CMA has concluded that an uplift for specific deterrence is necessary for each of Citi and Morgan Stanley the following reasons:

(a) since no compliance could reasonably be expected entirely to remove the risk of future breaches, the financial penalty itself needs to be of an order of magnitude that is capable of having a deterrent effect;

(b) the size of the penalty at the end of Step 3 is not sufficiently high to command an appropriate degree of attention of each Party's top-level management to incentivise them to maintain robust competition compliance measures in this specialist sector; and

(c) although the regulatory regime in the financial sector in effect means that each Party will maintain compliance measures, its incentives to do so are different from, and not a substitute for, those created through the CMA's competition law-specific fining powers; hence those incentives do not remove the need for an uplift in the present case for the reasons set out above.

8.32 In view of the above factors, and the fact that Step 4 is '*an important step for the purposes of achieving deterrence in accordance with the statutory objective set*

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[268] Which were over £[✂] billion for Citi and over £[✂] billion for Morgan Stanley in the financial year ending 31 December 2011, which represents approximately [0 to 5%] and [0 to 5%] of the total volume traded by GEMMs in 2011 respectively (CMA calculations based on B-URN-000501386, see footnote 253). The CMA further notes that, as set out in footnote 243, the limitations of the information available and the ways in which revenues were generated mean it is not possible to capture the true scale of Citi's and Morgan Stanley's respective activities in the Relevant Market.
[269] Penalty Guidance paragraph 2.23.
[270] Penalty Guidance, paragraph 2.19.
[271] Including the number and range of Citi-MS Specific Dates (see Chapter 7) and Citi's and Morgan Stanley's respective share of the total volume traded by GEMMs (see footnote 268).
[272] See, for example, B-URN-000504706, provided in response to a Request for Information (B-URN-000504641) and B-URN-000504701, provided in response to a Request for Information (B-URN-000504645).

out in section 36(7A)(b) of [the Act]',[273] the CMA has increased each Party's penalty to **£23,000,000** for Citi and **£23,000,000** for Morgan Stanley at the end of Step 4.[274]

Step 5 – adjustment to check that the penalty is proportionate and prevent the maximum penalty being exceeded

8.33 Where necessary, the penalty may be decreased to ensure that the level of the penalty is not disproportionate.[275] The CMA is not restricted to imposing the lowest penalty that could reasonably be justified and it will select the figure which it considers is appropriate in the circumstances of the case.[276]

8.34 The CMA considers that a penalty of £23,000,000 for Citi and £23,000,000 for Morgan Stanley for the Citi-MS Infringement is appropriate and proportionate in the round. In making this assessment, the CMA has had regard to the following:[277]

(a) each Party's specific size and financial position, as set out in paragraphs 8.27, 8.28 and footnote 274 above;

(b) the factors set out in paragraph 8.30(a); and

(c) the extensive compliance (and related monitoring and surveillance) measures that each Party has put in place since the end of the Citi-MS Infringement (see paragraphs 8.30(b) and 8.31).

8.35 On the same day as this Decision is adopted, the CMA has also adopted separate decisions imposing financial penalties on:

(a) Citi for a broadly similar infringement involving it and Deutsche Bank (the '**Citi-DB Infringement**'); and

(b) Morgan Stanley for a broadly similar infringement involving it and Deutsche Bank (the '**DB-MS Infringement**').

8.36 Taking a step back, in making this Decision, the CMA has considered:

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[273] Penalty Guidance, paragraph 2.19.
[274] The CMA acknowledges that each Party's penalty after Step 4 is large both in absolute terms and relative to the level of the penalty after Step 3. However, this remains a very small proportion of Citi's and Morgan Stanley's total worldwide revenue for the financial year ending 31 December 2023 (less than 0.1% and less than 0.1% respectively), its average worldwide revenue over its last three financial years (less than 0.1% and less than 0.1% respectively), its worldwide profit after tax for the financial year ending 31 December 2023 (approximately 0.3% and approximately 0.3% respectively) and its average worldwide profit after tax over its last three financial years (approximately 0.2% and approximately 0.3% respectively).
[275] Penalty Guidance, paragraph 2.25. A penalty may be proportionate even if it exceeds the statutory cap; however, if that is the case a further adjustment will be needed (Penalty Guidance, paragraph 2.27).
[276] Penalty Guidance, paragraph 2.25 and *FP McCann Limited v CMA* [2020] CAT 28 at [347].
[277] Penalty Guidance, paragraph 2.26.

(a) the total penalties resulting at the end of Step 4 for Citi in relation to both the Citi-MS Infringement and the Citi-DB Infringement; and

(b) the total penalties resulting at the end of Step 4 for Morgan Stanley in relation to both the Citi-MS Infringement and the DB-MS Infringement.

8.37 As regards Citi, the CMA considers that a total penalty of £49,000,000 at the end of Step 4 for Citi (namely £23,000,000 in relation to the Citi-MS Infringement and £26,000,000 in relation to the Citi-DB Infringement) would be disproportionate, in particular, given that a significant proportion of both penalties is the result of uplifts for specific deterrence in relation to broadly similar infringements (see paragraph 8.35).

8.38 The CMA considers that a total penalty of £33,000,000 would be appropriate and proportionate in the round for Citi (in relation to both the Citi-MS Infringement and the Citi-DB Infringement)[278] and has therefore reduced Citi's total penalty at the end of Step 5 in this Decision to **£7,000,000**.[279]

8.39 As regards Morgan Stanley, the CMA considers that a total penalty of £49,000,000 at the end of Step 4 for Morgan Stanley (namely £23,000,000 in relation to the Citi-MS Infringement and £26,000,000 in relation to the DB-MS Infringement) would be disproportionate, in particular, given that a significant proportion of both penalties is the result of uplifts for specific deterrence in relation to broadly similar infringements (see paragraph 8.35).

8.40 The CMA considers that a total penalty of £33,000,000 would be appropriate and proportionate in the round for Morgan Stanley (in relation to both the Citi-MS Infringement and the DB-MS Infringement)[280] and has therefore reduced Morgan Stanley's total penalty at the end of Step 5 in this Decision to **£7,000,000**.[281]

8.41 No further adjustment is required for either Party as the respective penalties do not exceed 10% of each Party's worldwide revenue in the financial year ending 31 December 2023.

[278] The sum of these two penalties represents approximately 0.1% of Citi's total worldwide revenue for the financial year ending 31 December 2023 and approximately 0.1% of Citi's average worldwide revenue over its last three financial years.
[279] Having reduced Citi's penalty in this Decision, no further adjustment is required in the separate decision in relation to the Citi-DB Infringement, in which Citi's penalty remains **£26,000,000** at the end of Step 5.
[280] The sum of these two penalties represents approximately 0.1% of Morgan Stanley's total worldwide revenue for the financial year ending 31 December 2023 and approximately 0.1% of Morgan Stanley's average worldwide revenue over its last three financial years.
[281] Having reduced Morgan Stanley's penalty in this Decision, no further adjustment is required in the separate decision in relation to the DB-MS Infringement, in which Morgan Stanley's penalty remains **£26,000,000** at the end of Step 5.

8.42 As a result of the above, in this Decision, after Step 5, Citi's penalty is **£7,000,000** and Morgan Stanley's penalty is **£7,000,000**.[282]

Step 6 – application of reductions including under the CMA's settlement policy

8.43 The CMA will reduce an undertaking's penalty at Step 6 where the undertaking has a leniency agreement with the CMA or reaches a settlement with the CMA.[283]

8.44 Provided that Citi continues to comply with the conditions set out in its leniency agreement,[284] it will benefit from a leniency discount of **35%** in relation to the Citi-MS Infringement.

8.45 As set out in paragraph 8.5, Citi has admitted its involvement in, and liability for, the Citi-MS Infringement as set out in this Decision. In light of that admission, and Citi's agreement to cooperate in the process for concluding the investigation, the CMA has reduced Citi's financial penalty by **20%** in relation to the Citi-MS Infringement (provided that it complies with the continuing requirements of the settlement reached with the CMA[285]).

8.46 As set out in paragraph 8.5, Morgan Stanley has admitted its involvement in, and liability for, the Citi-MS Infringement as set out in this Decision. In light of that admission, and Morgan Stanley's agreement to cooperate in the process for concluding the investigation, the CMA has reduced Morgan Stanley's financial penalty by **10%** in relation to the Citi-MS Infringement (provided that it complies with the continuing requirements of the settlement reached with the CMA[286]).

Penalties imposed by the CMA

8.47 The CMA therefore requires:

(a) Citi to pay a penalty of **£3,640,000** for the Citi-MS Infringement; and

(b) Morgan Stanley to pay a penalty of **£6,300,000** for the Citi-MS Infringement.

[282] The CMA considers that these adjustments are only appropriate and proportionate in the circumstances set out in this Decision taken together with the CMA's separate decisions, namely: (i) in relation to Citi, the Citi-DB Infringement; and (ii) in relation to Morgan Stanley, the DB-MS Infringement.
[283] Penalty Guidance, paragraphs 2.30 and 2.31.
[284] See paragraph 2.2.
[285] See paragraph 2.6.
[286] See paragraph 2.6.

8.48 The penalty will become due to the CMA on Tuesday, 22 April 2025[287] and must be paid to the CMA by close of banking business on that date.[288]

Juliette Enser

Acting Executive Director, Competition Enforcement

for and on behalf of the Competition and Markets Authority

[287] The next working day two calendar months from the expected date of receipt of this Decision.
[288] Details on how to pay are set out in the letter accompanying this Decision.

[ANNEXES] CONTENTS

Annex A: Glossary

A.1 In this Decision, the following terms have the meaning set out below. References to the singular include the plural and vice versa as the context requires.

Term	Definition
the Act	the Competition Act 1998
auction gilt	the specific gilt being issued in a gilt auction
bid / bidding	submitting a bid in a gilt auction
bid price	a price bid in a gilt auction for the auction gilt
bid volume	a volume bid in a gilt auction for the auction gilt
Bloomberg chat	contemporaneous communications between the Key Individuals sent in a 'persistent' bilateral Bloomberg chatroom
Chapter I prohibition	the prohibition in section 2(1) of the Act
Citi	together, Citigroup GML and its ultimate parent company Citigroup Inc.
Citigroup GML	Citigroup Global Markets Limited
Citi-DB Infringement	has the meaning given to it in paragraph 8.35(a) of this Decision
Citi-MS Communications	has the meaning given to it in paragraph 7.2 of this Decision
Citi-MS Conduct	has the meaning given to it in paragraph 7.7 of this Decision
Citi-MS Gilt Auction Communication	has the meaning given to it in paragraph 7.9 of this Decision
Citi-MS Gilt Buy-Back Auction Communication	has the meaning given to it in paragraph 7.19 of this Decision
Citi-MS Infringement	the infringement in which Citi and Morgan Stanley participated, as detailed in paragraph 7.2 of this Decision
Citi-MS Relevant Period	the period from 6 December 2011 to 15 February 2012
Citi-MS Specific Dates	has the meaning given to it in paragraph 7.2 of this Decision
Citi-MS Trading Communications	has the meaning given to it in paragraph 7.16 of this Decision
the CMA	the Competition and Markets Authority
the CMA Rules	the Competition Act 1998 (Competition and Market Authority's Rules) Order 2014, SI 2014/458
commercially sensitive information	commercially sensitive strategic information
DB-MS Infringement	has the meaning given to it in paragraph 8.35(b) of this Decision
Deutsche Bank	Deutsche Bank Aktiengesellschaft
the DMO	the Debt Management Office (an executive agency of HM Treasury)
the FCA	the Financial Conduct Authority
GEMM	a wholesale gilt-edged market maker

Term	Definition
Gilt	a sterling-denominated UK government bond, pursuant to which the UK government guaranteed to pay the holder of the gilt an annual cash payment (the coupon) in two equal semi-annual payments until the gilt's maturity date, at which point the UK government would pay the holder the final coupon payment and the principal amount
gilt asset swap	a product consisting of a gilt and an interest rate swap, typically with the same or similar maturity date as the gilt
gilt auction	an auction conducted for the purposes of issuing a gilt on behalf of the UK government
Gilt Auction Conduct	has the meaning given to it in paragraph 7.7(a) of this Decision
gilt buy-back auction	an auction conducted by the Bank of England to buy-back gilts
Gilt Buy-Back Auction Conduct	has the meaning given to it in paragraph 7.7(c) of this Decision
HSBC	together, HSBC Bank Plc and its ultimate parent company HSBC Holdings Plc
IDB	an inter-dealer broker, to which GEMMs had exclusive trading and viewing access
Key Individual	certain traders employed by the Parties, as detailed in Chapter 3 of this Decision
mid-price / mid / middle	has the meaning given to it in paragraph 4.21 of this Decision
Morgan Stanley	together, Morgan Stanley & Co. International Plc and its ultimate parent company Morgan Stanley
offer / offering	submitting an offer in a gilt buy-back auction
offer gilt	a specific gilt within the relevant maturity range for a gilt buy-back auction, which can therefore be, or is, the subject of an offer
offer price	a price offered in a gilt buy-back auction for selling that volume of that gilt
offer volume	a specific volume offered in a gilt buy-back auction for an offer gilt
Party	has the meaning given to it in paragraph 1.1 of this Decision
Party to the CMA's Investigation	Each of Citi, Morgan Stanley, Deutsche Bank, HSBC and RBC
Penalties Order	the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, SI 2000/309
Penalty Guidance	CMA, *Guidance as to the appropriate amount of a penalty*, CMA73, 16 December 2021
pricer	a Party's pricing software
RBC	together, RBC Europe Limited and its ultimate parent company Royal Bank of Canada
Relevant Market	the bidding for gilts in gilt auctions, trading of gilts and gilt asset swaps, and offering of gilts in gilt buy-back auctions globally
Requests for Information	an informal information request or a notice issued under section 26 of the Act
tap auction	a gilt auction for the issuance of additional volumes of a single specific gilt already in issue
trading / trade	individually and collectively, the trading of gilts and the trading of gilt asset swaps

Term	Definition
Trading Conduct	has the meaning given to it in paragraph 7.7(b) of this Decision
trading of gilt asset swaps	the outright purchase or sale of a gilt asset swap (either as a single trade or in two separate legs)
trading of gilts	the outright purchase or sale of an individual gilt
trading price	the price in relation to a trade or potential trade of gilts and gilt asset swaps by a dealer

Annex B: Chat Evidence

Introduction

B.1 This Annex sets out the CMA's assessment of the Citi-MS Communications on which the CMA relies to evidence the Citi-MS Conduct (as relevant to the Citi-MS Infringement) as summarised in paragraphs 7.9, 7.16 and 7.19. It consists of Bloomberg chats between Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) that took place in a 'persistent'[1] bilateral Bloomberg chatroom titled '*[MS Trader/Citi Trader]*', which was opened on [✂] September 2011 and closed on [✂] May 2012.[2] The relevant chats are referred to by the unique reference numbers (ie URNs) assigned to them by the CMA.[3]

B.2 The CMA has indicated in **bold** in each chat extract table and in the text accompanying each chat those disclosures which it has concluded constitute infringing conduct in relation to the Citi-MS Infringement.[4]

Citi-MS, A-URN-000020,[5] 6 December 2011

Summary

B.3 On 6 December 2011, Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) engaged in **Gilt Auction Conduct** and **Trading Conduct** during the gilt auction taking place that morning:[6]

(a) Morgan Stanley ([MS Trader]) disclosed the **parameters of his** intended, or likely, **bid price** in the gilt auction for the auction gilt, ie the 4.25% 2040 gilt.

(b) Citi ([Citi Trader]) disclosed the **parameters** of his intended, or likely, **bid price** and his **current mid-price** for the auction gilt.

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[1] A persistent or 'permanent' Bloomberg chatroom would retain and display participants' message history if they exited the chatroom (see B-URN-000502063, page 105).
[2] The dates and titles of the Bloomberg chatroom is taken from the metadata of the Bloomberg chats. Given [✂], it is possible that the persistent Bloomberg chatroom was closed earlier than the dates specified in the metadata; however, in any event, the evidence shows that the persistent Bloomberg chatroom was open throughout the Citi-MS Relevant Period.
[3] In some cases, the time zones recorded on the face of a Bloomberg chat did not reflect local UK time. Any differences between the timestamps in the chat and the UK time on the relevant day will be indicated in a footnote. All statements as to the difference between the time zone on the face of the Bloomberg chat and the time in the UK on the relevant day are based on the CMA's analysis, which was conducted by reference to the information available on the UK government website (www.gov.uk/when-do-the-clocks-change), the US National Institute of Standards and Technology website (https://www.nist.gov/pml/time-and-frequency-division/popular-links/daylight-saving-time-dst) and the Greenwich Mean Time website (https://greenwichmeantime.com/time-zone/abbreviations/).
[4] Other exchanges between Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) which are set out in this Annex B are included for context.
[5] A-URN-000020. Timestamps from the chat are recorded in UTC, which was the same as UK time on that date. Morgan Stanley also produced a chat on this date between Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]), A-URN-002049.
[6] The gilt auction conduct concerned a tap of a 4.25% 2040 gilt on 6 December 2011 (B-URN-000500742, DMO '*Gilt Market Issuance calendar 2011-2012*').

Disclosure of current mid-price, the parameters of the intended, or likely, bid price for the auction gilt (09:37:55 to 10:32:17)

B.4 At 09:37:55, Morgan Stanley ([MS Trader]) said to Citi ([Citi Trader]) that he thought that the gilt auction would go '*well*' and asked Citi ([Citi Trader]) for his view on the price to bid in order to be successful in the gilt auction ('*i guess today goes well*' '*though i wonder how much u have to pay*' '*last auction tailed, do you think u can get any below or too well wanted/*' '*?*' at 09:37:55 to 09:38:12). [MS Trader] (Morgan Stanley) said in interview that he was speculating as to whether a lower bid might succeed in the gilt auction or whether too many people were trying to buy the auction gilt thus increasing the price.[7] [Citi Trader] (Citi) said in interview that he understood Morgan Stanley ([MS Trader]) to be asking whether the price to bid was below the mid-price or whether there was so much demand that the price was going to be above it.[8]

B.5 At 09:40:36 Citi ([Citi Trader]) responded by stating his view of the price at which the gilt auction would clear ('*it gonna come thru mate*'). [Citi Trader] (Citi) said that given the wider economic context the demand for government bonds would be strong, and he was '*fairly certain*' the gilt auction would clear above the mid-price.[9]

B.6 Shortly before the gilt auction window closed, in response to Morgan Stanley ([MS Trader])'s earlier request, Citi ([Citi Trader]) disclosed his current mid-price for the auction gilt and the parameters of his intended, or likely, bid price.

B.7 At 10:08:57 Citi ([Citi Trader]) disclosed his **current mid-price** for the auction gilt and the **parameters of his intended, or likely, bid price** ('***i'm spotting a 117.8 mid right now. i wud bid 89-91, i thibnk [think]***'). Consistent with the CMA's interpretation, [Citi Trader] (Citi) said in interview that '*117.8*' referred to his internal mid-price for the auction gilt and that his bid price(s) would be around '*89-91*' if he was bidding at that particular moment, ie 21 minutes before the close of the gilt auction.[10] [MS Trader] (Morgan Stanley)'s evidence in interview was that Citi ([Citi

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[7] [MS Trader] (Morgan Stanley) said in interview that '*So, I, I guess I'm saying I'm not sure if it's going to come cheap or i… if to be successful you need to be one or paid through or -- before you can bid back, i.e. debating on whether it tails or not.'* He also said: *'if an auction tails, it means that, erm, erm, you know, you, you -- so… some of the auction, erm, clears, say, like below the non-comp, or it clears below the market. I guess you can probably use in the two senses -- but basically even if, erm -- even if the average is quite high, the lower down bids were, were still successful*.' When asked to explain "*too well wanted*", [MS Trader] (Morgan Stanley) said *'"Is it too well wanted" is it, is it just going to -- is everyone trying to buy this thing?*' (B-URN-000502073, pages 65 to 66).

[8] [Citi Trader] (Citi) said in interview that *'I think what he's saying is do I -- given that the last auction tailed, in my opinion, do I think it -- there will be, er, a w -- in my opinion, do I think that the price to bid is below wherever mid might be at the time, or is there so much demand that the price is going to be above it?*' (B-URN-000502064, page 127).

[9] See B-URN-000502064, page 128. [MS Trader] (Morgan Stanley) evidence was that he had interpreted [Citi Trader] (Citi)'s comments in the same manner. [MS Trader] (Morgan Stanley) said in interview '*So, he's …he says there "it's going to come thru". By "thru" I think he means that it will clear above the mid market at the time, ie that people want it. That's his opinion*.' (B-URN-000502073, page 66).

[10] [Citi Trader] (Citi) said in interview in relation to the term, '*spotting*', that '*that's where I think it [the mid] is, er in my own opinion*' and that '*[i]f somebody asks me – if a client says to me, "[Citi Trader], where would you spot mid for 40s?"… I would respond with, "I think my mid is –" or "I'm spotting it at 117.80"*'. [Citi Trader] (Citi) also said in interview that '*Er, I think that's just me hypothesising that, given that there's still 21 minutes left, er, I think mid at the moment is 117.80, and*

Trader]) was indicating that he would pay above his mid-price to '*buy*' the auction gilt.[11]

B.8 At 10:09:15 Morgan Stanley ([MS Trader]) then disclosed the **parameters of his intended or likely bid price** by replying '***yeah me thinks so***'. The CMA infers from this that Morgan Stanley ([MS Trader]) was disclosing that he would also bid at a price of '***89-91***'. Consistent with the CMA's inference, [MS Trader] (Morgan Stanley)'s evidence in interview was that he agreed with Citi ([Citi Trader])'s pricing strategy; the auction gilt was trading strongly in the market and in order to buy the auction gilt, a trader would have to buy it at a price higher than the mid-price.[12]

B.9 Following the close of the gilt auction, Citi ([Citi Trader]) stated that he had bid a price of '*88*' ('*well, I chased it. bid 88'* at 10:31:48),[13] and Morgan Stanley ([MS Trader]) disclosed that Morgan Stanley had bid '*90*' ('*bid 90 ourselves'* at 10:32:17).[14]

Chat extract table – 09:37:55 to 10:32:17

Timestamp (UTC)	Party (Key Individual) ***Extract***
09:37:55 09:38:00 09:38:11 09:38:12 09:38:24	**Morgan Stanley ([MS Trader])** *i guess today goes well* *though i wonder how much u have to pay* *last auction tailed, do you think u can get any below or too well wanted/ ?* *i'm debating between 1bp up and 1bp back!*
09:40:36	**Citi ([Citi Trader])** *it gonna come thru mate. esp after this story abt europe downgrade watch. i reckon u get people miss it, then they have nothing to offer tonight, and the bank lifts high offers and this thing just goes and goes.*

if it was to happen right now, I think, given the price action, given everything I said at 9:40, I would much rather want to bid above the market than below it' (B-URN-000502064, pages 130 to 131). The CMA notes that [MS Trader] (Morgan Stanley) said in interview that Citi ([Citi Trader]) was '*probably*' referring to '*just the mid on screen of the bond*' (B-URN-000502073, page 72). Notwithstanding [MS Trader] (Morgan Stanley)'s evidence in interview, the CMA infers that Citi ([Citi Trader]) was in fact referring to his internal mid-price and not, for instance, a composite mid-price that would have been available to other dealers. The CMA considers that the most natural reading of the exchange in light of [Citi Trader] (Citi)'s evidence in interview and in light of [MS Trader] (Morgan Stanley)'s other evidence in interview in which he acknowledged that at this timestamp Citi ([Citi Trader]) was referring to paying a price '*above **his** [ie Citi ([Citi Trader])'s] mid*' (B-URN-000502073, page 72, emphasis added).

[11] [MS Trader] (Morgan Stanley) said in interview '*he's [ie Citi ([Citi Trader])'s] indicating that he is going to pay above his [ie Citi ([Citi Trader])'s] mid to buy those bonds which I -- I think, you know, goes back to his 09:40:36 when he says it's "gonna come thru"*' (B-URN-000502073, page 72).

[12] [MS Trader] (Morgan Stanley) said in interview that '*I guess what I'm saying is yeah, if, if it looks to me that the price action is so strong that you probably… if you want to buy it, you'd probably have to pay up a lot for it, so – you know bidding 10 cents through might be what you have to do if you want to buy it*' (B-URN-000502073, pages 84 to 85).

[13] After the gilt auction closed, Citi ([Citi Trader]) disclosed to Morgan Stanley ([MS Trader]) that he had bid '*88*' ('*well, i chased it. bid 88*') (timestamp: 10:31:48) and Morgan Stanley ([MS Trader]) disclosed that Morgan Stanley had bid '*90*' ('*bid 90 ourselves*' (timestamp: 10:32:17).

[14] [Citi Trader] (Citi) said in interview '*So, the auction has shut at 10:30 and then I said to him, "Well, actually, I, I bid 88", um, which would have been one of my many bids…and he's said that… Morgan Stanley, had bid 90*' (B-URN-000502064, pages 139 to 140).

09:55:43 to 10:05:56	*[…]*
10:08:57	**Citi ([Citi Trader])** ***i'm spotting a 117.8 mid right now. i wud bid 89-91 i thibnk***
10:09:15	**Morgan Stanley ([MS Trader])** ***yeah me thinks so***
10:20:00 to 10:23:24	*[…]*
10:31:48	**Citi ([Citi Trader])** *well, i chased it. bid 88*
10:31:51	**Morgan Stanley ([MS Trader])** *88 clera?*
10:31:53	**Citi ([Citi Trader])** *think i'll miss*
10:31:56 10:32:17	**Morgan Stanley ([MS Trader])** *ha that's what i was thinking* *bid 90 ourselves*

Citi-MS, A-URN-000025,[15] 13 December 2011

Summary

B.10 On 13 December 2011, Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Gilt Buy-Back Auction Conduct**: during the gilt buy-back auction for gilts maturating in 2038 and later Citi ([Citi Trader]) disclosed the **offer price** he was offering the Bank of England in the gilt buy-back auction.

B.11 The gilt buy-back auction took place between 14:15 and 14:45.[16]

Disclosure during the gilt buy-back auction of an offer price (13:43:56 to 14:42:35)

B.12 Between 13:43:56 and 13:49:04, Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) discussed the upcoming gilt buy-back auction. At 13:48:32, Morgan Stanley ([MS Trader]) said *'i think there is 500mm total out there in teh st to be sold today*', which [MS Trader] (Morgan Stanley) said in interview was his view that there were sellers of about 500 million gilts and, as the gilt buy-back auction was for a larger volume, the gilt buy-back auction would do well, which the CMA understands meant that high offer prices would be accepted by the Bank of England (see below).[17]

B.13 In response to Morgan Stanley ([MS Trader]) seeking Citi ([Citi Trader])'s view, '*but after that i'm not sure ya know*?' (at 13:48:40), Citi ([Citi Trader]) disclosed his view '*i am not thinking uncovered, but super high offers get lifted*' (at 13:49:04). [Citi Trader] (Citi) said in interview that he was suggesting that '*given that they [the Bank of England] are buying more than 500 million, could possibly mean that high offers get lifted*'.[18]

B.14 At 14:41:59, during the last five minutes of the gilt buy-back auction, Citi ([Citi Trader]) disclosed the **offer price** (the 4.25% 2049 gilt) he was offering the Bank of England in the gilt buy-back auction ('***i'm offering some 49s @ 125.09***'). [Citi Trader] (Citi)'s evidence in interview was that he was offering the 2049 gilts to the Bank of England at a price of 125.09.[19]

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[15] A-URN-000025. Timestamps from the chat are recorded in UTC, which was the same as UK time on that date. Morgan Stanley also produced a chat on this date between Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]), A-URN-002069.
[16] B-URN-000500757, tab 13DEC11 which indicates that in the competitive gilt buy-back auction on the date of this chat the Bank of England received offers to sell gilts including with the following coupons and maturities: 4.75% 2038, 4.25% 2039, 4.25% 2040, 4.5% 2042, 4.25% 2046, 4.25% 2049, 3.75% 2052, 4.25% 2055 and 4% 2060.
[17] [MS Trader] (Morgan Stanley) said in interview '*So, I guess what I'm saying is I think that there's an overhang in that auction of about 500 million and, erm, the APF is slightly bigger than that, so I think it'll do well'* (B-URN-000502073, page 96).
[18] B-URN-000502064, page 144.
[19] [Citi Trader] (Citi) said in interview, '*Yeah. I just say "I'm going to be offering some 49s at 125.09". Er, he says about 30 seconds later that he is about the same price but in some other bonds; he doesn't specify which bonds'*. When asked, [Citi Trader] (Citi) confirmed that he was referring to the 2049 gilt and that 125.09 was the price that he was looking to

B.15 At 14:42:35 Morgan Stanley ([MS Trader]) acknowledged Citi ([Citi Trader])'s disclosure and stated that he was offering some gilts other than the 4.25% 2049 gilt at a 'about' the same price ('*yeah i'm about same equiv in some other stuff*').[20]

Chat extract table – 13:43:56 to 14:42:35

Timestamp (UTC)	Party (Key Individual) ***Extract***
13:43:56	**Citi ([Citi Trader])** *seen lots of RM buying of longs mate. Esp 32s, which are real cheap*
13:47:22 13:47:34 13:47:39 13:47:45	**Morgan Stanley ([MS Trader])** *hey dude* *yeah saw decent rec yesterday* *i think ti's pretty clean* *thnk only 500mm left*
13:48:18 13:48:23	**Citi ([Citi Trader])** *500mm?* *how do u mean?*
13:48:32 13:48:33 13:48:35 13:48:40	**Morgan Stanley ([MS Trader])** *i think there is 500mm total out there in teh st to be sold today* *my guess* *from last week* *but after that i'm not sure ya know?*
13:49:04	**Citi ([Citi Trader])** *ah ....well, i am not thinking uncovered, but super high offers get lifted.*
13:50:48 to 14:39:24	*[…]*
14:41:59	**Citi ([Citi Trader])** ***i'm offering some 49s @ 125.09***
14:42:35	**Morgan Stanley ([MS Trader])** *yeah i'm about same equiv in some other stuff*

submit to the Bank of England (B-URN-000502064, page 149). [MS Trader] (Morgan Stanley)'s evidence was that [Citi Trader] (Citi) was indicating where he was going to offer gilts ('*bonds*') into the '*APF*' (also known as the gilt buy-back auction) (B-URN-000502073, page 100).

[20] [MS Trader] (Morgan Stanley) said in interview '*So, I'm not being specific about the bonds that I'm selling or the size. But I'm saying, erm, that generally I guess at that middle -- that level is where I'm -- I've offered stuff as well or where, where I'm offering stuff as well... Erm, sounds like it's just other gilts rather than that gilt. Erm, but it's not definitive*' (B-URN-000502073, page 100). [Citi Trader] (Citi) said in interview that '*I just say, "I'm going to be offering some 49s at 125.09". Er, he says about 30 seconds later that he is about the same price but in some other bonds; he doesn't specify which bonds*' (B-URN-000502064, page 149).

Citi-MS, A-URN-000036,[21] 15 February 2012

Summary

B.16 On 15 February 2012, Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Trading Conduct**: Citi ([Citi Trader]) disclosed his **future trading price** in relation to 2040 gilt asset swaps.

Disclosure of future trading price (11:20:18 to 11:20:35)

B.17 At 11:20:18 to 11:20:35 Citi ([Citi Trader]) disclosed his **future trading price** in relation to a long dated gilt asset swap, namely the 2040 gilt asset swap ('***I'm sitting on a 12.5 bid for 40s asw***' at 11:20:18). [Citi Trader] (Citi)'s evidence in interview was that he was disclosing the trading price at which he wanted to purchase the 2040 gilt asset swaps.[22] He said that his comment '*think these are the cheaper ones, but its worth like 1-1.5bp max ya know!*' (11:20:35) was a reference to relative profit from the 2040 gilt asset swaps compared with other gilt asset swaps of similar or longer maturity.[23]

B.18 [MS Trader] (Morgan Stanley)'s evidence in interview was that, when Citi ([Citi Trader]) said at 11:20:18 that he was '*sitting on*' a '*bid*', he was saying that '*If it [ie the price] gets down there, I'll buy some. But I'm not trying to buy any right now*' and that '*it sounds like a not a very aggressive bid*'.[24] Although [MS Trader] (Morgan Stanley) said in interview that he could not be sure what Citi ([Citi Trader]) was referring to specifically at 11:20:35,[25] his evidence in respect of Citi ([Citi Trader])'s disclosure at 11:20:18 corroborates that of [Citi Trader] (Citi) who said in interview that he was disclosing '*the [price] level I would wait for before I bought*'.[26]

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[21] A-URN-000036.Timestamps from the chat are recorded in UTC, which was the same as UK time on that date. Morgan Stanley also produced a chat on this date between Citi ([Citi Trader]) and Morgan Stanley ([MS Trader]), A-URN-002145.
[22] [Citi Trader] (Citi)'s said in interview that '*Yeah. So, I'm only effectively saying to him that I think the right level to buy the asset swaps would be at 12.5'* and *'That's the level I would wait for before I bought*' (B-URN-000502064, pages 183 to 184).
[23] [Citi Trader] (Citi) said in interview '*What I'm saying is that the reason I picked 40s versus, say, for example, 42s, is because I think 40s are a little cheaper and therefore, I think that if I bought the 40s I could potentially make an extra 1 to 1.5 basis points than if I bought the 42s or stayed with the 55s*' (B-URN-000502064, page 184).
[24] B-URN-000502073, page 148.
[25] B-URN-000502073, page 147.
[26] [Citi Trader] (Citi)'s said in interview that '*Yeah. So, I'm only effectively saying to him that I think the right level to buy the asset swaps would be at 12.5'* and *'That's the level I would wait for before I bought*' (B-URN-000502064, pages 183 and 184).

Chat extract table – 11:20:18 to 11:20:35

Timestamp (UTC)	Party (Key Individual) ***Extract***
11:20:18 11:20:35	**Citi ([Citi Trader])** *yeah, i hear ya.* ***I'm sitting on a 12.5 bid for 40s asw*** *think these are the cheaper ones, but its worth like 1-1.5bp max ya know!*