

Decision of the Competition and Markets Authority

Competition Act 1998

**UK government bonds: Deutsche
Bank-HSBC Infringement**

Case Number: 50601

21 February 2025



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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 Some numbers have been replaced by a range.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 Names have been replaced by a general descriptor of the individual's role.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

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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) Deutsche Bank Aktiengesellschaft¹ ('**Deutsche Bank**'); and
 - (b) HSBC Bank Plc² and its ultimate parent company HSBC Holdings Plc³ (together '**HSBC**').
- 1.2 During the period 28 October 2009 to 29 June 2010 (the '**DB-HSBC Relevant Period**'), both Deutsche Bank and HSBC 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**'); and
 - (b) the trading of gilts and gilt asset swaps with various counterparties.⁴
- 1.3 The CMA has found that in the DB-HSBC Relevant Period, Deutsche Bank and HSBC 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.⁵
- 1.4 Specifically, and as described further in Chapter 7, the CMA has found that Deutsche Bank and HSBC participated in a single and repeated infringement on the DB-HSBC Specific Dates⁶ in the form of a concerted practice which comprised the disclosure by one or both of Deutsche Bank and HSBC to the other of commercially sensitive strategic information ('**commercially sensitive information**') in various communications, through a bilateral Bloomberg

¹ A company registered in England and Wales with company number FC007615 and overseas company address Taunusanlage 12, Frankfurt am Main, 60325, Germany. Its UK establishment number is BR000005 and the registered and trading address of its UK establishment is 21 Moorfields, London, EC2Y 9DB.

² A company registered in England and Wales with the company number 00014259 and registered and trading address of 8 Canada Square, London, E14 5HQ.

³ A company registered in England and Wales with company number 00617987 and registered office of 8 Canada Square, London, E14 5HQ.

⁴ 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)).

⁵ 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.

⁶ See the definition of DB-HSBC Specific Dates in Chapter 7.

‘chatroom’,⁷ in relation to certain auction gilts and the trading of certain gilts and gilt asset swaps.⁸

- 1.5 Deutsche Bank applied for, and was granted, full immunity from financial penalties under the CMA’s leniency policy.⁹ This immunity will continue to apply provided that Deutsche Bank continues to comply with the conditions of the CMA’s leniency policy.
- 1.6 By this Decision, the CMA is imposing a financial penalty on HSBC under section 36 of the Act, in accordance with the terms of settlement that HSBC has reached with the CMA.¹⁰
- 1.7 The CMA has indicated in **bold** at paragraphs 7.9 and 7.10 and at Annex B the specific mid-price disclosures which it has found to comprise the infringing disclosures in the DB-HSBC 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).
- 1.8 A table of abbreviations and defined terms used in this Decision is provided at Annex A.

⁷ The disclosures were made by certain traders employed by the Parties (each a ‘**Key Individual**’ and together the ‘**Key Individuals**’), see Chapter 3.

⁸ All references in this Decision to the DB-HSBC Infringement are to the term as defined in Chapter 7.

⁹ *Applications for leniency and no-action in cartel cases* (OFT1495, adopted by the CMA Board). See Chapter 2.

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 HSBC.¹¹ The case was allocated to the CMA under the concurrency framework¹² and followed an application by Deutsche Bank for a Type A immunity marker under the CMA's leniency policy.¹³
- 2.2 The CMA's investigation after launch included gathering material from the Parties to the CMA's Investigation and third parties including: contemporaneous documents,¹⁴ interviews of individuals previously employed by the Parties to the CMA's Investigation,¹⁵ and responses to informal information requests and/or notices issued under section 26 of the Act (together, '**Requests for Information**').¹⁶ The CMA also considered certain published documents.¹⁷
- 2.3 The CMA issued a Statement of Objections and Draft Penalty Statement to Deutsche Bank and HSBC on 24 May 2023.¹⁸

¹¹ See B-URN-000500732. In addition to Deutsche Bank and HSBC, the following were also party to the CMA's investigation: Citigroup Global Markets Limited and its ultimate parent company Citigroup Inc. (together '**Citi**'); Morgan Stanley & Co. International Plc and its ultimate parent company, Morgan Stanley (together '**Morgan Stanley**'); 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 Citi, Morgan Stanley and RBC is an addressee to this Decision, nor has the CMA made any findings of infringement in respect of Citi, Morgan Stanley and RBC as regards the DB-HSBC 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, as part of which Deutsche Bank admitted its involvement in, and liability for, the DB-HSBC Infringement.

¹⁴ Including contemporaneous communications between the Key Individuals sent in a 'persistent' bilateral Bloomberg chatroom ('**Bloomberg chats**') (see Annex B).

¹⁵ Including transcripts of interviews with each of the Key Individuals (including B-URN-000502065; B-URN-000502066; B-URN-000502067; B-URN-000502068; B-URN-000502069; B-URN-000502070; B-URN-000502074; B-URN-000502075; and B-URN-000502077). Each interviewed individual signed a statement of truth confirming the accuracy of their interview transcripts (including B-URN-000503013; and B-URN-000503290).

¹⁶ The CMA obtained material from Deutsche Bank as part of its obligation to cooperate as a leniency applicant in response to a number of Requests for Information (including B-URN-000500791; B-URN-000501069; B-URN-000501172; and B-URN-000501579). The CMA also obtained material from HSBC in response to a number of Requests for Information (including B-URN-000500736; B-URN-000501015; B-URN-000501073; B-URN-000501166; B-URN-000501757; and B-URN-000502155). 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).

¹⁷ Including versions of the DMO's guidebooks that were applicable during the DB-HSBC Relevant Period (see B-URN-000503293; and B-URN-000503302). For the purpose of market definition (see Chapter 5), the CMA has also considered versions of the Bank of England's market notices that were applicable during the DB-HSBC Relevant Period (see B-URN-000503304; B-URN-000503305; and B-URN-000503306).

¹⁸ 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**').

- 2.4 HSBC provided written representations on the Statement of Objections and Draft Penalty Statement in August 2023 and an oral hearing was held in November 2023.¹⁹
- 2.5 The CMA and HSBC reached a settlement on 19 February 2025, after the Statement of Objections was issued.²⁰ As part of that settlement, HSBC admitted its involvement in, and liability for, the DB-HSBC Infringement and agreed that a streamlined administrative procedure would apply to it for the remainder of the investigation. HSBC 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 DB-HSBC Infringement as part of its settlement.

¹⁹ Consistent with the conditions of leniency under the CMA's leniency policy, Deutsche Bank did not provide full written or oral representations on the Statement of Objections or the Draft Penalty Statement.

²⁰ The draft infringement decision, on the basis of which HSBC reached a settlement, was provided to Deutsche Bank and HSBC 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. Deutsche Bank

- 3.2 Deutsche Bank is a global bank which offers *‘investment, financial and related products and services to private individuals, corporate entities and institutional clients around the world’*.²¹
- 3.3 The ultimate parent company of the undertaking is Deutsche Bank Aktiengesellschaft (**‘Deutsche Bank’**). Deutsche Bank is designated as a wholesale gilt-edged market maker (**‘GEMM’**)²² and was a GEMM throughout the DB-HSBC Relevant Period.²³

A.I [DB Trader] (Deutsche Bank)

- 3.4 [DB Trader] was employed by DB Group Services (UK) Limited, a subsidiary within Deutsche Bank,²⁴ from [X] to [X] ([X]).²⁵ [DB Trader] was therefore an employee of Deutsche Bank throughout the DB-HSBC Relevant Period.
- 3.5 [DB Trader] was a trader on Deutsche Bank’s [desk] as part of a team that traded gilts and certain sterling derivatives (including interest rate swaps), which sat together.²⁶ In this role, [DB Trader] participated in gilt auctions and the trading of gilts and gilt asset swaps on behalf of Deutsche Bank.²⁷
- 3.6 In light of the above and having taken into account the evidence summarised in Chapter 7 and Annex B, the CMA has concluded that [DB Trader] carried on the activities of Deutsche Bank during the DB-HSBC Relevant Period, namely the

²¹ Deutsche Bank Annual Report 2023, page 6. Available from: <https://investor-relations.db.com/files/documents/annual-reports/2024/Annual-Report-2023.pdf> [Accessed on 3 October 2024].

²² See Chapter 4. During the DB-HSBC Relevant Period, there were between 15 and 18 wholesale GEMMs, including each of the Parties (B-URN-000503296, pages 50 to 51; and B-URN-000503297, pages 42 to 43). 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.

²³ B-URN-000503296; page 50; B-URN-000503297, page 42; and the DMO’s list of GEMMs available from: <https://www.dmo.gov.uk/responsibilities/gilt-market/market-participants/> [Accessed on 17 October 2024].

²⁴ B-URN-000503142. DB Group Services (UK) Limited is a private limited company registered in England and Wales with the company number 03077349, which acts as an employing entity for Deutsche Bank and its subsidiaries. DB Group Services (UK) Limited is owned and controlled by Deutsche Bank (See Deutsche Bank Annual Report for the year ending 31 December 2023, page 360. Available from: <https://investor-relations.db.com/files/documents/annual-reports/2024/Annual-Report-2023.pdf> [Accessed on 3 October 2024]).

²⁵ B-URN-000503262; and B-URN-000502065, pages 15 to 16. [X].

²⁶ B-URN-000501299, paragraphs 1.1 to 1.5; and B-URN-000502068, pages 24 to 25.

²⁷ B-URN-000501299, paragraphs 1.2 to 1.5; B-URN-000501610, paragraph 1.1; and B-URN-000502065, pages 16 to 19.

participation in gilt auctions and trading of gilts and gilt asset swaps that formed part of the DB-HSBC Infringement.

B. HSBC

3.7 HSBC is ‘one of the largest banking and financial services organisations in the world’, providing banking and related financial services to its customers, which include government, corporate and institutional clients and private individuals.²⁸

3.8 The ultimate parent company of the undertaking is HSBC Holdings Plc.

3.9 HSBC Bank Plc is a GEMM and was a GEMM throughout the DB-HSBC Relevant Period.²⁹ HSBC Bank Plc is wholly owned by HSBC Holdings Plc.³⁰

B.1 [HSBC Trader] (HSBC)

3.10 [HSBC Trader] was employed by HSBC Bank Plc, a subsidiary within HSBC, from [X] to [X]. [HSBC Trader] was therefore an employee of HSBC throughout the DB-HSBC Relevant Period.³¹

3.11 [HSBC Trader] was a trader on HSBC’s [team],³² which involved ‘multiple people doing gilts and interest rate swaps’ who all sat together.³³ In this role, [HSBC Trader] participated in gilt auctions and trading of gilts and gilt asset swaps on behalf of HSBC.³⁴

²⁸ HSBC Holdings Plc Annual Report and Accounts for the year ending 31 December 2023, pages 4 and 372. Available from: <https://www.hsbc.com/investors/results-and-announcements/annual-report> [Accessed on 3 October 2024].

²⁹ B-URN-000503296; page 50; B-URN-000503297, page 42; and the DMO’s list of GEMMs available from: <https://www.dmo.gov.uk/responsibilities/gilt-market/market-participants/> [Accessed on 17 October 2024].

³⁰ HSBC Holdings Plc Annual Report and Accounts for the year ending 31 December 2023, page 428. Available from: <https://www.hsbc.com/investors/results-and-announcements/annual-report> [Accessed on 3 October 2024]. See also *Companies House* [Online] Available from <https://find-and-update.company-information.service.gov.uk/company/00617987> [Accessed on 7 October 2024]. This was also the case throughout the DB-HSBC Relevant Period, see HSBC Holdings Plc Annual Report and Accounts for the year ending 31 December 2009, page 484 and HSBC Holdings Plc Annual Report and Accounts for the year ending 31 December 2010, page 375. *Companies House* [Online] Available from <https://find-and-update.company-information.service.gov.uk/company/00617987> [Accessed on 17 October 2024].

³¹ B-URN-000500149, page 2. [X], the CMA has evidence of Bloomberg chats between HSBC ([HSBC Trader]) and Deutsche Bank ([DB Trader]) in June 2010 (see, for example, **DB-HSBC, A-URN-007673**).

³² B-URN-000501042, page 24.

³³ B-URN-000502074, pages 35 to 37.

³⁴ B-URN-000501042, pages 23 to 24; and B-URN-000502074, pages 23 to 24 and 119 to 120.

4. INDUSTRY BACKGROUND

A. Products

4.1 The DB-HSBC Infringement³⁵ relates to the following two products:³⁶

- (a) **Gilts:**³⁷ 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**');³⁸ 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**').³⁹ 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).⁴⁰ A dealer would use a gilt asset swap to, for example, hedge interest rate risk.⁴¹

B. Parties' role as GEMMs

4.2 In relation to gilts, each of the Parties was designated as a GEMM during the DB-HSBC Relevant Period. GEMMs were subject to a number of obligations,⁴² and

³⁵ This Decision uses the past tense to denote that the relevant description refers to matters as they pertained during the DB-HSBC Relevant Period.

³⁶ These products were interrelated. For example, their prices were linked (see footnotes 78 and 79) 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-000502068, pages 29 to 30; and B-URN-000502074, page 109).

³⁷ References to 'gilts' in this Decision are to conventional gilts. Since no other sub-categories of gilts are the subject of the DB-HSBC 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-000502065, page 56).

³⁸ B-URN-000503300, page 4; B-URN-000500865, paragraph 1.1(a); and B-URN-000501042, page 1. 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 (see B-URN-000502065, pages 123 to 124). 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-000502066, page 281 and Annex B)).

³⁹ A gilt asset swap would also have been referred to by a number of other names, including 'asset swap', 'asw', 'swap', 'matched maturity' or 'mm' (B-URN-000502065, pages 127 to 128 and 161; and B-URN-000501206, page 11).

⁴⁰ B-URN-000501195, paragraph 20.2; and B-URN-000502065, pages 208 to 209.

⁴¹ B-URN-000501195, paragraph 20.2; and B-URN-000501293, page 4.

⁴² 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 two-way prices*' to clients and maintain a specific market share in gilts over a rolling period (B-URN-000503293, paragraphs 13 and 15 to 17).

were entitled to certain privileges,⁴³ in relation to the issuance and trading of gilts. The Parties played a similar, but informal, role as dealers of gilt asset swaps.⁴⁴

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

- (a) gilt auctions;⁴⁵ and
- (b) the trading of gilts and gilt asset swaps with various counterparties (that is, GEMMs, other dealers and clients).

B.1 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.⁴⁶

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'**).⁴⁷

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'**).⁴⁸ GEMMs bid *'blindly'* (ie they could not see other GEMMs' bids).⁴⁹ A GEMM could amend or withdraw its bid(s) up to, or very close to, the close of the gilt auction window.⁵⁰

⁴³ 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-000503293, paragraphs 22 and 26 and page 54).

⁴⁴ B-URN-000502066, pages 13 to 15.

⁴⁵ 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-000500865, paragraphs 21.1 to 21.5; and B-URN-000501042, pages 18 to 19). The DB-HSBC Infringement only relates directly to gilt auctions, so the Parties' roles in relation to syndication are not considered further in this Decision.

⁴⁶ B-URN-000503295, page 1 and paragraphs 1 and 2.

⁴⁷ B-URN-000500865, paragraph 2.2. New gilts were traded in advance of their issuance in the period between the DMO's announcement of the terms and conditions for the gilt auction and the gilt auction itself (known as the when-issued (or 'wi') period) (see B-URN-000502065, pages 87 to 88).

⁴⁸ B-URN-000503293, paragraphs 41 to 43. 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).

⁴⁹ B-URN-000501382, page 8.

⁵⁰ B-URN-000503293, paragraph 42. [DB Trader] (Deutsche Bank) said in interview that he would amend his bids up until the close of the relevant gilt auction (B-URN-000502069, page 234). 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).

- 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.⁵¹
- 4.8 Since GEMMs were the only institutions eligible to bid directly in gilt auctions,⁵² 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; and the purchase of one specific gilt and the sale of another specific gilt (a '**gilt switch**')⁵³ (such trading, individually and collectively, 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.⁵⁴
- 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).⁵⁵ The Parties and other dealers traded through a range of channels, including:
- (a) with clients:⁵⁶ directly,⁵⁷ via agency brokers⁵⁸ and, in relation to gilts only, via electronic trading platforms (including Bloomberg and Tradeweb);⁵⁹ and

⁵¹ B-URN-000503293, paragraphs 49 to 51 and 57; and B-URN-000501382, page 8.

⁵² B-URN-000503293, paragraph 22.

⁵³ B-URN-000502067, page 54; and B-URN-000502074, page 111.

⁵⁴ 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**'.

⁵⁵ 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-000502068, pages 6 to 7; and B-URN-000503293, paragraph 99).

⁵⁶ Subject to each GEMM's obligation continually to make two-way prices (see footnote 42).

⁵⁷ B-URN-000502065, pages 38 to 39 and 44 to 45; B-URN-000502066, pages 12 to 13; and B-URN-000502074, pages 29 to 30 and 60.

⁵⁸ See, for example in relation to gilts, B-URN-000500865, paragraph 4.1(c); and B-URN-000501206, pages 4 to 5.

⁵⁹ B-URN-000501195, paragraphs 9.1 to 9.7.

(b) with other counterparties: via brokers (including, for gilts, IDBs)⁶⁰ and directly (although such trading was not common).⁶¹

4.12 A dealer would typically trade for a range of strategic reasons, including to build relationships with clients,⁶² manage risk,⁶³ 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.⁶⁴

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.⁶⁵

C. The determination of pricing by a Party

4.14 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.⁶⁶ 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 or buy or sell a product through trades⁶⁷ by reference to a range of imperfect sources of available information.

4.15 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;⁶⁸

⁶⁰ B-URN-000500865, paragraphs 4.1(b) to (c); B-URN-000502066, pages 8 to 10; B-URN-000501042, pages 4 to 5; and B-URN-000502074, pages 60 to 61. GEMMs' obligation continually to make two-way prices applied only to clients, not with other GEMMs (see B-URN-000503293, paragraphs 96 to 97).

⁶¹ B-URN-000501195, paragraph 11.3; and B-URN-000501042, page 4. 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 DB-HSBC Infringement (noting that such direct trades were uncommon).

⁶² B-URN-000502074, pages 108 to 109.

⁶³ B-URN-000501195, paragraph 16.7(b); and B-URN-000501042, page 25.

⁶⁴ See footnotes 42 and 45; B-URN-000500865, paragraphs 10.1 and 10.2; and B-URN-000502074, pages 104 to 105.

⁶⁵ B-URN-000500865, paragraph 29.1; and B-URN-000501042, page 22.

⁶⁶ 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).

⁶⁷ Prices of gilts were typically quoted as a price per £100 nominal (see footnote 48). The Parties often only referred to the fractional part of the price (the pence or 'cents', also sometimes referred to as 'ticks') (see B-URN-000502065, pages 181 and 262; and B-URN-000502066, page 252). 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-000502065, page 232). When considering a price for a product involving more than one leg (eg gilt switches or gilt asset swaps), the Parties typically referred to prices articulated as yields (see, for example, B-URN-000502074, pages 87 to 88). 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/1sljygu/yldegns.pdf> [Accessed on 18 October 2024]).

⁶⁸ See paragraph 4.7; and B-URN-000501382, pages 16 to 18; B-URN-000501195, paragraph 13.1; B-URN-000502065, page 52; and B-URN-000501206, pages 6 to 7.

- (b) electronic trading platforms, including composite mid-prices⁶⁹ and limited details of client trading;⁷⁰
- (c) IDBs and other brokers, including:
 - (i) in relation to gilts: trading prices available via that broker⁷¹ and details of trades after they had completed (including the product(s) and price);⁷²
 - (ii) in relation to gilt asset swaps: trading prices available via that broker⁷³ and details of trades after they had completed (including the product(s) and price);⁷⁴ and
- (d) a client on an *ad hoc* basis.⁷⁵

4.16 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’)⁷⁶ for each gilt and gilt asset swap, which were intended to represent where the Party/dealer considered the market ‘*equilibrium*’ to be at that point.⁷⁷

4.17 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.⁷⁸ To determine such mid-prices, in addition to and in combination with the information and approach referred to in paragraphs 4.15 and 4.16 above, the Parties will have used pricing software (also referred to as a ‘pricer’).⁷⁹ Each Party’s pricer was proprietary or confidential^{80, 81} and a Party’s mid-prices for both

⁶⁹ B-URN-000501195, paragraph 11.1; and B-URN-000501206, page 5.

⁷⁰ B-URN-000501195, paragraph 9.6.

⁷¹ B-URN-000501206, page 4.

⁷² B-URN-000501195, paragraph 10.5; and B-URN-000501206, page 4.

⁷³ B-URN-000502066, page 8.

⁷⁴ B-URN-000502068, pages 7 to 8; and B-URN-000502074, page 58.

⁷⁵ B-URN-000500865, paragraph 36.1; B-URN-000501195, paragraph 16.3(d)(i); and B-URN-000502074, pages 83 and 101 to 102.

⁷⁶ Deutsche Bank’s responses to Requests for Information refer to the ‘*fair value*’ price rather than the mid-price (see, for example, B-URN-000501195, paragraph 16.3(a)), which the CMA understands to be the same as the mid-price (for example, [DB Trader] (Deutsche Bank) said in interview that Deutsche Bank’s pricer (see paragraph 4.17) produced mid-prices for gilts (B-URN-000502066, page 16)).

⁷⁷ [X] said in interview that ‘[t]he mid[-price] is supposed to be the objective um best guess of equilibrium at any point in time’ (B-URN-[X]).

⁷⁸ B-URN-000501195, paragraph 16.9; and B-URN-000501206, pages 7 to 8. 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 (see B-URN-000502066, pages 28 to 29; and B-URN-000502074, pages 101 to 102).

⁷⁹ B-URN-000501195, paragraphs 16.3 to 16.6; and B-URN-000501206, page 8. 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-000502066, pages 29 to 30; and B-URN-000502074, page 116).

⁸⁰ B-URN-000501195, paragraph 16.8. HSBC did not specifically state whether or not it considered its gilt pricer to be proprietary or confidential (B-URN-000501206, pages 7 to 9); however [HSBC Trader] (HSBC) said in interview that another bank’s internal mid-prices would not have been available to him (see also footnote 82).

⁸¹ Given the nature of each Party’s equivalent gilt asset swap pricer (see footnote 78), the CMA infers that they would also be considered proprietary or confidential.

gilts and gilt asset swaps were not ordinarily available to other GEMMs and dealers.⁸²

- 4.18 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 information from certain sources or in certain contexts, and the available information changed frequently in response to market dynamics.⁸³
- 4.19 A dealer would then determine its bid price(s) for a gilt auction and/or its trading price(s)⁸⁴ by reference to:⁸⁵
- (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 or trade in question, having had regard to a range of information including that specified in paragraph 4.15.
- 4.20 In determining a bid price for a gilt auction or a trading price, 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.⁸⁶

⁸² B-URN-000502067, pages 60 to 61; and B-URN-000502074, page 156. Although Deutsche Bank referred to pricing outputs from the gilt pricer (ie gilt mid-prices) being disclosed to clients (B-URN-000501195, paragraph 16.8), given the evidence available, the CMA considers that such prices ordinarily remained confidential at least as between GEMMs and dealers.

⁸³ [DB Trader] (Deutsche Bank) said in interview that '*some [trades] you'd maybe give more weight to and... that would raise your price*' (B-URN-000502066, page 180). See also B-URN-000502075, page 27.

⁸⁴ Given the similarities in how gilts and gilt asset swaps were priced and traded (see paragraphs 4.11 and 4.17), 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).

⁸⁵ See B-URN-000501195, paragraphs 16.1 to 16.10; B-URN-000502066, pages 179 to 181; B-URN-000501206, pages 7 to 8; and B-URN-000502074, pages 79 and 122. [DB Trader] (Deutsche Bank) said in interview that his internal mid-price was '*a reference point from where I start my bids*' (B-URN-000502066, page 181) and [HSBC Trader] (HSBC) said that '*...the starting point of the pricer would be to provide me with a clean mid-price...Then as a market maker my job would be to show bids and offers around that mid*' (B-URN-000502074, page 79).

⁸⁶ B-URN-000501195, paragraphs 8.2, 16.7(b), 16.7(c) and 16.10(c); B-URN-000502068, pages 30 to 31; B-URN-000500865, paragraphs 4.1(a) and 29.1(e); B-URN-000502065, page 51; B-URN-000501206, page 8; B-URN-000502074, pages 103 and 127; and B-URN-000501042, pages 26 to 27.

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.⁸⁷ 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.⁸⁸
- 5.2 The CMA has considered the two focal products for the DB-HSBC 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 segments⁸⁹) formed part of the same product market, since:
- (a) there is evidence of demand-side substitutability,⁹⁰ albeit that such substitutability was potentially limited and dependent on the circumstances;⁹¹

⁸⁷ 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.

⁸⁸ *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.

⁸⁹ For the purposes of the CMA's investigation, the market segments are gilt auctions, trading and gilt buy-back auctions. The Bank of England conducted regular gilt buy-back auctions at certain points during the DB-HSBC Relevant Period as part of its quantitative easing policy. Although GEMMs' obligations and privileges did not relate to gilt buy-back auctions, GEMMs were eligible to participate in gilt buy-back auctions (see B-URN-000500756, tab 'Info requests – responses'). The CMA has found that the DB-HSBC Infringement related to gilt auctions and trading only – it did not relate to gilt buy-back auctions (see Chapter 7) – but the CMA has nevertheless considered whether the gilt buy-back auction segment forms part of the relevant market.

⁹⁰ Since GEMMs were involved in two-way trading (see paragraph 4.11 and footnote 42), 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.

⁹¹ For example: (i) gilts and gilt asset swaps were interrelated (see footnote 36), but they exposed holders to different risks; (ii) although clients typically specified the maturity of the gilt or gilt asset swap product they were looking to trade (see B-URN-000501299, paragraphs 3.1 and 3.3; and B-URN-000501293, page 5), 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-000501299, paragraph 3.2); 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-000500865, paragraph 3.2; and B-URN-000501042, page 11).

- (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;⁹² and
- (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.⁹³

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,⁹⁴ which were not tied to any particular physical location.

⁹² 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-000501299, paragraphs 2.2 to 2.4; B-URN-000502068, pages 24 to 25; and B-URN-000502074, pages 35 to 37); (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 swaps and auction processes in gilt auctions, and also gilt buy-back auctions (see Chapter 4). In relation to gilt buy-back auctions, the process also involved participants being able to submit, withdraw and amend offers throughout the gilt buy-back auction window with results determined by the prices quoted, albeit for a range of gilt maturities rather than a single auction gilt (see B-URN-000503304, paragraphs 32 to 39); 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-000501299, paragraphs 4.1 to 4.2; and B-URN-000501377, page 2)).

⁹³ See Chapter 8.

⁹⁴ See footnote 92. 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-000501396, tab 'Top 10 Customers for Gilts'; and B-URN-000501377, pages 3 to 4).

6. THE LAW

- 6.1 This Chapter sets out the key legal principles applicable to the CMA's assessment of the DB-HSBC Infringement.⁹⁵

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,⁹⁶ unless they are excluded under, or exempt in accordance with, the Act.⁹⁷

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.⁹⁸ 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 ...*'.⁹⁹

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*'.¹⁰⁰
- 6.5 Each undertaking must determine independently the policy that it intends to adopt on the market.¹⁰¹ This principle precludes '*any direct or indirect contact*' between undertakings of which '*the object or effect ... is either to influence the conduct on*

⁹⁵ 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.

⁹⁶ References to the UK are to the whole or part of the UK (section 2(7) of the Act).

⁹⁷ 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).

⁹⁸ C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraph 21.

⁹⁹ C-118/85 *Commission v Italian Republic*, EU:C:1987:283, paragraph 7.

¹⁰⁰ 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).

¹⁰¹ 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’.*¹⁰²

- 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.¹⁰³
- 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*’.¹⁰⁴ Therefore, the mere receipt of information is sufficient to give rise to a concerted practice.¹⁰⁵ An exchange of information on a single occasion can give rise to a concerted practice.¹⁰⁶
- 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.¹⁰⁷ Information may be commercially sensitive even if it is capable of being obtained from other sources or inaccurate.¹⁰⁸
- 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.¹⁰⁹

¹⁰² *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.

¹⁰³ 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).

¹⁰⁴ 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.

¹⁰⁵ *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-Poulenc v Commission*, EU:T:1991:56, paragraphs 122-123.

¹⁰⁶ *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).

¹⁰⁷ T-240/17, *Campine NV and Others v Commission*, EU:T:2019:778, (*‘Campine’*), paragraph 186.

¹⁰⁸ 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].

¹⁰⁹ 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

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.¹¹⁰
- 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.¹¹¹ 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.¹¹²
- 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.¹¹³ 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.¹¹⁴
- 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.¹¹⁵

be presumed to have accepted the information and adapted its market conduct accordingly unless it rebuts that 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.

¹¹⁰ 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.

¹¹¹ C-67/13 P *Groupeement 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.

¹¹² *Cartes Bancaires*, paragraph 50 and the caselaw cited; *HSBC*, paragraph 54; *Ping Europe Ltd v CMA* [2020] EWCA Civ 13 at paragraph 37.

¹¹³ *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.

¹¹⁴ *Cartes Bancaires*, paragraph 53.

¹¹⁵ 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.

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 uncertainty as to the operation of the market in question, with the result that competition between undertakings was restricted’*.¹¹⁶
- 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.¹¹⁷
- 6.16 The caselaw has also held that exchanges of information on factors relevant to pricing amount to a restriction of competition by object.¹¹⁸ With specific regard to certain financial services products, this includes information relating to mid-prices.¹¹⁹
- 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’*.¹²⁰ 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*

¹¹⁶ 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)].

¹¹⁷ HSBC, paragraph 62 citing *Dole*, paragraph 122; and *T-Mobile*, paragraph 41; and *Lexon (UK) Limited v CMA* [2021] CAT 5 at [187(4)].

¹¹⁸ *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.

¹¹⁹ HSBC, paragraphs 125 to 161. The General Court held, in the context of that case, that *‘information relating to bids 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 bids 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 ‘bid’ 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.

¹²⁰ *Balmoral Tanks Limited v CMA* [2017] CAT 23, at [41].

*competitors having, as its object or effect, either to influence future conduct in the market or to disclose future intentions’.*¹²¹

D.III Subjective intention

- 6.18 Intention is not a necessary factor in determining whether a concerted practice is restrictive of competition.¹²² However, there is nothing prohibiting a competition authority from taking the parties’ intentions into account.¹²³

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.¹²⁴ The fact that a concerted practice is not implemented is not sufficient to preclude the existence of an infringement.¹²⁵ However, evidence of the parties’ conduct demonstrating that the concerted practice was implemented may be taken into account.¹²⁶

E. The burden and standard of proof

- 6.20 The burden of proving an infringement of the Chapter I prohibition falls on the CMA.¹²⁷ The standard of proof is the civil standard, that is the balance of probabilities.¹²⁸ The burden of proof does not preclude the CMA from relying, where appropriate, on inferences or evidential presumptions.¹²⁹

¹²¹ *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]).

¹²² *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]).

¹²³ *Cartes Bancaires*, paragraph 54 and the caselaw cited.

¹²⁴ *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).

¹²⁵ 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.

¹²⁶ *Cityhook Limited v OFT* [2007] CAT 18 at [268]. Joined cases 96/82 etc. *NV IAZ v Commission*, EU:C:1983:310, paragraph 23.

¹²⁷ *Tesco Stores Limited and Others v Office of Fair Trading* [2012] CAT 31 (*‘Tesco’*) at [88].

¹²⁸ *Ibid.*

¹²⁹ *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’*.

- 6.21 The courts have confirmed that ‘*the evidence must be assessed not in isolation, but as a whole*’¹³⁰ and that ‘*the evidence must be assessed in its entirety, taking into account all relevant circumstances of fact*’.¹³¹

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 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.¹³² Whether the natural persons involved on behalf of those undertakings are identical is also a factor that may be taken into account.¹³³
- 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.¹³⁴

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.¹³⁵ 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.¹³⁶

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

¹³⁰ 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].

¹³¹ T-141/94 *Thyssen Stahl v Commission*, EU:T:1999:48, paragraph 175.

¹³² *Campine*, paragraph 238 and the caselaw cited.

¹³³ *Campine*, paragraph 238 and the caselaw cited.

¹³⁴ *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).

¹³⁵ 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.

¹³⁶ *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.

competition law and national competition law, and that there is no requirement that the effect on trade within the UK should be appreciable.¹³⁷

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.¹³⁸

J. Attribution of liability

J.I Identification of the appropriate legal entity

- 6.27 For each Party which the CMA has found has infringed the Act, the CMA has first identified the legal entity directly involved in the DB-HSBC Infringement. It has then determined whether liability for the DB-HSBC 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).¹³⁹

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 involvement¹⁴⁰ – where, as a matter of economic reality,¹⁴¹ it exercised decisive influence over its subsidiary during its ownership period.¹⁴² In such circumstances, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking.¹⁴³ This assessment turns not only on intervention in, or

¹³⁷ *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.

¹³⁸ 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 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.

¹³⁹ T-6/89, *Enichem Anic SpA v Commission*, EU:T:1991:74, paragraphs 236-237.

¹⁴⁰ 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.

¹⁴¹ C-293/13 P *Del Monte v Commission*, EU:C:2015:416, paragraphs 75-78.

¹⁴² *Akzo*, paragraph 60; C-179/12 P *Dow v Commission*, EU:C:2013:605; *Allergan Plc v CMA* [2023] CAT 56 at [172].

¹⁴³ *Akzo*, paragraph 59; *Sainsbury's Supermarkets Ltd v MasterCard* [2016] CAT 11, at [363]; *Allergan Plc v CMA* [2023] CAT 56 at [163] to [165].

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.¹⁴⁴

- 6.30 Where a parent company holds, whether directly or indirectly,¹⁴⁵ 100% (or nearly 100%)¹⁴⁶ of the shares or voting rights¹⁴⁷ in a subsidiary, then the parent company is able to exercise decisive influence over the subsidiary and there is a rebuttable presumption in law that the parent did in fact exercise decisive influence over the commercial policy of the subsidiary.¹⁴⁸

¹⁴⁴ C-440/11 *Commission v Stichting Administratiekantoort 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.

¹⁴⁵ 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.

¹⁴⁶ T-217/06 *Arkema France, Altuglas International SA, Altumax Europe SAS v Commission*, EU:T:2011:251, paragraph 53.

¹⁴⁷ 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.

¹⁴⁸ *Akzo* paragraphs 60 and 61, T-24/05 *Alliance One & Others v Commission*, EU:T:2010:453, paragraphs 126-130.

7. ASSESSMENT OF THE DB-HSBC INFRINGEMENT

A. Summary

- 7.1 For the reasons set out in this Chapter, the CMA has found that in the DB-HSBC Relevant Period Deutsche Bank and HSBC 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 Deutsche Bank and HSBC participated in a single and repeated infringement on specific dates¹⁴⁹ (referred to collectively as the '**DB-HSBC Specific Dates**') in the DB-HSBC Relevant Period in the form of a concerted practice which comprised the disclosure by one or both of Deutsche Bank and HSBC to the other of **current mid-prices** in Bloomberg chats in relation to certain auction gilts and the trading of certain gilts and gilt asset swaps¹⁵⁰ (collectively the '**DB-HSBC Communications**'), which, in the specific circumstances of each disclosure, involved the disclosure of commercially sensitive information (the '**DB-HSBC Infringement**').¹⁵¹
- 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 and trading strategies in relation to (as applicable) the bidding for certain gilts and the trading of certain gilts and gilt asset swaps, in the context of gilt auctions and trading of gilts and gilt asset swaps.¹⁵²

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 chats¹⁵³) in their proper context.
- 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 DB-HSBC

¹⁴⁹ 28 October 2009, 8 January 2010, 19 January 2010, 21 January 2010, 22 January 2010, 2 February 2010, 5 February 2010, 2 March 2010, 3 March 2010, 10 May 2010, 2 June 2010 and 29 June 2010.

¹⁵⁰ See further paragraphs 7.9 and 7.10 below.

¹⁵¹ The CMA's findings in this Decision are made in respect of the conduct set out in this Chapter 7 in relation to the DB-HSBC Infringement. The CMA has also indicated **in bold** at paragraphs 7.9 and 7.10 and at Annex B the specific mid-price disclosures which it has found to comprise the infringing disclosures in the DB-HSBC Infringement.

¹⁵² See further paragraphs 7.21 to 7.23 below.

¹⁵³ 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.

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.¹⁵⁴

C. Undertakings

- 7.6 The CMA has found that each of Deutsche Bank and HSBC constituted an undertaking for the purposes of the Chapter I prohibition during the DB-HSBC Relevant Period, since each of them was engaged in economic activity which included bidding for gilts in gilt auctions and trading gilts and gilt asset swaps. Each of Deutsche Bank and HSBC continues to engage in economic activity.¹⁵⁵

D. The DB-HSBC Conduct as a concerted practice

- 7.7 The CMA has found that the disclosures on the DB-HSBC Specific Dates were made in the context of variously:
- (a) Gilt auctions conducted by the DMO: one or both of Deutsche Bank and HSBC disclosed to the other commercially sensitive information in relation to bidding for certain auction gilts (**'Gilt Auction Conduct'**); and
 - (b) Trading: one or both of Deutsche Bank and HSBC disclosed to the other commercially sensitive information in relation to the trading of certain gilts and/or gilt asset swaps (**'Trading Conduct'**),
- (collectively the **'DB-HSBC Conduct'**).
- 7.8 In reaching its finding that the DB-HSBC Conduct constituted a concerted practice, the CMA has relied on the following evidence in the DB-HSBC Relevant Period:
- (a) That the Parties were competitors in the bidding for gilts in gilt auctions and the trading of gilts and gilt asset swaps in the DB-HSBC Relevant Period (see paragraphs 4.8 and 4.13).¹⁵⁶
 - (b) That the disclosures of a competitor's mid-price in relation to certain gilt auctions and certain trading conduct (see paragraphs 7.9 to 7.10 below and

¹⁵⁴ 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 footnotes 172, 177, 179 and 181 below).

¹⁵⁵ See paragraphs 3.2 to 3.3 and 3.7 to 3.9.

¹⁵⁶ The evidence shows that in the DB-HSBC Relevant Period the Parties participated in the same gilt auctions (each of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) participated in each of the gilt auctions summarised in paragraph 7.9 and set out more fully at Annex B) and on occasion discussed the same or similar trades involving gilts and gilt asset swaps. For example, in Bloomberg chat **DB-HSBC, A-URN-000181** on 21 January 2010, both Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) discussed their trading activity in relation to two gilt asset swaps.

Annex B) constituted commercially sensitive information (see paragraphs 7.11 to 7.15 below).

- (c) That the Parties remained active on the Relevant Market in the DB-HSBC 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 and the trading of the gilts and gilt asset swaps in question (see paragraph 7.16 below).

D.I Gilt Auction Conduct

The content of the information disclosed

7.9 The DB-HSBC Conduct as it related to the Gilt Auction Conduct consisted of one or both of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosing to the other commercially sensitive information on its current mid-price in the context of each of three specific gilt auctions, in each instance during the relevant gilt auction window. In summary, and as set out more fully at Annex B, the disclosures occurred in the following communications (the '**DB-HSBC Gilt Auction Communications**')

- (a) In Bloomberg chat **DB-HSBC, A-URN-007478** on 2 February 2010, during the tap gilt auction of the 5.25% 2012 gilt, the disclosure occurred approximately ten minutes before the end of the gilt auction window. In response to HSBC ([HSBC Trader])'s request, '*where u got mid*' (at 10:19:18), Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for the auction gilt '**13**' (at 10:20:42).¹⁵⁷
- (b) In Bloomberg chat **DB-HSBC, A-URN-007514** on 3 March 2010, during the tap gilt auction of the 2.75% 2015 gilt, the disclosures occurred approximately 13 minutes before the end of the gilt auction window. Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their **current mid-prices** for the auction gilt: HSBC ([HSBC Trader]) stated '*i have 73.7 mid*' (at 10:17:00); Deutsche Bank ([DB Trader]) then stated '*me too*' (at 10:17:16).¹⁵⁸
- (c) In Bloomberg chat **DB-HSBC, A-URN-000238** on 2 June 2010, during the tap gilt auction of the 2.75% 2015 gilt, the disclosures occurred

¹⁵⁷ This disclosure was also relevant to Trading Conduct, summarised at paragraph 7.10(b)(iv) below.

¹⁵⁸ This disclosure was also relevant to Trading Conduct, summarised at paragraph 7.10(c)(iv) below. For the reasons set out at paragraphs B.50 to B.51 of Annex B, the CMA infers that this disclosure related to the auction gilt, namely the 2.75% 2015 gilt and that both Key Individuals would have understood at the time of the chat to which gilt they were referring. See also footnote 168 below.

approximately ten minutes before the end of the gilt auction window. HSBC ([HSBC Trader]) commented on trading activity he had observed (*'02 bid'*), following which HSBC ([HSBC Trader]) and Deutsche Bank ([DB Trader]) disclosed to each other their **current mid-prices** for the auction gilt: HSBC ([HSBC Trader]) stated *'i have 97 mid'* (at 09:20:09);¹⁵⁹ Deutsche Bank ([DB Trader]) then stated *'me too'* (at 09:20:12).¹⁶⁰

D.II Trading Conduct

The content of the information disclosed

7.10 The DB-HSBC Conduct as it related to Trading Conduct consisted of one or both of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosing to the other commercially sensitive information on its current mid-price. In summary, and as set out more fully at Annex B, the disclosures occurred in the following communications (the **'DB-HSBC Trading Communications'**):

- (a) In several chats, Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) commercially sensitive information on its **current mid-price** in circumstances where HSBC ([HSBC Trader]) was either experiencing problems with its pricer¹⁶¹ or had not been paying attention to its pricer; and in one instance (see (iii) below) HSBC ([HSBC Trader]) then disclosed commercially sensitive information on its **current mid-price**:
 - (i) In Bloomberg chat **DB-HSBC, A-URN-007462** on 19 January 2010, as requested by HSBC ([HSBC Trader]), (*'got some issues on my asw pricer, just wanna check some levels [prices] with u if ok'* at 15:40:31), (*'5 12, 2q14, 3t19', 'pls', 'matched', 'and 4q39'*)¹⁶² at 15:40:45 to 15:40:50 and 15:40:57), Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-prices** for those four specific gilt asset swaps (**'41.45', '28.41', '-13.01', '-24.83'** at 15:40:56 and 15:41:05 to 15:41:22). In response, HSBC ([HSBC Trader]) thanked Deutsche Bank ([DB Trader]) for the information (*'great thx'* at 15:41:28) and then stated regarding his own mid-price (*'im over 1bp too low on sub-10yr, pricer here cant seem to handle the stub'* at 15:41:46).

¹⁵⁹ Timestamps in this chat are recorded in UTC, which was 1 hour behind UK time on that date (BST), so 09:20:09 (UTC) should be read as 10:20:09 (BST).

¹⁶⁰ This disclosure was also relevant to Trading Conduct, summarised at paragraph 7.10(b)(ix) below. For the reasons set out at paragraph B.59 of Annex B, the CMA infers that this disclosure related to the auction gilt, namely the 2.75% 2015 gilt and that both Key Individuals would have understood at the time of the chat to which gilt they were referring. See also footnote 166 below.

¹⁶¹ See further paragraph 4.17.

¹⁶² ie the 5% 2012, 2.25% 2014, 3.75% 2019 and 4.25% 2039 gilt asset swaps.

- (ii) In Bloomberg chat **DB-HSBC, A-URN-000181** on 21 January 2010, Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for the 2.75% 2015 gilt asset swap, (*'i have a 17.7 mid'* at 08:39:39). HSBC ([HSBC Trader]) stated shortly afterwards that he was continuing to experience issues with his pricer (*'my asw pricer still [expletive]'* at 08:39:50).
 - (iii) Later that morning, as requested by HSBC ([HSBC Trader]), (*'mate just cheking my pricer again with IT guys, where u have 2t15 asw pls?'* at 09:08:05 and *'and 2q14 pls?'* at 09:09:47), Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for the 2.75% 2015 gilt asset swap (*'17.6'* at 09:08:23) and the 2.25% 2014 gilt asset swap (*'25.8'* at 09:09:55), to which HSBC ([HSBC Trader]) replied (*'ta'*, at 09:09:59). HSBC ([HSBC Trader]) then disclosed his **current mid-price** for the 2.25% 2014 gilt (*'[...] with 15 midd on bonds'* at 09:10:49) and Deutsche Bank ([DB Trader]) disclosed that he had the same **current mid-price** for that gilt (*'i have same mid on bonds'* at 09:11:05).
 - (iv) In Bloomberg chat **DB-HSBC, A-URN-007484** on 5 February 2010, Deutsche Bank ([DB Trader]) stated *'people are short 4h13, 5 12, 5q12 i reckon'* (at 10:17:56). HSBC ([HSBC Trader]) then requested *'where u marking shorts?'* (at 10:21:58), stating *'just noticed this, havent been watching finvision [HSBC's internal pricer] as been so quiet'* (at 10:22:12). Deutsche Bank ([DB Trader]) then disclosed his **current mid-price** for the gilt switch consisting of five-year and ten-year gilts (*'184.25 maybe 184.5'* at 10:22:18). HSBC ([HSBC Trader]) responded, effectively disclosing that his **current mid-price** was the same as Deutsche Bank ([DB Trader])'s for this gilt switch (*'ye same'* at 10:22:33).
 - (v) In Bloomberg chat **DB-HSBC, A-URN-007673** on 29 June 2010, HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]) to disclose his mid-price for the 2.75% 2015 gilt asset swap, noting that he was asking due to experiencing problems with his pricer (*'where u got 2t15 mms?'*, *'think my pricer is [expletive]'* at 15:08:05 and 15:08:39), Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for the requested gilt asset swap (*'22'* at 15:08:28) and also disclosed his **current mid-price** for a five-year and ten-year gilt switch (*'with curve at 127'* at 15:08:57).
- (b) In several chats, one or both of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to the other commercially sensitive information on

its **current mid-price** in light of comments one or both made to each other about trading activity that they were observing in the market:¹⁶³

- (i) In Bloomberg chat **DB-HSBC, A-URN-007358** on 28 October 2009 after a Deutsche Bank ([DB Trader]) comment about trading prices that he was observing (*'those outright bids looked too good'*, at 11:32:31), HSBC ([HSBC Trader]) disclosed his **current mid-price** for the 2.75% 2015 gilt (***'yes, im marking the bonds at 48.5'*** at 11:33:45). A little over a minute later, Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for the same gilt (*'i have them lower'*, ***'46.8 mid at the mo'*** at 11:35:16 and 11:35:23). HSBC ([HSBC Trader]) then disclosed his revised **current mid-price** for the gilt (***'yes now i have same'*** at 11:35:28).
- (ii) In Bloomberg chat **DB-HSBC, A-URN-007466** on 22 January 2010, Deutsche Bank ([DB Trader]) commented on prices he was observing in the market for the 5% 2014 gilt and disclosed his **current mid-price** (***'i have a 115 mid'***, *'yet i seem to be marked on offer side of [electronic trading platform]'* at 11:08:58 and 11:09:15). HSBC ([HSBC Trader]) then stated how his mid-prices compared to those on the electronic trading platform [electronic trading platform]¹⁶⁴ (*'same here'*, at 11:10:41).
- (iii) In Bloomberg chat **DB-HSBC, A-URN-007478** on 2 February 2010, Deutsche Bank ([DB Trader]) discussed with HSBC ([HSBC Trader]) prices they were observing in the market regarding two gilts being issued by gilt auction, respectively, the next day (5% 2018 gilt) and at the time of the chat (5.25% 2012 gilt). Following this discussion, Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for one of the gilts (***'i have a 6 mid'***, at 10:02:54). HSBC ([HSBC Trader]) then disclosed his **current mid-price** for the same gilt, (***'i have 5.25'***, ***'5.8 now'***, at 10:03:20 and 10:03:34).
- (iv) Later that morning, Deutsche Bank ([DB Trader]) commented on activity he was observing in the market and referenced the auction gilt for that day's tap gilt auction, the 5.25% 2012 gilt (*'gitl down 25 ticks'*, *'5q12 unch on day'* at 10:14:34 and 10:14:40). Shortly afterwards, HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]), (*'where u got mid'* at 10:19:18), in response to which Deutsche Bank ([DB Trader])

¹⁶³ The CMA notes that **DB-HSBC, A-URN-007484** as summarised at paragraph 7.10(a)(iv) above also concerns the disclosure of a mid-price following a comment by Deutsche Bank ([DB Trader]) about trading activity he was observing in the market.

¹⁶⁴ See paragraph 4.11(a).

disclosed to HSBC ([HSBC Trader]) his **current mid-price** for the auction gilt (**'13'** at 10:20:42).¹⁶⁵

- (v) Later that day, Deutsche Bank ([DB Trader]) asked HSBC ([HSBC Trader]) to disclose his mid-price for the 2.75% 2015 gilt, (*'where do you have 2t15 marked', 'cash price', 'i look really low to [electronic trading platform]'* at 12:41:59 to 12:42:18). HSBC ([HSBC Trader]) stated that his price also looked low compared to [electronic trading platform] and disclosed his **current mid-price** for the gilt (**'have 2 mid'** at 12:48:56).
- (vi) In Bloomberg chat **DB-HSBC, A-URN-007514** on 3 March 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) discussed a trade they had observed via brokers involving the 2.75% 2015 gilt asset swap. Deutsche Bank ([DB Trader]) indicated that he had not been involved in the trade and had a higher mid-price for that gilt asset swap. HSBC ([HSBC Trader]) then stated that his mid-price was also higher and disclosed his **current mid-price** for that gilt asset swap, (**'12.7'** at 08:43:18).
- (vii) Later that day, Deutsche Bank ([DB Trader]) commented on a gilt switch trade he observed via a broker involving the 4.75% 2015 gilt and the 3.75% 2019 gilt (*'wow that was low in 4t15 vs 3t19'*, at 10:05:32). Deutsche Bank ([DB Trader]) then disclosed his **current mid-price** for that gilt switch (**'i have a 114 mid'**, at 10:06:15).
- (viii) In Bloomberg chat **DB-HSBC, A-URN-007596** on 10 May 2010, HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]) for his current mid-price for a gilt asset swap involving the 4.5% 2013 gilt, indicating that his own mid-price was different to the prices he was observing, (*'where u marking 4h13 matched', 'my mid is miles away from mrket'* at 15:02:44 and 15:02:54). Deutsche Bank ([DB Trader]) responded by disclosing his **current mid-price**, (**'i have 28.8 here'** at 15:03:17) and an explanation of the difference to observed trade prices. At 15:03:51, HSBC ([HSBC Trader]) disclosed his **current mid-price** for the same gilt asset swap, (**'ok i have 28.5'**).
- (ix) In Bloomberg chat **DB-HSBC, A-URN-000238** on 2 June 2010, HSBC ([HSBC Trader]) commented on trading activity he had observed, (*'02 bid!'* at 09:20:05), following which HSBC ([HSBC Trader]) and Deutsche Bank ([DB Trader]) disclosed to each other their **current mid-prices** for the 2.75% 2015 gilt, which was the auction gilt for that day's tap gilt

¹⁶⁵ This disclosure was also relevant to Gilt Auction Conduct, as set out in paragraph 7.9(a) above.

auction: HSBC ([HSBC Trader]) disclosed '**i have 97 mid**' (at 09:20:09); Deutsche Bank ([DB Trader]) then disclosed '**me too**' (at 09:20:12).¹⁶⁶

- (c) In several chats one or both of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to the other commercially sensitive information on its **current mid-price** in circumstances which enabled the Parties to compare their current mid-prices.¹⁶⁷
- (i) In Bloomberg chat **DB-HSBC, A-URN-007445** on 8 January 2010, as requested by Deutsche Bank ([DB Trader]) ('*where you marked 5 14*' at 08:18:03), HSBC ([HSBC Trader]) disclosed his **current mid-price** for the 5% 2014 gilt ('**2.875%**', '**mid**' at 08:18:12 and 08:18:18). Deutsche Bank ([DB Trader]) then compared his current mid-price for that gilt to that of HSBC ([HSBC Trader]), stating that it was a quarter of a basis point different ('*ok i have 0.25 different there*' at 08:18:28).
- (ii) In Bloomberg chat **DB-HSBC, A-URN-007466** on 22 January 2010, Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for the 2.25% 2014 gilt asset swap ('**i have a 27.5 mid**' at 13:35:15) and HSBC ([HSBC Trader]) disclosed that he had the same **current mid-price** ('**i have the same**' at 13:35:21), thus enabling the Parties to compare their mid-prices for that gilt asset swap.
- (iii) In Bloomberg chat **DB-HSBC, A-URN-000185** on 2 March 2010, Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for the 2.75% 2015 gilt asset swap ('**have a mid of 10.5**' at 14:17:53). HSBC ([HSBC Trader]) then compared his **current mid-price** for the same gilt asset swap, disclosing ('**have 10,25**' at 14:18:02).
- (iv) In Bloomberg chat **DB-HSBC, A-URN-007514** on 3 March 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their **current mid-prices** for the 2.75% 2015 gilt, which was the auction gilt for that day's tap gilt auction. This enabled the Parties to compare their mid-prices for that gilt: HSBC ([HSBC Trader]) disclosed '**i have 73.7 mid**' (at 10:17:00); Deutsche Bank ([DB Trader]) then

¹⁶⁶ This disclosure was also relevant to Gilt Auction Conduct, as set out in paragraph 7.9(c) above. As noted at footnote 160 above, for the reasons set out at paragraph B.59 of Annex B, the CMA infers that this disclosure related the auction gilt, namely the 2.75% 2015 gilt and that both Key Individuals would have understood at the time of the chat to which gilt they were referring. Even if this disclosure did not relate to the auction gilt, the disclosure would remain relevant to Trading Conduct, noting in particular that neither trader sought clarification on the gilt in question during the chat, which implies that the gilt would have been understood by them at the time.

¹⁶⁷ The CMA notes that a number of other disclosures (summarised at paragraphs 7.10(a)(iii), 7.10(a)(iv), 7.10(b)(i), 7.10(b)(iii), 7.10(b)(viii) and 7.10(b)(ix) above) would also have enabled the Parties to compare their current mid-prices.

disclosed that he had the same **current mid-price** (*'me too'* at 10:17:16).¹⁶⁸

D.III The information disclosed in the DB-HSBC Communications was commercially sensitive information

- 7.11 The information disclosed on current mid-prices in the DB-HSBC Communications 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.
- 7.12 Although some information relating to mid-prices was available from a number of sources (see paragraph 4.15), the CMA considers that this does not undermine its view that the information disclosed on current internal mid-prices in the specific context of the DB-HSBC Communications was confidential. In normal conditions of competition, each Party would have had to determine its mid-prices independently of the other and in the context of uncertainty as to the mid-prices of other GEMMs.¹⁶⁹
- 7.13 Moreover, the information disclosed by the disclosing Party on current mid-prices in the DB-HSBC Communications was strategic in nature, including in that:
- (a) in the context of the DB-HSBC Gilt Auction Communications, 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; and
 - (b) in the context of the DB-HSBC Trading Communications it provided insight into specific aspects of the disclosing Party's pricing strategies for (as applicable) certain gilts and gilt asset swaps and/or was capable of influencing specific aspects of the recipient Party's trading strategies (including pricing) in relation to (as applicable) certain gilts and gilt asset swaps.
- 7.14 In reaching this conclusion, the CMA has taken into account the nature of the information disclosed, the content and context of the DB-HSBC Communications

¹⁶⁸ This disclosure was also relevant to Gilt Auction Conduct, as set out in paragraph 7.9(b) above. As noted at footnote 158 above, for the reasons set out at paragraphs B.50 to B.51 of Annex B, the CMA infers that this disclosure related the auction gilt, namely the 2.75% 2015 gilt and that both Key Individuals would have understood at the time of the chat to which gilt they were referring. Even if this disclosure did not relate to the auction gilt, the disclosure would remain relevant to Trading Conduct, noting in particular that neither trader sought clarification on the gilt in question during the chat, which implies that the gilt would have been understood by them at the time.

¹⁶⁹ See paragraph 4.17 above, B-URN-000502067, pages 60 to 61 and B-URN-000502074, page 156. As regards the confidentiality of a GEMM's bidding strategy in a gilt auction see further B-URN-000501382, page 8; B-URN-000500865, page 26; and B-URN-000501042, page 25. As regards the confidentiality of a GEMM's trading strategy, see B-URN-000500865, page 27; B-URN-000501610, page 3; and B-URN-000501042, pages 26 to 27.

and, where relevant, evidence from the Parties and the Key Individuals, noting that:

- (a) The disclosing Party's mid-price was a pricing reference point in how that Party determined (as applicable) its bid price for a gilt auction and its trading price.¹⁷⁰
- (b) In the context of the DB-HSBC Gilt Auction Communications, the information on current mid-prices that was disclosed was specific to the gilt auctions taking place on specific dates for certain gilts.¹⁷¹ Further, 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 window.¹⁷²
- (c) In the context of the DB-HSBC Trading Communications, the information disclosed on current mid-prices was specific, including that it related to certain gilts and/or gilt asset swaps.¹⁷³ Further, the disclosures were made during the trading day (typically between 07:30 and 17:00)¹⁷⁴ 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.

¹⁷⁰ See paragraphs 4.16 to 4.20 above, including evidence at footnote 85. For example, Deutsche Bank explained that its pricing software was used to arrive at a mid-price for a gilt, which would have been considered by a trader in setting trading prices, amongst other considerations. See B-URN-000501195, paragraphs 16.1 to 16.10. According to HSBC, the process by which traders would typically have determined an appropriate price when engaging in trading would involve the trader considering internal sources, including its mid-price and pricing engines, amongst other factors. See B-URN-000501206, pages 7 to 8. Each of Deutsche Bank and HSBC also stated that their respective pricing strategy for gilt auctions followed the same process as for trading, and that mid-prices were relevant to this.

¹⁷¹ As set out in further detail at paragraphs B.35 to B.36, B.50 to B.51 and B.59 at Annex B, the CMA has relied on the evidence of [DB Trader] (Deutsche Bank), the timing of the disclosure and the context of the relevant chat to conclude that these disclosures related to the gilt being auctioned that day. In relation to **DB-HSBC, A-URN-007478** on 2 Feb 2010, the CMA has also relied on the evidence of [HSBC Trader] (HSBC).

¹⁷² The CMA notes that the Key Individuals both said that there were limited benefits to knowing the type of information disclosed in the DB-HSBC Gilt Auction Communications, where those disclosures were not made in the final moments of the gilt auction (See, for example, B-URN-000502208; B-URN-000502066, page 193; B-URN-000502074, pages 236 to 237; and B-URN-000502075, page 62). However, the CMA's view is that the fact that a Party's bid could change before the close of the gilt auction in response to changes in trading conditions does not negate the strategic nature of the disclosed information, nor the strategic value of the information during the gilt auction window. The fact of the disclosures being made shows that, at the time of a disclosure, the disclosing Party was formulating its bidding strategy to apply in the gilt auction in question. By virtue of the information disclosed during a gilt auction on the disclosing Party's pricing, the recipient Party would have obtained an insight into the disclosing Party's pricing strategies at the time of the disclosure.

¹⁷³ This includes the various combinations of gilt and gilt asset swap trades noted, including gilt switches. The evidence shows that the information was expressed in such a way that the recipient Party would have understood that the information disclosed related to the disclosing Party's mid-prices in relation to those gilts and/or gilt asset swaps. As set out in Annex B, the evidence provided in interview from [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) in many cases confirmed the identity of the specific gilt and/or gilt asset swap that they were discussing in a particular Bloomberg chat. Where, given the passage of time, one or both of the traders were unclear at the time of interview as to what specific product was being discussed, the evidence (as set out in Annex B) shows that they each would have understood at the time of the chat in question the specific gilt and/or gilt asset swap being discussed.

¹⁷⁴ See paragraph 4.11.

- (d) The disclosures of current mid-prices in the DB-HSBC Communications meant that the recipient Party obtained information of a different quality to that available from other sources.¹⁷⁵ In each case, by virtue of the information disclosed, the recipient Party obtained an insight into specific aspects of the disclosing Party's pricing based on the trading conditions at the time of the disclosure.
- (e) The evidence provided by the Key Individuals and the context of the disclosures¹⁷⁶ indicates that they provided the recipient Party with a form of reassurance ([DB Trader] referred to a '*sense check*' or '*a form of sanity check*')¹⁷⁷ which was liable to give the recipient Party more confidence when formulating and executing their bidding¹⁷⁸ and trading strategies (including pricing). From this, the CMA has inferred that the information disclosed would have been of value to the recipient Party.¹⁷⁹

¹⁷⁵ [DB Trader] (Deutsche Bank) (in the context of explaining why he had asked HSBC ([HSBC Trader]) to disclose his mid-price for a gilt), said in interview that information obtained from another GEMM, who was a market maker, would have a different quality from information obtained from a broker. His evidence was that it would be more accurate to obtain pricing information from HSBC ([HSBC Trader]), explaining '*[s]o I guess I could have asked a broker their middle at the time on that cash bond. And at various points I seem to remember doing that. ...it's not quite the same*', adding that he '*wouldn't necessarily trust that the brokers had, you know, accurate curve builds*' (see B-URN-000502066, pages 186 to 187).

¹⁷⁶ As regards the disclosures in the context of the Gilt Auction Conduct, see paragraph 7.14(b) above. As regards the disclosures in the context of Trading Conduct, these occurred variously: (i) where the recipient Party was experiencing technical problems with, or had not been paying attention to, its pricer (see paragraphs 7.10(a)(i) to 7.10(a)(v) above); (ii) in light of comments one or both Parties made to each other about trading activity that they were observing in the market (see paragraphs 7.10(b)(i) to 7.10(b)(ix) and 7.10(a)(iv) above); (iii) where the disclosure would have enabled a Party to compare its mid-price with the mid-price of the other Party (see paragraphs 7.10(c)(i) to 7.10(c)(iv), 7.10(a)(iii), 7.10(a)(iv), 7.10(b)(i), 7.10(b)(iii), 7.10(b)(viii) and 7.10(b)(ix) above). On some occasions, the disclosure was requested by the recipient Party (see paragraphs 7.10(a)(i), 7.10(a)(iii), 7.10(a)(iv), 7.10(a)(v), 7.10(b)(iv), 7.10(b)(v), 7.10(b)(viii) and 7.10(c)(i) above).

¹⁷⁷ In his letter to the CMA following his interviews (B-URN-000502208), [DB Trader] stated that the reason he participated in such discussions, including with [HSBC Trader] (HSBC), '*was to test and **sense check** my views against those of other market participants*' (emphasis added) and that '*sharing mids was a **form of sanity check** as much as anything else*' (emphasis added). He also stated in the same document that '*the primary reason for sharing mids was to try and explain and reconcile activity in the market*'. [HSBC Trader] (HSBC) said in interview that the DB-HSBC Communications allowed him to check his mid-prices with Deutsche Bank ([DB Trader]) (B-URN-000502074, pages 142 to 143). In relation to Bloomberg chat **DB-HSBC, A-URN-007466** on 22 January 2010, see also B-URN-000502070, page 22; and B-URN-000502077, pages 17 to 18.

This reassurance would have included circumstances where a composite mid would not have been of assistance to the relevant Key Individual. For example, [DB Trader] (Deutsche Bank) explained in interview in relation to Bloomberg chat **DB-HSBC, A-URN-007478**, on 2 February 2010 that he asked HSBC ([HSBC Trader]) to disclose his mid-price for the 2.75% 2015 gilt because of differences between his mid-price and [electronic trading platform] which he could not reconcile with the composite screen: '*So I say that I look really low to [electronic trading platform]. So at that point I'm, kind of -- my mid which I think will be based off the, you know, maybe activity in the broker screens, obviously, I can't reconcile that with the composite screen. So for whatever reason, erm, I -- you know, I'm like -- I guess I'm trying to understand whether -- you know, whether I'm -- what -- you know, what, what I'm doing wrong here. Or whether -- you know. And that's where that question comes from, I believe.*' (B-URN-000502066, page 185). See also B-URN-000502070, pages 18 to 19.

¹⁷⁸ [DB Trader] explained in interview that his reasons for disclosing information to HSBC ([HSBC Trader]), in particular in the context of gilt auctions included: in order to have HSBC ([HSBC Trader]) '*validate*' his strategy or confirm that it was '*right*' or to obtain valuable information in return from HSBC ([HSBC Trader]) (see B-URN-000502066, pages 128 and 191).

¹⁷⁹ This is notwithstanding some evidence from [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) that there were limited benefits to knowing a competitor's mid-price. See for example B-URN-000502208; B-URN-000502066, page 181; and B-URN-000502074, pages 153 – 154. The CMA's view, supported by the evidence set out in paragraphs 7.11 to 7.14 is that the benefits to knowing a competitor's current mid-price were not limited (as contended by [DB Trader])

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

7.15 In view of the above:

- (a) In relation to the Gilt Auction Conduct, the CMA has concluded that the information disclosed by each Party in the DB-HSBC Gilt Auction Communications on its current mid-prices in relation to certain gilts was commercially sensitive information, the disclosure of which removed, or at least reduced, uncertainty as to specific aspects of the disclosing Party's pricing strategies in relation to the gilts in question and/or was capable of influencing specific aspects of the recipient Party's bidding strategies (including pricing) in relation to the gilts in question.
- (b) In relation to the Trading Conduct, the CMA has concluded that the information disclosed by each Party in the DB-HSBC Trading Communications on its current mid-prices in relation to certain gilts and gilt asset swaps was commercially sensitive information, the disclosure of which removed, or at least reduced, uncertainty as to specific aspects of the disclosing Party's pricing strategies in relation to the gilts and gilt asset swaps in question and/or was capable of influencing specific aspects of the recipient Party's trading strategies (including pricing) in relation to the gilts and gilt asset swaps 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

7.16 In the DB-HSBC Relevant Period, the Parties remained active on the Relevant Market, through their participation in gilt auctions and trading, and there is no evidence that either Deutsche Bank ([DB Trader]) or HSBC ([HSBC Trader]) expressed any reservation or objection to, or sought to publicly distance themselves from, the disclosures of commercially sensitive information in the DB-HSBC Conduct on the DB-HSBC Specific Dates.¹⁸⁰ Therefore, the recipient Party is presumed to have taken account¹⁸¹ of the commercially sensitive information on

(Deutsche Bank) and [HSBC Trader] (HSBC)) and that disclosure of such a mid-price disclosed to the recipient Party commercially sensitive information regarding a pricing reference in how a Party determined its bid and trading prices.

¹⁸⁰ 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.

¹⁸¹ The CMA has considered the evidence of [HSBC Trader] (HSBC) that he would not have taken account of certain information disclosed in the DB-HSBC Communications summarised in paragraphs 7.9 and 7.10 above and set out in Annex B (See, for example, B-URN-000502074, pages 153 to 154; see also footnote 179). In light of the considerations set out in footnotes 179 and 180, the CMA has concluded that this evidence does not undermine its finding that the recipient Party is presumed to have taken account of the commercially sensitive information disclosed when determining its conduct on the Relevant Market.

current mid-prices disclosed by the disclosing Party in determining the recipient Party's conduct in relation to (as applicable) the gilt auction in question and the trading of the gilts and gilt asset swaps in question.

Conclusion – concerted practice in relation to Gilt Auction Conduct and Trading Conduct

- 7.17 In view of the above, in relation to the Gilt Auction Conduct and the Trading Conduct, taken individually and collectively, the CMA has concluded that the information disclosed by one or both of Deutsche Bank and HSBC to the other in the DB-HSBC Gilt Auction Communications and the DB-HSBC Trading Communications on current mid-prices in relation to certain gilts and gilt asset swaps 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) the bidding for certain gilts in the context of gilt auctions and trading of certain gilts and gilt asset swaps (as summarised above and set out in Annex B).
- 7.18 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 auctions in question and the trading of the gilts and gilt asset swaps in question. Deutsche Bank and HSBC 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

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

E.I Content of the DB-HSBC Conduct

- 7.20 The CMA has found that the content of the concerted practice consisting of the DB-HSBC Conduct was the disclosure by one or both of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) to the other of commercially sensitive information on (as applicable) their respective mid-prices in relation to certain gilt auctions and the trading of certain gilts and gilt asset swaps.¹⁸²

¹⁸² See paragraphs 7.9 to 7.15 above.

E.II Objective

- 7.21 The CMA has concluded that the objective of the DB-HSBC Conduct was to assist one or both of the Parties in formulating and executing aspects of their respective bidding and trading strategies in relation to (as applicable) the bidding for certain gilts and the trading of certain gilts and gilt asset swaps, in the context of gilt auctions and trading of gilts and gilt asset swaps.¹⁸³
- 7.22 Specifically, one or both of the Parties received and/or provided assistance through disclosing competitively sensitive information on mid-prices which provided reassurance from/to one another on their respective conduct,¹⁸⁴ and this was liable to give one or both of the Parties more confidence when formulating and executing their bidding and trading strategies (including in relation to pricing).¹⁸⁵
- 7.23 In reaching this finding, the CMA has considered evidence about the nature¹⁸⁶ and context¹⁸⁷ of the exchanges.

E.III Legal and economic context

- 7.24 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 consisting of the DB-HSBC Conduct and those that are specific to each of the Gilt Auction Conduct and the Trading Conduct.
- 7.25 The CMA's view, for present purposes, is that there was some relationship between the Parties' activities which are the subject of this Decision,¹⁸⁸ noting the available evidence from the Parties and Key Individuals regarding the way their

¹⁸³ As the Parties' activities across gilt auctions and trading were interrelated (see paragraph 7.25 below), the CMA has found that the objective of the DB-HSBC Conduct applied across the Gilt Auction Conduct and the Trading Conduct.

¹⁸⁴ See further footnotes 176 to 178 above.

¹⁸⁵ For example, in Bloomberg chat **DB-HSBC, A-URN-007596** on 10 May 2010, HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]) to disclose his mid-price for a gilt asset swap, explaining that he was asking as he was trying to reconcile his mid-price with observed trading prices. In response, Deutsche Bank ([DB Trader]) disclosed his mid-price and the reason why his and HSBC ([HSBC Trader])'s mid-prices were out of line with the observed trading price. See further Annex B; see also footnote 177 above.

¹⁸⁶ Noting that a Party's internal mid-price was a pricing reference point in the determination of a Party's pricing strategies (see paragraph 7.28 below).

¹⁸⁷ Noting that [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) sought and valued each other's opinions on pricing strategies, including in the context of one or both of the traders requesting commercially sensitive information from the other. See, for example, Bloomberg chats **DB-HSBC, A-URN-007462** on 19 January 2010 and **DB-HSBC, A-URN-000181** on 21 January 2010 and **DB-HSBC, A-URN-007478** on 2 February 2010. [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) also trusted each other, disclosing information to each other that they would not have expected to be shared more widely. For example, in Bloomberg chat **DB-HSBC, A-URN-007466** on 22 January 2010, Deutsche Bank ([DB Trader]) provided to HSBC ([HSBC Trader]) his recent trading activity on a 'no-post' trade (see further Annex B, paragraph B.28) involving a gilt asset swap and then asked HSBC ([HSBC Trader]) to keep this information confidential ('...*don't say anything cos i shouldn't be telling you*' at 13:34:21, to which HSBC ([HSBC Trader]) agreed ('*course*' at 13:34:25).

¹⁸⁸ That is, their activities across gilt auctions and trading (see paragraphs 4.4 to 4.13 and Chapter 5), and in relation to gilts and gilt asset swaps (see paragraph 4.1 and Chapter 5).

respective bidding and trading strategies were set¹⁸⁹ and how they traded.¹⁹⁰ The CMA also notes that the Parties used a single persistent Bloomberg chat room to disclose the commercially sensitive information disclosed in the DB-HSBC Conduct.¹⁹¹

- 7.26 Both Parties were designated as GEMMs during the DB-HSBC Relevant Period and were therefore amongst each other's closest competitors for gilts and gilt asset swaps.¹⁹² GEMMs had an important role in relation to gilts in supporting the issuance of government debt and liquidity in gilts.¹⁹³
- 7.27 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 4.14). 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).¹⁹⁴ The CMA notes that in the context of the DB-HSBC Conduct, the Parties often disclosed information on mid-prices, variously, where there was a misalignment between the price a Party was observing on the market and its own mid-price for a gilt or gilt asset swap, or where a Party was experiencing an issue with its pricer or had not been monitoring its pricer.¹⁹⁵
- 7.28 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 a gilt auction and the trading of gilts and gilt asset swaps (see paragraphs 4.16 to 4.20 and 7.14(a)). Further, the adoption of an incorrect mid-price could risk undermining a trader's bidding or trading strategy.¹⁹⁶

¹⁸⁹ See B-URN-000501299, paragraph 2.4; B-URN-000500865, paragraphs 14.9; and 37.2 and B-URN-000501042, pages 25 and 27. [DB Trader] (Deutsche Bank) said in interview that gilt auctions presented an opportunity to buy certain maturities of gilts and set up a trade that he liked (B-URN-000502068, pages 30 and 31). He also explained in interview how a gilt auction might affect his trading strategy (B-URN-000502065, page 60). [HSBC Trader] (HSBC) said in interview that his strategies in relation to trading and the client flows he was seeing could determine what he was doing in a gilt auction (B-URN-000502074, pages 122 to 123).

¹⁹⁰ See paragraph 4.17 and footnote 78. See also B-URN-000502065, pages 49 and 63; and B-URN-000501206, page 10.

¹⁹¹ See paragraph B.1, Annex B and the DB-HSBC Communications set out in Annex B.

¹⁹² Each of the Parties identified other dealers designated as GEMMs as their closest competitors for gilts and gilt asset swaps (see footnote 92).

¹⁹³ See Chapter 4. Specifically, the DMO guidebook sets out the DMO's view that '*liquidity in the gilt-edged market is best preserved by the presence of competing market makers*' (emphasis added) (B-URN-000503293, paragraph 5).

¹⁹⁴ See also paragraphs 4.14 to 4.20. [HSBC Trader] (HSBC) explained in interview that '*as a trader you are trying to piece together a whole mosaic of data*' (emphasis added) (B-URN-000502074, page 43). [HSBC Trader] (HSBC) also said in interview that he would consider observed trading activity and then '*as a market-maker you obviously have to make a decision as to what is... er, you know, is this a blip, er, and is it going to normalise very quickly, or is it, um, you know, something that's going to have a longer-lasting impact?*' (emphasis added) (B-URN-000502075, page 27). See also footnote 177.

¹⁹⁵ See further paragraphs 7.10 and 7.14(e) above. As noted above at paragraph 7.10, the Parties also disclosed information on mid-prices in circumstances which enabled them to compare their current mid-prices.

¹⁹⁶ See, for example, B-URN-000502074, page 192 read together with B-URN-000502075, pages 27 to 28.

- 7.29 In determining its bid price(s) in a gilt auction or its trading price(s) for a gilt or gilt asset swap, a Party would have had regard to its mid-price for (as applicable) the auction gilt or the gilt or gilt asset swap being traded 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 or trading strategies (see paragraphs 4.19 to 4.20).
- 7.30 As regards Gilt Auction Conduct, during the DB-HSBC 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.¹⁹⁷ 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 the other GEMMs, nor were they otherwise published or made available.¹⁹⁸
- 7.31 As regards Trading Conduct, during the DB-HSBC Relevant Period, the Parties competed with each other (and other dealers) both in relation to trades with clients and trades with other counterparties.¹⁹⁹ 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.²⁰⁰

E.IV Restriction or distortion of competition by object

- 7.32 In view of the foregoing analysis of the content, objective and legal and economic context in which the DB-HSBC Conduct took place, and for the further reasons set out below, the CMA has concluded that the concerted practice consisting of the DB-HSBC Conduct had as its object the restriction or distortion of competition.
- 7.33 As regards Gilt Auction Conduct, a fair and competitive gilt auction process depended on the participating GEMMs submitting independently derived bids.²⁰¹
- 7.34 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.²⁰²

¹⁹⁷ See further paragraphs 4.6 to 4.8.

¹⁹⁸ See paragraph 4.6.

¹⁹⁹ See paragraph 4.13.

²⁰⁰ See paragraph 4.12.

²⁰¹ See paragraphs 4.6, 4.14, 4.17 and 7.30.

²⁰² See paragraphs 4.13, 4.14, 4.17 and 7.31.

- 7.35 The disclosures of commercially sensitive information on current mid-prices in the DB-HSBC Gilt Auction Communications removed, or at least reduced, uncertainty as to specific aspects of the disclosing Party's pricing strategies in relation to the gilts in question and/or were capable of influencing specific aspects of the recipient Party's bidding strategies (including pricing) in relation to the gilts in question.²⁰³ They also resulted in an informational asymmetry between the Parties and other GEMM participants in the relevant gilt auctions,²⁰⁴ thereby placing one or both of the Parties at a competitive advantage compared to those other GEMMs, bidding on their own behalf or on behalf of their clients.²⁰⁵
- 7.36 The disclosures of commercially sensitive information on current mid-prices in the DB-HSBC Trading Communications removed, or at least reduced, uncertainty on the relevant DB-HSBC Specific Dates as to specific aspects of the disclosing Party's pricing strategies in relation to the gilts and gilt asset swaps in question and/or were capable of influencing specific aspects of the recipient Party's trading strategies (including pricing) in relation to those gilts and gilt asset swaps.²⁰⁶ They also resulted in an informational asymmetry between the Parties and other participants in relation to the trading of those gilts and gilt asset swaps,²⁰⁷ thereby placing one or both of the Parties at a competitive advantage compared to counterparties (which included each Party's clients) and competitors.
- 7.37 The disclosures in the DB-HSBC Communications 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 strategies (including pricing) for the relevant gilt auction and their trading strategies (including pricing) in relation to the gilts and gilt asset swaps in question.²⁰⁸
- 7.38 Such conduct was not consistent with the Parties determining their bidding and trading strategies (including pricing) independently. It did not correspond to the normal conditions of competition in (as applicable) certain gilt auctions and in the trading of certain gilts and gilt asset swaps that would have been present absent the disclosures. Moreover, the disclosures of commercially sensitive information were not necessary for the proper functioning of normal competition in those gilt auctions or in relation to the trading of those gilts and gilt asset swaps.

²⁰³ See further paragraph 7.15.

²⁰⁴ 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.

²⁰⁵ Since GEMMs were the only institutions eligible to bid directly in a gilt auction, their clients could, therefore, only participate in gilt auctions indirectly by placing bids through a GEMM. See paragraph 4.8.

²⁰⁶ See further paragraph 7.15.

²⁰⁷ 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.

²⁰⁸ The CMA has also found that certain disclosures were relevant both to Gilt Auction Conduct and Trading Conduct. See paragraphs 7.9, 7.10(b)(iv), 7.10(b)(ix) and 7.10(c)(iv).

- 7.39 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.V Conclusion on the restriction or distortion of competition

- 7.40 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 DB-HSBC Conduct revealed a sufficient degree of harm to competition in relation to the gilt auctions in question and the trading of the gilts and gilt asset swaps in question such as to constitute a restriction or distortion of competition by object.

F. The DB-HSBC Infringement as an appreciable restriction of competition

- 7.41 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.²⁰⁹
- 7.42 The CMA has found that Deutsche Bank and HSBC participated in a concerted practice that had the object of restricting or distorting competition (see paragraphs 7.17, 7.18 and 7.40). 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.²¹⁰

G. Potential effect on trade within the UK of the DB-HSBC Infringement

- 7.43 The CMA has found that the DB-HSBC Infringement was capable of affecting trade within the UK given the geographical scope of the DB-HSBC Infringement (which included the whole of the UK), the nature of the DB-HSBC Infringement, and the Parties' activities in the Relevant Market within the UK (see footnote 210).

²⁰⁹ See paragraph 6.24.

²¹⁰ In any event, and in the alternative, the CMA has found that the DB-HSBC 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 DB-HSBC Infringement covered conduct within the UK; (ii) the nature of the DB-HSBC Infringement (see paragraphs 7.32 to 7.40); and (iii) the Parties' activities in the Relevant Market within the UK, including the nature of the Parties' roles as GEMMs.

H. Exclusion or exemption

- 7.44 The CMA has found that none of the exclusions from the Chapter I prohibition apply to the DB-HSBC Infringement.²¹¹
- 7.45 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).
- 7.46 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.²¹² The CMA has therefore concluded that no exemption applies in this case.

I. Legal characterisation and duration of the DB-HSBC Infringement

- 7.47 The CMA has found that, on the basis of the evidence taken as a whole, the DB-HSBC Conduct constituted a single and repeated infringement, comprising the specific disclosures of commercially sensitive information in the DB-HSBC Communications on each of the DB-HSBC Specific Dates, namely: 28 October 2009, 8 January 2010, 19 January 2010, 21 January 2010, 22 January 2010, 2 February 2010, 5 February 2010, 2 March 2010, 3 March 2010, 10 May 2010, 2 June 2010 and 29 June 2010.
- 7.48 The CMA has relied on the following evidence to conclude that the DB-HSBC Conduct constituted a single infringement:
- (a) The DB-HSBC Conduct pursued a single objective, which was to assist one or both of the Parties in formulating and executing aspects of their respective bidding and trading strategies in relation to (as applicable) the bidding for certain gilts and the trading of certain gilts and gilt asset swaps in the context of gilt auctions and trading of gilts and gilt asset swaps.²¹³
 - (b) The same two Key Individuals at the same two undertakings disclosed the commercially sensitive information in the DB-HSBC Relevant Period using the same means of communication (a single persistent bilateral Bloomberg chatroom) which existed throughout the DB-HSBC Relevant Period).²¹⁴

²¹¹ See paragraph 6.26.

²¹² 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.

²¹³ See paragraphs 7.21 to 7.23.

²¹⁴ See paragraph B.1, Annex B.

- (c) The products that were the subject of the DB-HSBC Infringement, namely gilts and gilt asset swaps, were the same or similar throughout the DB-HSBC Relevant Period and were traded in the same or similar ways.²¹⁵
- (d) There were certain similarities in how pricing of those products across gilt auctions and trading was determined during the DB-HSBC Relevant Period.²¹⁶

7.49 Through its own conduct, each of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) intentionally contributed to the DB-HSBC Conduct and the single objective of that conduct. Furthermore, each of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) was a party to each DB-HSBC Communication and, having understood its contents, was necessarily aware of the other's contribution to the DB-HSBC Conduct in pursuit of the single objective.

7.50 In the specific circumstances of this case, the CMA has found that the disclosures of commercially sensitive information in the DB-HSBC Communications between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) on the DB-HSBC Specific Dates constitute a single and repeated infringement. The CMA has therefore found that the duration of the DB-HSBC Infringement was 12 days.

J. Conclusion on the DB-HSBC Infringement

7.51 For the reasons set out in this Chapter, the CMA has found that in the DB-HSBC Relevant Period Deutsche Bank and HSBC 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

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

K.I Deutsche Bank

7.53 The ultimate parent company of the undertaking is Deutsche Bank.²¹⁷

7.54 During the DB-HSBC Relevant Period, [DB Trader]'s participation in the gilt auctions and trading activities described in this Chapter 7 was on behalf of

²¹⁵ See paragraphs 4.9 to 4.10, footnote 36 and paragraph 5.3.

²¹⁶ See paragraph 4.14.

²¹⁷ See paragraph 3.3.

Deutsche Bank.²¹⁸ Accordingly, the CMA has concluded that Deutsche Bank was directly involved in, and is therefore liable for, the DB-HSBC Infringement. This Decision is therefore addressed to Deutsche Bank.

K.II HSBC

7.55 [HSBC Trader] was employed by HSBC Bank Plc during the DB-HSBC Relevant Period and his participation in the gilt auctions and trading activities described in this Chapter 7 was on behalf of HSBC.²¹⁹ Accordingly, the CMA has concluded that HSBC Bank Plc was directly involved in, and is therefore liable for, the DB-HSBC Infringement.

7.56 The CMA has also found that HSBC Holdings Plc is jointly and severally liable with HSBC Bank Plc for the DB-HSBC Infringement. That is because throughout the DB-HSBC Relevant Period HSBC Bank Plc was a wholly owned subsidiary of HSBC Holdings Plc,²²⁰ which can therefore be presumed to have exercised decisive influence over HSBC Bank Plc during the DB-HSBC Relevant Period, and thereby formed part of the same undertaking.

7.57 This Decision is therefore addressed to HSBC Bank Plc and HSBC Holdings Plc.

²¹⁸ See paragraphs 3.5 and 3.6.

²¹⁹ See paragraph 3.11.

²²⁰ See HSBC Holdings Plc Annual Report and Accounts for the year ending 31 December 2009, page 484 and HSBC Holdings Plc Annual Report and Accounts for the year ending 31 December 2010, page 375. *Companies House* [Online] Available from <https://find-and-update.company-information.service.gov.uk/company/00617987> [Accessed on 17 October 2024]. HSBC remains wholly owned by HSBC Holdings Plc. 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.²²¹
- 8.3 As the DB-HSBC 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.²²²
- 8.5 The CMA signed an immunity agreement with Deutsche Bank, pursuant to which Deutsche Bank admitted its involvement in the DB-HSBC Infringement.²²³ Deutsche Bank was granted full immunity from financial penalties under the CMA's leniency policy. This immunity will continue to apply provided that Deutsche Bank continues to comply with the conditions of the CMA's leniency policy.²²⁴
- 8.6 As part of its settlement,²²⁵ HSBC has admitted its involvement in, and liability for, the DB-HSBC Infringement as set out in this Decision. Under the terms of the settlement, HSBC has agreed to pay a maximum total financial penalty of **£23,400,000** in relation to the DB-HSBC Infringement.

²²¹ Section 32(1), read together with section 2(5) of the Act.

²²² Section 36(1), read together with section 2(5) of the Act.

²²³ See paragraph 2.1.

²²⁴ The CMA has therefore not calculated the level of any financial penalty that the CMA would have imposed on Deutsche Bank if immunity had not been granted.

²²⁵ See paragraph 2.5.

- 8.7 The CMA must have regard to the guidance on penalties in force at the time when setting the amount of a penalty,²²⁶ which sets out a six-step approach for calculating the penalty to be imposed on an undertaking.²²⁷
- 8.8 The CMA has a discretion to impose financial penalties.²²⁸ In assessing the appropriateness and proportionality of a penalty, the CMA is not bound by its previous decisions, but it should ensure that there is broad consistency in its approach.²²⁹
- C.1 Intention/negligence**
- 8.9 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.²³⁰
- 8.10 In view of the objective of the conduct of the Parties in respect of the DB-HSBC Infringement (see Chapter 7²³¹) and the obligations the Parties, as GEMMs, were required to meet,²³² 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.²³³ 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.
- 8.11 The CMA has therefore found, for the purposes of determining whether to exercise its discretion to impose a penalty, that the DB-HSBC Infringement was committed intentionally. In the alternative, for the same reasons, the CMA has found that the DB-HSBC Infringement was committed at least negligently.

²²⁶ 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).

²²⁷ Penalty Guidance, paragraph 2.1.

²²⁸ Penalty Guidance, paragraph 1.2.

²²⁹ Penalty Guidance, paragraph 1.4.

²³⁰ 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]).

²³¹ In particular, see paragraph 7.49 in relation to each Party's intentional contribution to the DB-HSBC Conduct and its single objective, and also each Party's awareness of the other's contribution to the DB-HSBC Conduct in pursuit of the single objective.

²³² See Chapter 4. Specifically, the DMO guidebooks in force during the DB-HSBC Relevant Period set out the DMO's view that '*liquidity in the gilt-edged market is best preserved by the presence of **competing market makers***' (emphasis added) (B-URN-000503293, paragraph 5).

²³³ 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]).

C.II Calculation of HSBC's penalty

Step 1 – starting point

- 8.12 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.²³⁴

Determination of HSBC's relevant turnover

- 8.13 The CMA has calculated HSBC's penalty using an income-based, rather than turnover-based, approach.²³⁵
- 8.14 HSBC 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),²³⁶ which the CMA used to determine the categories of income that it considers appropriate to include within HSBC's relevant turnover.²³⁷
- 8.15 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).²³⁸

²³⁴ Penalty Guidance, paragraphs 2.2 to 2.13.

²³⁵ 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.

²³⁶ 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). HSBC did not separately record income derived from its activities within the Relevant Market and it highlighted limitations in its ability to retrieve, and provide the CMA with, income information that specifically relates to gilts and gilt asset swaps (ie the products falling within the Relevant Market) from its archived and demised data and systems (see, for example, B-URN-000501982, in particular pages 1 to 3; B-URN-000502282; B-URN-000502251, in particular pages 1 to 2; and B-URN-000502456, in particular pages 1, 2 and 8). HSBC therefore provided the CMA with estimates based on categories of income reporting from its 2009, 2010 and 2011 Management Accounts (B-URN-000502456; B-URN-000502251; and B-URN-000501982).

²³⁷ 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 HSBC (and other GEMMs) were remunerated for their activities within the Relevant Market. 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 HSBC's activities in the Relevant Market at Step 1 in this case.

²³⁸ Penalty Guidance, paragraph 2.10.

However, to reduce the distortive effect of gains and losses year on year,²³⁹ the CMA has taken an average of each Party's relevant turnover across:²⁴⁰

- (a) the 'last business year', ie the financial year ending **31 December 2009**; and
- (b) any other financial year falling (in whole or in part) within the DB-HSBC Relevant Period, ie the financial year ending **31 December 2010**.

8.16 The CMA has therefore determined that HSBC's relevant turnover was **£8,220,500**.²⁴¹

Assessment of the seriousness of the DB-HSBC Infringement and the need for general deterrence

8.17 The CMA considers that the DB-HSBC 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%**.²⁴²

8.18 In making this assessment, the CMA has considered the relevant circumstances of the case,²⁴³ including the nature of the product,²⁴⁴ the structure of the market,²⁴⁵ the market coverage of the infringement,²⁴⁶ and the potential harm from the DB-

²³⁹ 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). 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, HSBC reported negative income related to some of its gilt and gilt-related derivative trading activities in 2009 and 2010, despite actively participating in the Relevant Market throughout the DB-HSBC Relevant Period (see B-URN-000502456, B-URN-000502455 and B-URN-000502252) and HSBC'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 245)).

²⁴⁰ Although there is no certainty that the fluctuations caused by external factors will in practice average out within the DB-HSBC 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.

²⁴¹ Based on the sum of the figures in Table 5 of B-URN-000502456, excluding rows 2, 8 and 18. This equates to £12.7 million for 2009 and £3.7 million for 2010 and the CMA notes that these figures are sensitive to allocative assumptions that have been applied to HSBC's contemporaneous management reporting. As HSBC was not able to distinguish between income from gilts and income from gilt-related derivatives (see footnote 236), the CMA's determination of HSBC's relevant turnover may include income that falls outside the Relevant Market.

²⁴² Penalty Guidance, paragraph 2.5; see also paragraphs 2.3 to 2.9.

²⁴³ Penalty Guidance, paragraph 2.7.

²⁴⁴ ie gilts and gilt asset swaps, which were interrelated to gilts (see footnote 36), which were issued as part of the UK government's debt management policy.

²⁴⁵ Within which GEMMs (including HSBC) were each other's closest competitors for gilts and gilt asset swaps (see footnote 92) 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 2010, HSBC traded gilt volumes of approximately £[>] billion (the CMA has calculated HSBC'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 HSBC for gilts, based on GEMMs' own submissions of turnover data to the DMO (see B-URN-000501382, questions 14, 15 and 16)).

²⁴⁶ Including the fact that conventional gilts represented the vast majority of the UK's gilt portfolio (see B-URN-000503296, page 72) and the Relevant Market was global (see Chapter 5).

HSBC Infringement for competitors and consumers, whether directly or indirectly.²⁴⁷

- 8.19 Finally, the CMA considers that a starting point of 23% is appropriate and sufficient for the purposes of general deterrence,²⁴⁸ given the seriousness of the DB-HSBC 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.
- 8.20 HSBC's penalty at the end of Step 1 is therefore **£1,890,715**.

Step 2 – adjustment for duration

- 8.21 The CMA has found that the duration of the DB-HSBC Infringement was less than one year (see paragraph 7.50), and there are no exceptional circumstances to warrant decreasing the starting point. The CMA has therefore treated the duration of the DB-HSBC Infringement as a full year (ie the figure reached at the end of Step 1 will be **multiplied by 1**).²⁴⁹
- 8.22 HSBC's penalty at the end of Step 2 is therefore **£1,890,715**.

Step 3 – adjustment for aggravating and mitigating factors

- 8.23 The amount of the penalty may be increased where there are aggravating factors, or decreased where there are mitigating factors.²⁵⁰ 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.²⁵¹
- 8.24 In light of HSBC's cooperation,²⁵² the CMA has applied a reduction of 5% at Step 3. HSBC's penalty at the end of Step 3 is therefore **£1,796,179**.

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.²⁵³

²⁴⁷ See Chapter 7.

²⁴⁸ Penalty Guidance, paragraph 2.8.

²⁴⁹ Penalty Guidance, paragraph 2.14.

²⁵⁰ Penalty Guidance, paragraphs 2.15 to 2.17.

²⁵¹ 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).

²⁵² During the investigation, HSBC agreed to a streamlined access to file process and provided the CMA with a limited amount of information and documents on a voluntary basis at an early stage of the investigation, enabling the CMA to progress the investigation more effectively than would otherwise have been possible.

²⁵³ 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.

- 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 otherwise too low to achieve the objective of deterrence in view of the undertaking's size and financial position.²⁵⁴
- 8.27 In relation to HSBC's specific size and financial position,²⁵⁵ HSBC's total worldwide revenue was US\$66.1 billion (£53.1 billion) in the financial year ending 31 December 2023 and its average worldwide revenue was US\$55.4 billion (£43.4 billion) for the three-year period ending 31 December 2023.²⁵⁶
- 8.28 Over 99% of HSBC's worldwide revenue is therefore generated outside the Relevant Market. Moreover, a penalty at the end of Step 3 of £1,796,179 accounts for less than 0.01% of HSBC's total worldwide revenue for the financial year ending 31 December 2023 and less than 0.01% of its three-year average revenue.
- 8.29 HSBC's relevant turnover (see paragraph 8.16 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 profit²⁵⁷ and it is relatively small compared to HSBC's total traded gilt volumes.²⁵⁸ A more significant adjustment is therefore necessary at Step 4.²⁵⁹
- 8.30 The CMA has also concluded that other specific features of this case are relevant circumstances to be taken into account,²⁶⁰ including:
- (a) the potential harm from the DB-HSBC Infringement;²⁶¹ and
 - (b) the length of time that has passed since the end of the DB-HSBC Infringement and the extensive compliance (and related monitoring and surveillance) measures that HSBC has introduced since then (some of which

²⁵⁴ 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).

²⁵⁵ 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).

²⁵⁶ 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 HSBC Holding Plc's consolidated financial statements for the financial year ending 31 December 2023 (source: <https://www.hsbc.com/investors/results-and-announcements/annual-report>). 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.

²⁵⁷ See paragraph 8.13 and footnote 239.

²⁵⁸ Which were approximately £[>] billion in the financial year ending 31 December 2010, which represents approximately [6-10]% of the total volume traded by GEMMs in 2010 (CMA calculations based on B-URN-000501386, see footnote 245). The CMA further notes that, as set out in footnote 236, 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 HSBC's activities in the Relevant Market.

²⁵⁹ Penalty Guidance, paragraph 2.23.

²⁶⁰ Penalty Guidance, paragraph 2.19.

²⁶¹ Including the number and range of DB-HSBC Specific Dates (see paragraph 7.2) and HSBC's share of the total volume traded by GEMMs (see footnote 258).

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 DB-HSBC Infringement.²⁶²

8.31 Notwithstanding HSBC's current compliance measures, the CMA has concluded that an uplift for specific deterrence is necessary for HSBC for 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 the 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 HSBC 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 out in section 36(7A)(b) of [the Act]*',²⁶³ the CMA has increased HSBC's penalty at the end of Step 4 to **£26,000,000** for the DB-HSBC Infringement.²⁶⁴

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.²⁶⁵ 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.²⁶⁶

²⁶² See, for example, B-URN-000504713, provided in response to a Request for Information (B-URN-000504643).

²⁶³ Penalty Guidance, paragraph 2.19.

²⁶⁴ The CMA acknowledges that HSBC'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 HSBC's total worldwide revenue for the financial year ending 31 December 2023 (less than 0.1%), its average worldwide revenue over its last three financial years (less than 0.1%), its worldwide profit after tax for the financial year ending 31 December 2023 (approximately 0.1%) and its average worldwide profit after tax over the last three financial years (approximately 0.2%).

²⁶⁵ 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).

²⁶⁶ Penalty Guidance, paragraph 2.25 and *FP McCann Limited v CMA* [2020] CAT 28 at [347].

- 8.34 The CMA considers that a penalty for HSBC of £26,000,000 for the DB-HSBC Infringement is appropriate and proportionate in the round. In making this assessment, the CMA has had regard to the following:²⁶⁷
- (a) HSBC's specific size and financial position, as set out in paragraphs 8.27 and 8.28 and footnote 264;
 - (b) the factors set out in paragraph 8.30(a); and
 - (c) the extensive compliance (and related monitoring and surveillance) measures that HSBC has put in place since the end of the DB-HSBC Infringement (see paragraphs 8.30(b) and 8.31).
- 8.35 No adjustment is required as the penalty does not exceed 10% of HSBC's worldwide revenue in the financial year ending 31 December 2023.
- 8.36 As a result of the above, at the end of Step 5, HSBC's penalty for the DB-HSBC Infringement is **£26,000,000**.

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

- 8.37 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.²⁶⁸
- 8.38 As set out in paragraph 8.6, HSBC has admitted its involvement in, and liability for, the DB-HSBC Infringement as set out in this Decision. In light of that admission, and HSBC's agreement to cooperate in the process for concluding the investigation, the CMA has reduced HSBC's financial penalty by **10%** in relation to the DB-HSBC Infringement (provided that it complies with the continuing requirements of the settlement reached with the CMA²⁶⁹).

Penalties imposed by the CMA

- 8.39 The CMA therefore requires HSBC to pay a penalty of **£23,400,000** for the DB-HSBC Infringement.

²⁶⁷ Penalty Guidance, paragraph 2.26.

²⁶⁸ Penalty Guidance, paragraphs 2.30 and 2.31.

²⁶⁹ See paragraph 2.5.

8.40 The penalty will become due to the CMA on Tuesday, 22 April 2025²⁷⁰ and must be paid to the CMA by close of banking business on that date.²⁷¹

Juliette Enser

Acting Executive Director, Competition Enforcement

for and on behalf of the Competition and Markets Authority

²⁷⁰ The next working day two calendar months from the expected date of receipt of this Decision.

²⁷¹ Details on how to pay are set out in the letter accompanying this Decision.

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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 Global Markets Limited and its ultimate parent company Citigroup Inc.
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-HSBC Communications	has the meaning given to it in paragraph 7.2 of this Decision
DB-HSBC Conduct	has the meaning given to it in paragraph 7.7 of this Decision
DB-HSBC Gilt Auction Communications	has the meaning given to it in paragraph 7.9 of this Decision
DB-HSBC Infringement	has the meaning given to it in paragraph 7.2 of this Decision
DB-HSBC Relevant Period	the period 28 October 2009 to 29 June 2010
DB-HSBC Specific Dates	has the meaning given to it in paragraph 7.2 of this Decision
DB-HSBC Trading Communications	has the meaning given to it in paragraph 7.10 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
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

Term	Definition
Gilt Auction Conduct	has the meaning given to it in paragraph 7.7(a) of this Decision
gilt switch	a trade consisting of the purchase of one specific gilt and the sale of another specific gilt
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 4.16 of this Decision
Morgan Stanley	together, Morgan Stanley & Co. International Plc and its ultimate parent company Morgan Stanley
Party	has the meaning given to it in paragraph 1.1 of this Decision
Party to the CMA's Investigation	Each of Deutsche Bank, HSBC, Citi, Morgan Stanley and RBC
Penalties Order	the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, SI 2000/309
Penalty Guidance	CMA, <i>Guidance as to the appropriate amount of a penalty</i> , 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
Request 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
Trading Conduct	has the meaning given to it in paragraph 7.7 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 and a gilt switch
trading price	a 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 DB-HSBC Communications that the CMA relies on to evidence the DB-HSBC Conduct (as relevant to the DB-HSBC Infringement) as summarised in paragraphs 7.9 and 7.10 of this Decision. It consists of Bloomberg chats between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) that took place in a 'persistent'¹ Bloomberg chatroom titled 'The Real Derby', which was opened on [X<] October 2009 and closed on [X<] July 2010.² 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 DB-HSBC Infringement.⁴

DB-HSBC, A-URN-007358,⁵ 28 October 2009

Disclosure of current mid-price for 2.75% 2015 gilt (11:15:37 to 11:35:28)

- B.3 On 28 October 2009, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Trading Conduct** in that they disclosed to each other their respective **current mid-prices** for the 2.75% 2015 gilt.
- B.4 At 11:15:37, Deutsche Bank ([DB Trader]) stated that he was selling the 2.75% 2015 gilt that was being traded in the 'when-issued' (wi) period ('*now time to sell some wi*'). [DB Trader] (Deutsche Bank)'s evidence in interview in relation to this communication was that this statement related to the 2.75% 2015 gilt, which he

¹ A persistent (or permanent) Bloomberg chatroom would retain and display participants' message history if they exited the chatroom (see B-URN-000502065, page 109; and B-URN-000500550, page 1).

² The dates and titles of the Bloomberg chatroom are taken from the metadata of the Bloomberg chats. Given [X<], 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 DB-HSBC 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 Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) which are set out in this Annex B are included for context.

⁵ A-URN-007358. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000450. Timestamps from the chat are recorded in GMT, which was the same as UK time on that date (BST).

was trading in advance of the gilt auction on 3 November 2009 for the issuance of gilt, during the when-issued period.⁶

- B.5 At 11:32:31, 17 minutes later, Deutsche Bank ([DB Trader]) commented on trading activity, specifically prices for a gilt, he was observing, *'those outright bids looked too good'*.⁷ Following this, HSBC ([HSBC Trader]) disclosed his **current mid-price** for a gilt **'yes, im marking the bonds at 48.5'** (at 11:33:45). The evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) in interview in relation to this communication was that this was a disclosure of HSBC ([HSBC Trader])'s internal mid-price for the 2.75% 2015 gilt.⁸
- B.6 A little over a minute later, Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for the same gilt, *'i have them lower' '46.8 mid at the mo'* (at 11:35:16 to 11:35:23). [DB Trader] (Deutsche Bank) said in interview in relation to this communication that this was a disclosure of his internal mid-price for the gilt.⁹ HSBC ([HSBC Trader]) then disclosed his revised **current mid-price** for this gilt, *'yes now i have same'* (at 11:35:28).

⁶ [DB Trader] (Deutsche Bank)'s evidence was that there was some activity via brokers in relation to the 2.75% 2015 gilt which was trading in the when-issued period. [DB Trader] (Deutsche Bank) said in interview that *'So, it sounds like -- from my first comment, you know, it sounds like the bond is performing quite well, and it sounds like there's good bids in the broker market, um, and then I think -- you know, so then I've suggested, you know, now -- you know, it says "Now seems like a good time to set up for the auction".'* (B-URN-000502066, page 98). [HSBC Trader] (HSBC)'s evidence supports this. [HSBC Trader] (HSBC) said in interview that *'I think that's just a kind of general comment that he thinks WI [the 2.75% 2015 gilt] looks either expensive or, um, you know that he's going to try and sell some at some point. Or he is selling some, I -- I don't know.'* (B-URN-000502074, page 180).

⁷ [DB Trader] (Deutsche Bank)'s evidence was that he had observed buying for the 2.75% 2015 gilt through brokers and disclosed to HSBC ([HSBC Trader]) that he considered these bids high compared to his mid-price for the gilt. [DB Trader] (Deutsche Bank) said in interview that *'Um, and then 17 minutes later I said "those outright bids looked too good": that's obviously a reference to some bids in the IDBs, outright bids; again, quite rare. I think we kind of broached it earlier, whereby most of the IDB traded on a switch basis as opposed to outright, so getting quite rare, um, and obviously those outright bids look quite high. Obviously, reading the next couple of comments from [HSBC Trader], um, those outright bids look quite high versus where he's traded.'* [DB Trader] (Deutsche Bank) further confirmed that this related to the 2.75% 2015 gilt (B-URN-000502066, page 98). [HSBC Trader] (HSBC)'s evidence is consistent with this, although [HSBC Trader] (HSBC) was less certain whether this referred to the 2.75% 2015 gilt or another gilt. [HSBC Trader] (HSBC) said in interview *"Those outright bids looked too good", so he's obviously referring to an outright bid in a gilt that, that just traded maybe a few minutes ago or five minutes ago or ten minutes ago on a -- on the broker screen.'* [HSBC Trader] (HSBC) further said in interview *'I mean it could be the WI, but it could be -- you know, I mean there's a 17-minute gap',* later adding *"When issued", so it's the new gilt so this is probably a continuation of that, er, previous conversation, the new 15s.'* (B-URN-000502074, page 181). The CMA's view, in light of the evidence in the Bloomberg chat and the evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) taken in the round, is that this was a continuation of the discussion of the 2.75% 2015 gilt.

⁸ [HSBC Trader] (HSBC)'s evidence was that this was his internal mid-price for a gilt, *'probably'* the 2.75% 2015 gilt. [HSBC Trader] (HSBC) said in interview *'so this is probably a continuation of that, er, previous conversation, the new 15s'.* [HSBC Trader] (HSBC) said in interview, when asked what *'marking the bonds'* means that this was *'Basically my mid'*, and confirmed that this was his internal mid-price (B-URN-000502074, pages 181 to 182). [DB Trader] (Deutsche Bank)'s evidence supports this. [DB Trader] (Deutsche Bank) said in interview *'He said where he's marking the bonds: that's the cash bonds at 48.5, which will be the decimal points, and he's marking them at 48.5 [...], um, so obviously he's sold them at a higher price, so the broker market was bid at a higher price versus the mid, so he's, he's saying that.'* (B-URN-000502066, pages 98 to 99).

⁹ [DB Trader] (Deutsche Bank) said in interview, in relation to this statement that *'I'm saying that I have the -- my mid on the bonds lower than his mid on the bonds, at -- which was, I guess, 90 seconds previous.'* [DB Trader] (Deutsche Bank) also confirmed that *'46.8 mid'* was his internal mid-price (responding *'Yeah'* when asked: *'[...] the "46.8 mid" at 11:35:23; that's your internal mid price for the gilts?'*) (B-URN-000502066, page 100). [HSBC Trader] (HSBC)'s evidence was also that Deutsche Bank [DB Trader]) was referring to his mid-price in these statements. [HSBC Trader] (HSBC) said in interview that *'His mid is lower'*. (B-URN-000502074, page 183).

Chat extract table – 11:15:37 to 11:35:28

Timestamp (GMT)	Party (Key Individual) Extract
11:15:37 11:32:31	Deutsche Bank ([DB Trader]) <i>now time to sell some wi</i> <i>those outright bids looked too good</i>
11:33:45	HSBC ([HSBC Trader]) <i>yes, im marking the bonds at 48.5</i> <i>[...]</i>
11:35:16 11:35:23	Deutsche Bank ([DB Trader]) <i>i have them lower</i> <i>46.8 mid at the mo</i>
11:35:28	HSBC ([HSBC Trader]) <i>yes now i have same</i>

DB-HSBC, A-URN-007445,¹⁰ 8 January 2010

Disclosure of current mid-price for 5% 2014 gilt (08:18:03 to 08:18:32)

- B.7 On 8 January 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in Trading Conduct in that HSBC ([HSBC Trader]) disclosed his **current mid-price** for the 5% 2014 gilt to Deutsche Bank ([DB Trader]).
- B.8 At 08:18:03, Deutsche Bank ([DB Trader]) asked HSBC ([HSBC Trader]) to disclose his mid-price for the 5% 2014 gilt (*'where you marked 5 14'*). In response, HSBC ([HSBC Trader]) disclosed his **current mid-price** for that gilt (*'2.875%', 'mid'* at 08:18:12 and 08:18:18).
- B.9 Deutsche Bank ([DB Trader]) then stated that his current mid-price for the 5% 2014 gilt was a quarter of a basis point different to HSBC ([HSBC Trader]) (*'ok i have 0.25 different there'* at 08:18:28).
- B.10 This interpretation is supported by the evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) in interview, albeit that [HSBC Trader] (HSBC) was less sure of this:
- (a) [DB Trader] (Deutsche Bank)'s evidence in interview in relation to this communication was that in this extract HSBC ([HSBC Trader]) disclosed his mid-price for the 5% 2014 gilt, in response to a question from Deutsche Bank ([DB Trader]), and that Deutsche Bank ([DB Trader]) provided some information about the relative value of his mid-price. [DB Trader] (Deutsche Bank) said *'[...] And then ... then I've asked him where he's marked on the 5s, 14 [5% 2014 gilt] as in the bond, and he's given me his mid on the bond, and I say, "Okay, I'm a quarter base point difference"'*.¹¹
 - (b) [HSBC Trader] (HSBC) was unsure as to the meaning of this extract, stating, *'I've got to be completely honest. I've no idea what's going on here.'*¹² However, [HSBC Trader] (HSBC) said that this *'could be a yield'*, which would be consistent with it being a disclosure of his mid-price, expressed as a yield.¹³
- B.11 The CMA considers that in light of the evidence of both [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC), and the contents of the Bloomberg chat referencing the *'mid'* of *'5 14'*, taken in the round, HSBC ([HSBC Trader])

¹⁰ A-URN-007445. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000314. Timestamps from the chat are recorded in GMT, which was the same as UK time on that date.

¹¹ B-URN-000502070, page 16.

¹² B-URN-000502077, page 14.

¹³ [HSBC Trader] (HSBC) said in interview that this *'would seem strange because, I mean, in all of the other chats we never really talk about a yield'* (B-URN-000502077, page 14). However, the CMA notes that, as set out in paragraph 4.14, footnote 67, there was [a mathematical relationship] between price and yield for the purposes of buying or selling gilts.

disclosed his mid-price for the 5% 2014 gilt expressed as a yield. Furthermore, the CMA considers that this would have been understood by each of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) at the time, as neither sought clarification. [HSBC Trader] (HSBC)'s evidence supports this, he said '*We obviously know what we're talking about because there's a conversation*'.¹⁴

Chat extract table – 08:18:03 to 08:18:32

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
08:18:03	Deutsche Bank ([DB Trader]) <i>where you marked 5 14</i>
08:18:12 08:18:18	HSBC ([HSBC Trader]) 2.875% <i>mid</i>
08:18:28	Deutsche Bank ([DB Trader]) <i>ok i have 0.25 different there</i>
08:18:32	HSBC ([HSBC Trader]) <i>ok</i>

¹⁴ B-URN-000502077, page 16.

Disclosure of current mid-prices for four specific gilt asset swaps (15:40:31 to 15:41:46)

- B.12 On 19 January 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Trading Conduct** in that Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-prices** for four specific gilt asset swaps.
- B.13 At 15:40:31, HSBC ([HSBC Trader]) stated that he had some problems with his internal gilt asset swap pricing tool and asked Deutsche Bank ([DB Trader]) to disclose his mid-prices in order to *'check' these ('got some issues on my asw pricer, just wanna check some levels [prices] with u if ok')*.¹⁶ Deutsche Bank ([DB Trader]) accepted this request (*'sure'* at 15:40:41).
- B.14 HSBC ([HSBC Trader]) then specified the four gilt asset swaps that he wanted to check the price of (*'5 12, 2q14, 3t19' 'pls' 'matched' 'and 4q39'* at 15:40:45 to 15:40:50 and 15:40:57).
- B.15 Deutsche Bank ([DB Trader]) responded, disclosing his **current mid-prices** for each of those four gilt asset swaps (*'41.45' '28.41' '-13.01' '-24.83'* at 15:40:56 and 15:41:05 to 15:41:22). [DB Trader] (Deutsche Bank) said in interview he was disclosing his current mid-prices (*'these mids were my mids'*)¹⁷ for each of the 5% 2012, 2.25% 2014, 3.75% 2019 and 4.25% 2039 gilt asset swaps.¹⁸
- B.16 In response, HSBC ([HSBC Trader]) thanked Deutsche Bank ([DB Trader]) for the information (*'great thx'*) at 15:41:28 and stated regarding his own mid-price (*'im over 1bp too low on sub-10yr'*), adding that his pricing tool had a problem (*'pricer here cant seem to handle the stub'* at 15:41:46).¹⁹

¹⁵ A-URN-007462. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000323. Timestamps from the chat are recorded in GMT, which was the same as UK time on that date.

¹⁶ [HSBC Trader] (HSBC) said in interview that *'it appears like I am checking some mid-levels with [[DB Trader] (Deutsche Bank)] 'Because I'm having some pricing issues with my -- with my swap pricer'* (B-URN-000502074, pages 138 to 139). This is consistent with the evidence of [DB Trader] (Deutsche Bank), who said in interview that *'it looks like [[HSBC Trader] (HSBC)] has got some issues with his asset swap pricer, so he's asked me to confirm the levels [prices].'* (B-URN-000502066, page 54).

¹⁷ B-URN-000502066, page 57.

¹⁸ [DB Trader] (Deutsche Bank) said in interview that *'The first number, "41.45", would be the 5 12 asset swap. The second number, "28.41", would've been the 2Q14 asset swap. The third number, the "13.01", would've been the 3T19 asset swap. The fourth number, at 15:41:22, "24.83", would've been the 4Q39 asset swap, which he, he asked for at, er, 15:40:57.'* (B-URN-000502066, page 56).

¹⁹ [DB Trader] (Deutsche Bank) explained that the *'stub'* referred to the assumption made by market participants in respect of the first LIBOR level which was an input for swap pricers (B-URN-000502066, page 58).

Chat extract table – 15:40:31 to 15:41:46

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
15:40:31	HSBC ([HSBC Trader]) <i>got some issues on my asw pricer, just wanna check some levels with u if ok</i>
15:40:41	Deutsche Bank ([DB Trader]) <i>sure</i>
15:40:45 15:40:46 15:40:50	HSBC ([HSBC Trader]) <i>5 12, 2q14, 3t19 pls matched</i>
15:40:56	Deutsche Bank ([DB Trader]) 41.45
15:40:57	HSBC ([HSBC Trader]) <i>and 4q39</i>
15:41:05 15:41:12 15:41:22	Deutsche Bank ([DB Trader]) 28.41 -13.01 -24.83
15:41:28 15:41:46	HSBC ([HSBC Trader]) <i>great thx im over 1bp too low on sub-10yr, pricer here cant seem to handle the stub</i>

Summary

- B.17 On 21 January 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Trading Conduct** in that:
- (a) Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for a 2.75% 2015 gilt asset swap; and
 - (b) Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their respective **current mid-prices** for two gilt asset swaps (involving the 2.75% 2015 and 2.25% 2014 gilts) and their respective **current mid-prices** for the 2.25% 2014 gilt, which was the gilt leg of one of these gilt asset swaps.

Disclosure of current mid-price of 2.75% 2015 gilt asset swap (08:35:42 to 08:39:50)

- B.18 Deutsche Bank ([DB Trader]) commented on offers he observed in relation to two gilt asset swaps via brokers: 'on asw', '18 on 2t15 is offered' '25 on 2q14' (at 08:35:42 to 08:36:00), adding (in response to a question from HSBC ([HSBC Trader])), that this was with '[broker]' (at 08:36:37). HSBC ([HSBC Trader]) stated that he was not being told about this offer by his own broker at the same brokerage firm ('[an individual employed by a broker]²¹ saying he has bids only' (at 08:36:44)).²²
- B.19 Following a discussion between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) about other matters,²³ Deutsche Bank ([DB Trader]) disclosed his **current mid-price** in relation to the 2.75% 2015 gilt asset swap, '**i have a 17.7 mid**' (at 08:39:39).²⁴ HSBC ([HSBC Trader]) stated shortly afterwards that he was continuing to experience issues with his pricer ('my asw pricer still [expletive]' at 08:39:50).

²⁰ A-URN-000181. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000328. Timestamps from the chat are recorded in UTC, which was the same as UK time on that date.

²¹ [HSBC Trader] (HSBC) said in interview that '[an individual employed by a broker] was my broker at [broker], so he was the broker I spoke to at [broker]' (B-URN-000502074, page 146).

²² [HSBC Trader] (HSBC) said in interview that this meant 'As in he's, he's saying he's a buyer. The broker's saying he's only got bids and no offer.' [HSBC Trader] (HSBC) further said 'It sounds like they -- these bonds were offered at 18 and 25 and they went stale. And then the broker didn't show me the offer again because he was worried that they weren't there.' (B-URN-000502074, page 146).

²³ As noted at paragraph 7.8(a), footnote 156, in this chat extract (in particular timestamps 08:35:42 to 08:39:34 and 08:39:46) both Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) discussed their respective trading activity in relation to two gilt asset swaps.

²⁴ [DB Trader] (Deutsche Bank) said in interview that his comment '17.7 mid' related to the '2t15 asset swap [2.75% 2015 gilt asset swap]' (B-URN-000502066, page 61). [HSBC Trader] (HSBC)'s evidence is consistent with this. [HSBC Trader] (HSBC) said in interview, 'He's talking about the 2t15' and 'that would be his internal mid-price' (B-URN-000502074, pages 149 to 150).

Chat extract table – 08:35:42 to 08:39:50

Timestamp (UTC)	Party (Key Individual) <i>Extract</i>
08:35:42 08:35:54 08:36:00	Deutsche Bank ([DB Trader]) <i>on asw</i> <i>18 on 2t15 is offered</i> <i>and 25 on 2q14</i>
08:36:28	HSBC ([HSBC Trader]) <i>whos that with?</i>
08:36:37 08:36:43	Deutsche Bank ([DB Trader]) <i>[broker]</i> <i>might find out who</i>
08:36:44 08:36:55 08:36:59 08:37:11	HSBC ([HSBC Trader]) <i>[an individual employed by a broker] saying he has bids only</i> <i>i would lift 25m if i could find the offer</i> <i>just for the info</i> <i>he just told me has no offers</i>
08:38:18 08:38:22	Deutsche Bank ([DB Trader]) <i>i'm lifting both</i> <i>[expletive] it</i>
08:38:36	HSBC ([HSBC Trader]) <i>i cant believe [an individual employed by a broker] isnt showing me</i>
08:38:46 08:38:52	Deutsche Bank ([DB Trader]) <i>well they cant get the offers back thats why</i> <i>not sure if he is there</i>
08:39:02	HSBC ([HSBC Trader]) <i>i'll show a bid then</i>
08:39:11 08:39:12	Deutsche Bank ([DB Trader]) <i>lets see who this [expletive]</i> <i>is</i>
08:39:24	HSBC ([HSBC Trader]) <i>showing 17.25 bid</i>
08:39:34 08:39:39 08:39:46	Deutsche Bank ([DB Trader]) <i>i lifted 18 haha</i> <i>i have a 17.7 mid</i> <i>and 25 in 2q14</i>
08:39:50	HSBC ([HSBC Trader]) <i>my asw pricer still [expletive]</i>

Disclosure of current mid-prices for two gilt asset swaps and a gilt (09:08:05 to 09:11:05)

B.20 At 09:08:05, HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]) where he was pricing the 2.75% 2015 gilt asset swap,²⁵ having prefaced his question with a statement that he was checking his pricer internally within HSBC (*'mate just*

²⁵ [HSBC Trader] (HSBC) said in interview, 'I've asked him, "Where is the asset swap?"', which he clarified meant he was asking [DB Trader] (Deutsche Bank) for his internal mid-price (B-URN-000502074, page 156).

checking my pricer again with IT guys, where u have 2t15 asw pls?’), as he was continuing to experience problems with his pricer at the time.²⁶

- B.21 Deutsche Bank ([DB Trader]) responded disclosing his **current mid-price** for this gilt asset swap (**‘17.6’** at 09:08:23).²⁷
- B.22 HSBC ([HSBC Trader]) then asked Deutsche Bank ([DB Trader]) to disclose his price for the 2.25% 2014 gilt asset swap (*‘and 2q14 pls?’* at 09:09:47), which Deutsche Bank ([DB Trader]) responded to by disclosing his **current mid-price** for the 2.25% 2014 gilt asset swap (**‘25.8’** at 09:09:55).²⁸ HSBC ([HSBC Trader]) thanked Deutsche Bank ([DB Trader]) for this information (*‘ta’* at 09:09:59).
- B.23 HSBC ([HSBC Trader]) also disclosed his **current mid-price** for the 2.25% 2014 gilt, *‘[...] with 15 midd on bonds’* (at 09:10:49). Deutsche Bank ([DB Trader]) then disclosed that he had the same **current mid-price** for the 2.25% 2014 gilt (*‘i have same mid on bonds’* at 09:11:05).²⁹

Chat extract table – 09:08:05 to 09:11:05

Timestamp (UTC)	Party (Key Individual) <i>Extract</i>
09:08:05	HSBC ([HSBC Trader]) <i>mate just cheking my pricer again with IT guys, where u have 2t15 asw pls?</i>
09:08:23	Deutsche Bank ([DB Trader]) 17.6
09:08:27 09:08:42 09:09:47	HSBC ([HSBC Trader]) <i>should be bang on mine as straight 5yr wow im 1bp low on that as well and 2q14 pls?</i>
09:09:55	Deutsche Bank ([DB Trader]) 25.8

²⁶ The evidence of both [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) was that HSBC ([HSBC Trader]) was experiencing problems with his pricer at this time. [DB Trader] (Deutsche Bank) said in interview ‘Okay. So, it sounds like he is having continuing problems with his asset swap pricer, so he’s checking a mid again on the asset swap.’ (B-URN-000502066, page 65). [HSBC Trader] (HSBC) said in interview ‘So, I’m saying, “checking my pricer again with the IT guys”, who obviously were -- who built my model. Er, so obviously I’ve been checking stuff with them because we’ve had some issues.’ (B-URN-000502074, page 155). This issue appears to have been ongoing, having also been mentioned by HSBC ([HSBC Trader]) in Bloomberg Chat **DB-HSBC, A-URN-007462** on 19 January 2010, two days earlier.

²⁷ [DB Trader] (Deutsche Bank) said in interview, ‘I’ve given him, you know, my middle [...] of two bonds’ and further clarified that ‘17.6’ was his ‘internal price’ for the gilt asset swap (B-URN-000502066, pages 66 to 67). [HSBC Trader] (HSBC)’s evidence supports this, as [HSBC Trader] (HSBC) said ‘I ask him where the 2T15 asset swap is. He gives me his mid.’ (B-URN-000502074, page 155).

²⁸ [HSBC Trader] (HSBC) said in interview that, ‘so then I’ve asked him the 2Qs 14 mid, he’s come back with “25.8”’ (B-URN-000502074, page 158). See also B-URN-000502066, page 66.

²⁹ [DB Trader] (Deutsche Bank)’s evidence in interview was that both he and [HSBC Trader] (HSBC) had the same mid-price on the gilt but that their internal pricers were pricing the gilt asset swap differently: ‘Um, and then, then we go on to say -- then we go on to agree, agree a middle on the bonds, on the, on the other bonds, on the 2Q14, but we’ve got to have a different asset swap pricer, which is obviously to do with the swap leg’ (B-URN-000502066, page 66). [HSBC Trader] (HSBC)’s evidence in interview supports this, ‘Er, I guess he’s talking about the 2Qs 14, so I’ve said, “15 mid on bonds”, and he’s got the same’. [HSBC Trader] (HSBC) clarified in interview that they were discussing their internal mid-prices of the gilt (B-URN-000502074, page 161).

Timestamp (UTC)	Party (Key Individual) <i>Extract</i>
09:09:59	HSBC ([HSBC Trader]) <i>ta</i>
09:10:04	Deutsche Bank ([DB Trader]) <i>2t15 should be in line though</i> <i>[...]</i>
09:10:49	HSBC ([HSBC Trader]) <i>[...] with 15 midd on bonds</i>
09:11:05	Deutsche Bank ([DB Trader]) <i>i have same mid on bonds</i>

DB-HSBC, A-URN-007466,³⁰ 22 January 2010

Summary

- B.24 On 22 January 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Trading Conduct** in that:
- (a) Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for the 5% 2014 gilt; and
 - (b) Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their respective **current mid-prices** for the 2.25% 2014 gilt asset swap.

Disclosure of current mid-price for the 5% 2014 gilt (11:08:45 to 11:11:40)

- B.25 Deutsche Bank ([DB Trader]) commented on prices he was observing and disclosed his **current mid-price** for the 5% 2014 gilt: *'i have a 115 mid', 'yet i seem to be marked on offer side of [electronic trading platform]'*³¹ (at 11:08:58 and 11:09:15).³² HSBC ([HSBC Trader]) then stated *'same here'* (at 11:10:41), adding how his mid-prices compared to those on [electronic trading platform].³³
- B.26 Each trader also commented on the pricing they were observing, stating that they thought other market participants were 'short' in respect of the 5% 2014 gilt: Deutsche Bank ([DB Trader]) stated *'people are short 5 14 i would guess'* (at 11:08:45, and HSBC ([HSBC Trader]) then stated *'[...] [electronic trading platform]'*

³⁰ A-URN-007466. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000326. Timestamps from the chat are recorded in UTC, which was the same as UK time on that date.

³¹ See paragraph 4.11(a).

³² [DB Trader] (Deutsche Bank)'s evidence in interview was that they were discussing the 5% 2014 bond and he was disclosing his mid-price for the gilt switch (the 5% 2014 gilt vs a ten-year bond); [DB Trader] (Deutsche Bank) said *'115 will be yield spread against ten years, I believe. So, it won't be just the price of the bond, it would be yield spread of that 5s 14 bond against a ten-year bond.'* (B-URN-000502070, page 22). [HSBC Trader] (HSBC)'s evidence was also that this related to the mid-price of the 5% 2014 gilt, but [HSBC Trader] (HSBC) said in interview that this related to *'an outright gilt'* (see B-URN-000502077, page 17). The CMA considers that although it is unclear whether, at the time of the interview, both [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) understood this mid-price in identical terms (ie whether they understood it to be a gilt switch involving a ten-year benchmark gilt or an outright mid-price of the 5% 2014 gilt), at the time of the chat this would have been understood by both traders, as HSBC ([HSBC Trader]) went on to state his position (*'same here'*) without requiring clarification and both commented in the context of prices they were able to observe.

³³ The CMA notes that [DB Trader] (Deutsche Bank)'s evidence was that HSBC ([HSBC Trader]) was agreeing with the former's overall assessment, not disclosing his own mid-price: [DB Trader] (Deutsche Bank) said in interview *'[HSBC Trader] agrees without giving me his middle'* (B-URN-000502070, page 22). [HSBC Trader] (HSBC)'s evidence, however, was that he was disclosing that he had the same mid-price. [HSBC Trader] (HSBC) said in interview that *'[DB Trader] and I both have mid at 115'* (B-URN-000502077, page 19). The CMA considers that, based on the natural reading of the Bloomberg chat and the evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) in interview, taken in the round, it is not clear that HSBC ([HSBC Trader]) was disclosing that his own mid-price was the same as Deutsche Bank ([DB Trader])'s or whether he was only stating that his mid-price was also on the 'offer side' of [electronic trading platform].

*is becoming a really good indication of market pos [position]', 'the people who are marking their books to suit themselves are so dumb' at 11:10:53 to 11:11:08).*³⁴

- B.27 [HSBC Trader] (HSBC)'s and [DB Trader] (Deutsche Bank)'s evidence in interview was that they were comparing their internal mid-prices to prices they were observing on a broker ([electronic trading platform]) for the 5% 2014 gilt.³⁵

Chat extract table – 11:08:45 to 11:11:40

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
11:08:45 11:08:58 11:09:15	Deutsche Bank ([DB Trader]) <i>people are short 5 14 i would guess</i> <i>i have a 115 mid</i> <i>yet i seem to be marked on offer side of [electronic trading platform]</i>
11:10:41 11:10:53 11:11:08 11:11:40	HSBC ([HSBC Trader]) <i>same here</i> <i>in fact [electronic trading platform] is becoming a really good indication of market pos</i> <i>the people who are marking their books to suit themselves are so dumb</i> <i>thats the only one that looks out of line</i>

Disclosures of current mid-price in respect of the 2.25% 2014 gilt asset swap (13:33:06 to 13:35:21)

- B.28 Starting at 13:33:06, Deutsche Bank ([DB Trader]) stated, '*you wont belive what just happened*', '*on a no post*³⁶ *i got hit in 2q14*', '*asw*'. HSBC ([HSBC Trader]) then asked whether this trade was conducted via the broker [broker] ('*[broker]?*' at 13:34:01). Deutsche Bank ([DB Trader]) stated in response that he conducted the trade via the broker [broker] ('*[broker]*' at 13:34:21).³⁷

³⁴ [HSBC Trader] (HSBC) explained this statement in interview as follows: '*Yeah, so I am making a comment that they're stupid for doing this. Basically they are, erm -- you know, if they are saying they're short the bonds, so they're basically marking the bonds too low, hoping that they -- they can buy them back at a lower price. Really they should be marking them where they really are because if someone's going to sell them to them, they're not going to sell them at a lower price. It's just an observation about basically the, the [electronic trading platform] or the ... you know, the market in general.*' (B-URN-000502077, pages 20 to 21).

³⁵ [DB Trader] (Deutsche Bank) explained in interview that '*basically the conversation's about-- about, about mids but, basically, in a context of, you know, "Hold on a second. It's trading here in the market, but everyone's marking it somewhere differently. Am I going mad or is just everyone, you know [...]"*' (B-URN-000502070, page 22). [HSBC Trader] (HSBC) said in interview '*Well, I guess what I'm saying is that, you know, the mid is at 115, [DB Trader] and I agree. [...]* *Erm, but we don't look in line with [electronic trading platform] but I'm guessing there's some trades going on in the market at 115. But some people aren't marking them there.*' (B-URN-000502077, pages 17 to 18).

³⁶ [DB Trader] explained in interview that a 'no-post' is where one of the counterparties requests that the trade is not notified to other dealers: '*[...] a "no post" is is, essentially -- it's whereby the se... -- you know, the seller or the buyer says, "Okay, I want to do this but don't post it to the market".*' (B-URN-000502070, pages 24 to 25).

³⁷ [DB Trader] (Deutsche Bank) said in interview '*Um, so, it's broker trade. Um, it -- um, in, in [broker] broker*' (B-URN-000502070, pages 24 to 25).

- B.29 Deutsche Bank ([DB Trader]) asked HSBC ([HSBC Trader]) to keep this information confidential (*'dont say anything cos i shouldn't be telling you'* at 13:34:21), to which HSBC ([HSBC Trader]) agreed (*'course'* at 13:34:25).
- B.30 At 13:35:15, Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for the 2.25% 2014 gilt asset swap, *'i have a 27.5 mid'*.³⁸ Following this, at 13:35:21, HSBC ([HSBC Trader]) disclosed that his **current mid-price** was the same as Deutsche Bank ([DB Trader]), *'i have the same'*.³⁹

Chat extract table – 13:33:06 to 13:35:21

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
13:33:06	Deutsche Bank ([DB Trader]) <i>you wont belive what just happened</i>
13:33:13	HSBC ([HSBC Trader]) <i>what</i>
13:33:36	Deutsche Bank ([DB Trader]) <i>on a no post i got hit in 2q14</i>
13:34:01	HSBC ([HSBC Trader]) <i>[broker]?</i>
13:34:06 13:34:21	Deutsche Bank ([DB Trader]) <i>asw</i> <i>[broker] ... dont say anything cos i shouldn't be telling you</i>
13:34:25	HSBC ([HSBC Trader]) <i>course</i>
13:34:25	Deutsche Bank ([DB Trader]) <i>[...]</i>
13:34:34	HSBC ([HSBC Trader]) <i>[...]</i>
13:34:37 13:34:44	Deutsche Bank ([DB Trader]) <i>[...]</i> <i>[...]</i>
13:34:51 13:34:52	HSBC ([HSBC Trader]) <i>[...]</i> <i>[...]</i>
13:34:55	Deutsche Bank ([DB Trader]) <i>[...]</i>
13:34:58 13:35:09	HSBC ([HSBC Trader]) <i>[...]</i> <i>[...]</i>
13:35:15 13:35:21	Deutsche Bank ([DB Trader]) <i>i have a 27.5 mid</i> <i>[counterparty]</i>
	HSBC ([HSBC Trader])

³⁸ [DB Trader] said in interview that 27.5 was the mid-price generated by his pricer (B-URN-000502070, page 26).

³⁹ [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC)'s evidence was that HSBC ([HSBC Trader]) was disclosing that his mid-price was the same: [DB Trader] (Deutsche Bank) said in interview *'Same, same mid -- same middle, I believe,'* (B-URN-000502070, page 26) and [HSBC Trader] (HSBC) said in interview *'He's got 27.5 mid, which I agree with'* (B-URN-000502077, page 25).

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
13:35:21	<i>i have the same</i>

DB-HSBC, A-URN-007478,⁴⁰ 2 February 2010

Summary

B.31 On 2 February 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in:

(a) **Trading Conduct** in that:

- (i) Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their respective **current mid-prices** for a gilt;
- (ii) Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for the 5.25% 2012 gilt; and
- (iii) HSBC ([HSBC Trader]) disclosed to Deutsche Bank ([DB Trader]) his **current mid-price** for the 2.75% 2015 gilt.

(b) **Gilt Auction Conduct** in that:

- (i) Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for the 5.25% 2012 gilt in the context of, and shortly before the end of, the ongoing tap auction for this gilt.⁴¹

Disclosure of current mid-prices for a gilt (09:40:09 to 10:03:59)

B.32 From 09:40:09, Deutsche Bank ([DB Trader]) commented on trading he observed in the market relating to two gilts which were being issued by gilt auction, respectively, the next day (5% 2018 gilt) and at the time of this chat (5.25% 2012 gilt): *'18s are the bid bond today',⁴² 'think they are mixed up', 'they should be bidding up the 5q12'.*⁴³

B.33 Following his discussion with HSBC ([HSBC Trader]) of the prices they were observing,⁴⁴ Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for one

⁴⁰ A-URN-007478. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000332. Timestamps from the chat are recorded in GMT, which was the same as UK time on that date.

⁴¹ B-URN-000500738, DMO, *'Gilt Market Issuance Calendar 2009-2010'* and B-URN-000500741, DMO Gilt Market, Gilts in issue on 31 March 2011. This disclosure is also relevant to Trading Conduct as set out in paragraph B.31(a)(ii) above.

⁴² The CMA infers that this referred to the 5% 2018 gilts being auctioned the next day, on 3 February 2010. This is supported by [DB Trader] (Deutsche Bank)'s comment in interview *'As in 18 – so the 18s auction is the following day'*, (B-URN-000502066, page 171), as well as the fact that the 5% 2018 gilt was the only gilt maturing in 2018 that was in issue on the date of this chat, (B-URN-000500739, DMO Gilt Market, Gilts in issue on 31 March 2010).

⁴³ [DB Trader] (Deutsche Bank) explained in interview that typically in the run up to a gilt auction, there would be activity in relation to the auction gilt, but on the morning of 2 February 2010, the activity via brokers concerned the 5% 2018 gilt which was due to be auctioned the following day as opposed to the 5.25% 2012 gilt that was being auctioned that morning (B-URN-000502066, pages 164 to 165). [HSBC Trader] (HSBC)'s evidence supports that of [DB Trader] (Deutsche Bank). [HSBC Trader] (HSBC) said in interview, *'So, he's making a joke, "Think they are mixed up", because what tended to happen was that the auction bond goes bid. Um, but today a different bond's gone bid'* (B-URN-000502074, page 232).

⁴⁴ Between 10:01:56 and 10:02:27.

of the gilts⁴⁵ (*'i have a 6 mid'* at 10:02:54).⁴⁶ HSBC ([HSBC Trader]) then disclosed his **current mid-price** for the same gilt, *'i have 5.25', '5.8 now'* (at 10:03:20 and 10:03:34).⁴⁷

Chat extract table – 09:40:09 to 10:03:59

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
09:40:09 09:40:21	Deutsche Bank ([DB Trader]) <i>18s are the bid bond today think they are mixed up</i>
09:40:31	HSBC ([HSBC Trader]) <i>ha</i>
09:40:33	Deutsche Bank ([DB Trader]) <i>they should be bidding up the 5q12</i>
10:01:56	HSBC ([HSBC Trader]) <i>how do u even get them up to 7</i>
10:02:12 10:02:27 10:02:54	Deutsche Bank ([DB Trader]) <i>no idea usual idiots i have a 6 mid</i>
10:03:20 10:03:34	HSBC ([HSBC Trader]) <i>i have 5.25 5.8 now</i>
10:03:59	Deutsche Bank ([DB Trader]) <i>how do you get to 8 then</i>

Disclosure of current mid-price for the 5.25% 2012 gilt (10:14:34 to 10:20:42)

B.34 At 10:19:18, approximately ten minutes before the end of a tap auction for the 5.25% 2012 gilt, HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]) *'where u got mid'*, to which Deutsche Bank ([DB Trader]) responded **'13'** (at 10:20:42), disclosing his **current mid-price** for the 5.25% 2012 gilt.⁴⁸

⁴⁵ The evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) in interview differs in relation to whether this related to the 5.25% 2012 gilt or the 5% 2018 gilt (B-URN-000502066, pages 165 and 166 and B-URN-000502074, page 232). The CMA considers that, nonetheless, which of these gilts each trader was referring to would have been understood by both traders at the time, for example as HSBC ([HSBC Trader]) responded with his own mid-price without seeking clarification of the product in question.

⁴⁶ [DB Trader] (Deutsche Bank)'s evidence in interview was that he was referring to his mid-price for this gilt (*'Middle of my, er, my internal pricer of that bond'* and *'A cash gilt, not asset swap, pure cash gilt'* (B-URN-000502066, pages 166 to 167)). [HSBC Trader] (HSBC)'s evidence supports that of [DB Trader] (Deutsche Bank) - he said in interview *'he has "a 6 mid"'*, (B-URN-000502074, page 232).

⁴⁷ [HSBC Trader] (HSBC)'s evidence in interview was that he was trying to increase his mid-price for the gilt in line with *'the market'*. [HSBC Trader] (HSBC) said in interview, *'I say, "I've got a 5.25 mid". "5.8 mid now", I guess the market's moving higher because this guy's bidding up, so I'm slowly trying to get my bonds up to reflect.'* (B-URN-000502074, pages 235 to 236). [DB Trader] (Deutsche Bank)'s evidence in interview was also that HSBC ([HSBC Trader]) was disclosing his mid-price for the gilt (B-URN-000502066, page 167).

⁴⁸ [DB Trader] (Deutsche Bank) said in interview: *'This mid will be my internal mid'* (B-URN-000502066, page 178). This is consistent with the evidence of [HSBC Trader] (HSBC) who said in interview: *'I think I'm asking him [Deutsche Bank ([DB Trader])] where he's got mid on the 5Qs 12'* (B-URN-000502074, page 236).

- B.35 The evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) was that this related to the 5.25% 2012 gilt being auctioned that day.⁴⁹ This is also supported by both the timing of these statements, around ten minutes prior to the close of the gilt auction,⁵⁰ and statements in the Bloomberg chat prior to this, in which Deutsche Bank ([DB Trader]) referenced the auction gilt (*'gitl down 25 ticks'*,⁵¹ *'5q12 unch on day'* at 10:14:34 and 10:14:40).
- B.36 The evidence shows that each of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) participated in this gilt auction.⁵²

Chat extract table – 10:14:34 to 10:20:42

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
10:14:34 10:14:40	Deutsche Bank ([DB Trader]) <i>gitl down 25 ticks</i> <i>5q12 unch on day</i>
10:19:18	HSBC ([HSBC Trader]) <i>where u got mid</i>
10:20:42	Deutsche Bank ([DB Trader]) 13

Disclosure of current mid-price for the 2.75% 2015 gilt (12:41:59 to 12:48:56)

- B.37 Deutsche Bank ([DB Trader]) asked HSBC ([HSBC Trader]) to disclose his mid-price for the 2.75% 2015 gilt (*'where do you have 2t15 marked'* at 12:41:59) specifying that he was referring to the outright gilt and not the gilt asset swap⁵³ (*'cash price'* at 12:42:06), and comparing his price to [electronic trading platform] (*'i look really low to [electronic trading platform]'* at 12:42:18). In interview, [DB Trader] (Deutsche Bank) explained that he could not reconcile his mid-price with prices on [electronic trading platform], and therefore he had asked HSBC ([HSBC Trader]) to disclose his price for the 2.75% 2015 gilt.⁵⁴ In response, HSBC ([HSBC

⁴⁹ [DB Trader] (Deutsche Bank)'s evidence was that this disclosure was a continuation of the discussion from 09:40:09, which he considered to relate to the 5.25% 2012 gilt. [DB Trader] (Deutsche Bank) said in interview that this disclosure was *'Same product, same mid'*, *'Ten minutes before the auction'* (B-URN-000502066, pages 177 to 178). [HSBC Trader] (HSBC)'s evidence in interview supports this (B-URN-000502074, page 236).

⁵⁰ The evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) in interview shows that from the last 30 minutes, and particularly the last ten minutes, of a gilt auction window, they would be occupied with the gilt auction (B-URN-000502066, page 179 and B-URN-000502077, page 12).

⁵¹ See paragraph 4.14, footnote 67.

⁵² [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) discussed their participation in this gilt auction in Bloomberg chat **DB-HSBC, A-URN-007478**, on 2 February 2010 (eg at 16:16:10 *'already written dmo a cheque today'*) and in Bloomberg chat **DB-HSBC, A-URN-007481**, on 3 February 2010 (eg at 10:36:29 *'same as me yday'*).

⁵³ B-URN-000502066, page 184.

⁵⁴ B-URN-000502066, page 185. This is consistent with [HSBC Trader] (HSBC)'s evidence. [HSBC Trader] (HSBC) said in interview: *'Okay, so he's saying, "Where do you have 2T15 marked", as in where is my mid. He's saying he looks very low to [electronic trading platform], so he's questioning why he looks low to the usual kind of benchmark'* (B-URN-000502074, page 237).

Trader]) disclosed that his mid-price also looked low compared to [electronic trading platform]'s price (*'i look low as well'* at 12:48:54) and disclosed his **current mid-price** for the 2.75% 2015 gilt (*'have 2 mid'* at 12:48:56).⁵⁵

Chat extract table – 12:41:59 to 12:48:56

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
12:41:59 12:42:06 12:42:18	Deutsche Bank ([DB Trader]) <i>where do you have 2t15 marked cash price</i> <i>i look really low to [electronic trading platform]</i>
12:48:43 12:48:54 12:48:56	HSBC ([HSBC Trader]) <i>sorry been tied up</i> <i>i look low as well</i> <i>have 2 mid</i>

⁵⁵ [DB Trader] (Deutsche Bank) said in interview: *'he [HSBC ([HSBC Trader])] says that he looks low as well and he's given me his middle'* (B-URN-000502066, page 185).

DB-HSBC, A-URN-007484,⁵⁶ 5 February 2010

Disclosure of current mid-price for a gilt switch (10:17:56 to 10:22:35)

- B.38 On 05 February 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Trading Conduct** in that Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for a gilt switch consisting of five-year and ten-year gilts and HSBC ([HSBC Trader]) disclosed to Deutsche Bank ([DB Trader]) that his **current mid-price** for this gilt switch was the same.
- B.39 At 10:17:56, Deutsche Bank ([DB Trader]) stated *'people are short 4h13, 5 12, 5q12 i reckon'*. [DB Trader] (Deutsche Bank) said in interview that he was commenting on his perception of market positioning via inter-dealer brokers based on prices observed on the market.⁵⁷ Following this statement, HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]) for his mid-price for the five- and ten-year gilt switch (*'where u marking shorts?'* at 10:21:58),⁵⁸ adding that he had not been observing the prices on his own gilt pricer closely at that time (*'just noticed this, havent been watching finvision⁵⁹ as been so quiet'*).⁶⁰
- B.40 Deutsche Bank ([DB Trader]) responded by disclosing his **current mid-price** (*'184.25 maybe 184.5'* at 10:22:18). [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) explained in interview that Deutsche Bank ([DB Trader]) was disclosing his mid-price for the gilt switch consisting of five-year and ten-year gilts.⁶¹

⁵⁶ A-URN-007484. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000334. Timestamps from the chat are recorded in GMT, which was the same as UK time on that date.

⁵⁷ B-URN-000502066, pages 116 and 117. [DB Trader] (Deutsche Bank) said in interview: *'So, I am making a comment about what I perceive positioning to be in the, um, in the -- inter dealer broker market based on -- based on, um, mar -- based on the DMO marks on the screen relative to what's going on in the broker market.'* [HSBC Trader] (HSBC)'s evidence is aligned with that of [DB Trader] (Deutsche Bank): [HSBC Trader] (HSBC) said in interview: *'So, he's speculating on market positioning', 'Er, based off where the screens are ie [electronic trading platform] and [electronic trading platform].'* (B-URN-000502074, page 198).

⁵⁸ [DB Trader] (Deutsche Bank) said in interview, in relation to this statement, *'[HSBC Trader] asks, "where u marking shorts?". By that, he means five-year ten-year curve, um, five-year, ten-year bond curve'* (B-URN-000502066, page 117). [HSBC Trader] (HSBC)'s evidence supports this: [HSBC Trader] (HSBC) said in interview, in relation to this statement, *'it's where you're putting your small curve into your pricer. As in five -- your 5-year, 10-year yield curve [...] So, your 5-year, 10-year switch'* (B-URN-000502074, pages 198 to 199).

⁵⁹ [HSBC Trader] (HSBC) explained in interview that 'Finvision' was HSBC's internal pricer (B-URN-000502074, page 199).

⁶⁰ B-URN-000502074, pages 198 to 199. [HSBC Trader] (HSBC) explained what he was commenting on having just noticed as *'I'm guessing that it's the fact that people are marking those three bonds too low. Or that the [electronic trading platform] mid, er, looks low, I'm guessing.'*

⁶¹ B-URN-000502066, pages 116 to 118. [DB Trader] (Deutsche Bank)'s evidence was that this was *'most likely'* his internal mid-price for this gilt switch, but noted some uncertainty on this due to having provided two prices to HSBC ([HSBC Trader]). [DB Trader] (Deutsche Bank) said that this might have been because *'I haven't decided where to mark them'* (B-URN-000502066, page 118). [HSBC Trader] (HSBC)'s evidence also supports this being Deutsche Bank ([DB Trader])'s internal mid-price: [HSBC Trader] (HSBC) said this would be Deutsche Bank ([DB Trader])'s *'input into his bond pricer'* (B-URN-000502074, page 200). The CMA infers from [DB Trader] (Deutsche Bank)'s and [HSBC Trader] (HSBC)'s evidence, and the natural reading of the Bloomberg chat, which refers to where Deutsche Bank ([DB Trader]) had *'marked'* shorts, by which term traders referred to mid-prices (see for example B-URN-000502066, page 99 and B-URN-000502074, pages 182 and 237) taken in the round, that Deutsche Bank ([DB Trader]) was disclosing his internal mid-price for this gilt switch, and that he may have done so, for example, because Deutsche Bank ([DB Trader]) was considering adjusting it.

B.41 HSBC ([HSBC Trader]) then stated '**ye same**' (at 10:22:33), effectively disclosing that his **current mid-price** was the same as Deutsche Bank ([DB Trader])'s for this gilt switch.⁶²

Chat extract table – 10:17:56 to 10:22:35

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
10:17:56	Deutsche Bank ([DB Trader]) <i>people are short 4h13, 5 12, 5q12 i reckon</i>
10:20:55	HSBC ([HSBC Trader]) <i>what makes u say that</i>
10:21:09 10:21:35	Deutsche Bank ([DB Trader]) <i>how low the screens are being marked and they are long 2t15</i>
10:21:58 10:22:12	HSBC ([HSBC Trader]) <i>where u marking shorts? just noticed this, havent been watching finvision as been so quiet</i>
10:22:18	Deutsche Bank ([DB Trader]) 184.25 maybe 184.5
10:22:33 10:22:35	HSBC ([HSBC Trader]) ye same <i>def too low</i>

⁶² [DB Trader] (Deutsche Bank) said in interview, in relation to this, 'So he's [HSBC ([HSBC Trader])] saying same, same, um, he's got the same middle' (B-URN-000502066, page 119). [HSBC Trader] (HSBC)'s evidence in interview was also that he was disclosing he had the same mid-price, [HSBC Trader] (HSBC) explained this segment stating 'I end up agreeing with him by the sounds of it' (B-URN-000502074, page 200).

DB-HSBC, A-URN-000185,⁶³ 2 March 2010

Disclosure of mid-prices for the 2.75% 2015 gilt asset swap (14:16:47 to 14:18:04)

- B.42 On 2 March 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Trading Conduct** in that they disclosed to each other their respective **current mid-prices** for the 2.75% 2015 **gilt asset swap**.
- B.43 At 14:16:47, Deutsche Bank ([DB Trader]) speculated on the movement of the 2.75% 2015 gilt ahead of the gilt auction for that gilt the following day⁶⁴ when he asked '*i wonder whether these 2t15 are gonna be mega bid tomorrow*'. HSBC ([HSBC Trader]) commented that he had not seen any buyers of the 2.75% 2015 gilt ('*i am not seeing any int to buy them*' at 14:17:26).⁶⁵
- B.44 Deutsche Bank ([DB Trader]) then stated that he was offering the 2.75% 2015 gilt asset swap (which involved the gilt due to be auctioned the following day) at 10 basis points via brokers ('*i'm offering at 10bps on atched*' at 14:17:47).⁶⁶
- B.45 Deutsche Bank ([DB Trader]) went on to disclose his **current mid-price** for that gilt asset swap ('**have a mid of 10.5**' at 14:17:53),⁶⁷ following which HSBC ([HSBC Trader]) disclosed his **current mid-price** for the same gilt asset swap ('**have 10,25**' at 14:18:02).⁶⁸

Chat extract table – 14:16:47 to 14:18:04

Timestamp (UTC)	Party (Key Individual) <i>Extract</i>
14:16:47	Deutsche Bank ([DB Trader]) <i>i wonder whether these 2t15 are gonna be mega bid tomorrow</i>
14:17:26	HSBC ([HSBC Trader]) <i>i am not seeing any int to buy them</i>
14:17:47	Deutsche Bank ([DB Trader]) <i>i'm offering at 10bps on atched</i>

⁶³ A-URN-000185. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000418. Timestamps from the chat are recorded in UTC, which was the same as UK time on that date.

⁶⁴ B-URN-000500738, DMO '*Gilt Market Issuance Calendar 2009-2010*'.

⁶⁵ [DB Trader] (Deutsche Bank) said in interview that '*it looks to me like it's mainly commentary about ahead of the auction [...] -- ahead of that, bit of views, kind of views about the market and views about certain bonds*' (B-URN-000502066, page 125). [HSBC Trader] (HSBC) said in interview that they were '*just speculating on what might happen at the auction tomorrow*' (B-URN-000502074, pages 208 to 209).

⁶⁶ [DB Trader] (Deutsche Bank) said in interview that '*there's obviously an auction [the] next day of 15s*', '*So, er, I'm obviously offering some on asset swap as to pre-position for the auction*'. He further explained that he was offering the gilt asset swap for sale at 10 basis points via brokers (B-URN-000502066, pages 126 and 129). [HSBC Trader] (HSBC) said that he would have been aware of the offer and had '*guessed*' that it was Deutsche Bank ([DB Trader]) offering this price, as indicated by his next statement '*guessed it was u*' (B-URN-000502074, page 210).

⁶⁷ B-URN-000502066, page 131.

⁶⁸ B-URN-000502074, page 209.

Timestamp (UTC)	Party (Key Individual) <i>Extract</i>
14:17:53	HSBC ([HSBC Trader]) <i>guessed it was u</i>
14:17:53	Deutsche Bank ([DB Trader]) <i>have a mid of 10.5</i>
14:18:02 14:18:04	HSBC ([HSBC Trader]) <i>have 10,25</i> <i>haha</i>

Summary

B.46 On 3 March 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in:

(a) **Trading Conduct** in that:

- (i) HSBC ([HSBC Trader]) disclosed to Deutsche Bank ([DB Trader]) his **current mid-price** for the 2.75% 2015 gilt asset swap.
- (ii) Deutsche Bank ([DB Trader]) disclosed to HSBC ([HSBC Trader]) his **current mid-price** for a gilt switch involving the 4.75% 2015 gilt and the 3.75% 2019 gilt.
- (iii) Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their respective **current mid-prices** for the 2.75% 2015 gilt.

(b) **Gilt Auction Conduct** in that:

- (i) During the tap auction of the 2.75% 2015 gilt,⁷⁰ Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their respective **current mid-prices** for the auction gilt.⁷¹

Disclosure of current mid-price in respect of a gilt asset swap (08:42:36 to 08:43:18)

B.47 At 08:42:36, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) discussed a trade that they had observed via brokers involving the 2.75% 2015 gilt asset swap.⁷²

B.48 Following some further exchanges relating to the gilt asset swap trade, Deutsche Bank ([DB Trader]) then stated that he had a higher mid-price for this gilt asset swap than the observed trade would imply (*'i have a higher mid'* at 08:43:00). HSBC ([HSBC Trader]) then stated that his mid-price was also higher (*'ye same'* at 08:43:14) and disclosed his **current mid-price** for the same gilt asset swap, '**12.7**' (at 08:43:18).⁷³

⁶⁹ A-URN-007514. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000425. Timestamps from the chat were recorded in GMT, which was the same as UK time on that date.

⁷⁰ B-URN-000500738, DMO, *'Gilt Market Issuance Calendar 2009-2010'*.

⁷¹ This disclosure is also relevant to Trading Conduct as set out in paragraph B.46(a)(iii) above.

⁷² The evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) in interview was that this related to the 2.75% 2015 gilt asset swap (B-URN-000502070, page 28 and B-URN-000502075, page 49).

⁷³ The evidence of both [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) is that they were discussing their own mid-prices for this product. [DB Trader] (Deutsche Bank) said in interview *'we, obviously, both heard the trade but I said*

Chat extract table – 08:42:36 to 08:43:18

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
08:42:36	Deutsche Bank ([DB Trader]) <i>you hear that trade in 2t15 matched</i>
08:42:39 08:42:42	HSBC ([HSBC Trader]) <i>[...] in 2t15 asw</i> <i>[...]</i>
08:42:44	Deutsche Bank ([DB Trader]) <i>[...]</i>
08:42:47	HSBC ([HSBC Trader]) <i>[...]</i>
08:42:52 08:42:54 08:43:00	Deutsche Bank ([DB Trader]) <i>[...]</i> <i>[...]</i> <i>i have a higher mid</i>
08:43:14 08:43:18	HSBC ([HSBC Trader]) <i>ye same</i> 12.7

Disclosure of current mid-price for a gilt switch (10:05:32 to 10:06:15)

B.49 Deutsche Bank ([DB Trader]) commented on a gilt switch trade he had observed via a broker involving the 4.75% 2015 gilt and the 3.75% 2019 gilt, stating his assessment of the trading price and that he considered the price of that trade to be low (*'wow that was low in 4t15 vs 3t19'* at 10:05:32). HSBC ([HSBC Trader]) then stated that he had thought Deutsche Bank ([DB Trader]) was involved in that trade (*'i thought that was u!'* at 10:05:49), which Deutsche Bank ([DB Trader]) stated he was not (*'no'* at 10:05:53). Deutsche Bank ([DB Trader]) then disclosed his **current mid-price** for that gilt switch (*'i have a 114 mid'* at 10:06:15).⁷⁴

Chat extract table – 10:05:32 to 10:06:15

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
10:05:32	Deutsche Bank ([DB Trader]) <i>wow that was low in 4t15 vs 3t19</i>

I'd a -- I had a higher middle but I don't give my middle, and [HSBC Trader] gives his middle. So, it sounds like the trade was at a lower middle than where we had it.' (B-URN-000502070, page 28). [HSBC Trader] (HSBC) said in interview that Deutsche Bank ([DB Trader]) was *'saying his mid is higher than where it traded or --' [...]* -- he could be saying that now the mid is higher than when it traded, because it's a historic trade. So this trade could have happened ... you know, we comment on the trade at 8.42. It could have happened at 8.15, 8 o'clock. No idea. So the market's [...] -- probably moved' (B-URN-000502075, page 51).

⁷⁴ [DB Trader] (Deutsche Bank) explained as follows in interview: both traders had observed a trade on a broker screen at a low level; HSBC ([HSBC Trader]) had assumed it was Deutsche Bank ([DB Trader]) trading, but it was not; and Deutsche Bank ([DB Trader]) then disclosed his internal mid-price for that gilt switch trade (B-URN-000502070, page 34). [HSBC Trader] (HSBC)'s evidence in interview supports [DB Trader] (Deutsche Bank)'s evidence: [HSBC Trader] (HSBC) said in interview, *'Um, and he just says where he has mid. We're just observing the market, you know, like activity... I'm guessing he's referring to the 4t15 versus 3t19 switch'* (B-URN-000502075, page 59).

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
10:05:49	HSBC ([HSBC Trader]) <i>i thought that was u!</i>
10:05:53 10:05:59	Deutsche Bank ([DB Trader]) <i>no</i> <i>[trader at another bank] probably</i>
10:06:13	HSBC ([HSBC Trader]) <i>left selling</i>
10:06:15	Deutsche Bank ([DB Trader]) <i>i have a 114 mid</i>

Disclosure of current mid-prices for the auction gilt (10:17:00 to 10:17:16)

B.50 During the tap auction of the 2.75% 2015 gilt, HSBC ([HSBC Trader]) disclosed his **current mid-price** for the auction gilt (*'i have 73.7 mid'* at 10:17:00), following which Deutsche Bank ([DB Trader]) disclosed that he had the same **current mid-price** (*'me too'* at 10:17:16). Based on the evidence of [DB Trader] (Deutsche Bank), the timing of the disclosures and the comments in the chat, the CMA infers that these disclosures related to the auction gilt, namely the 2.75% 2015 gilt and that both Key Individuals understood at the time of the chat to which gilt they were referring:

- (a) Although [HSBC Trader] (HSBC) was unable to recall, or identify, the product being discussed,⁷⁵ [DB Trader] (Deutsche Bank)'s evidence in interview was that this part of the chat related to the auction gilt.⁷⁶
- (b) The evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) in interview shows that from the last 30 minutes, and particularly the last ten minutes of a gilt auction window, they would be occupied with the gilt auction.⁷⁷ This part of the Bloomberg chat took place during the last 30 minutes of the 2.75% 2015 gilt auction.⁷⁸
- (c) Neither Key Individual sought clarification on the specific gilt during the chat, thereby implying that each understood at the time (from the context, such as the timing of the disclosure) the gilt to which reference was made.

⁷⁵ [HSBC Trader] (HSBC) said in interview *'I comment on the mid of some sort'. No idea what it is'* (B-URN-000502075, page 61).

⁷⁶ [DB Trader] (Deutsche Bank)'s evidence was that they were discussing the mid-price of the 2.75% 2015 gilt (ie the auction gilt). [DB Trader] (Deutsche Bank) said in interview *'I think it's the mid on the bond, 2T15'* (B-URN-000502070, page 36).

⁷⁷ B-URN-000502066, page 179 and B-URN-000502077, page 12.

⁷⁸ B-URN-000500738, DMO, *'Gilt Market Issuance Calendar 2009-2010'*.

B.51 The evidence shows that each of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) participated in this gilt auction.⁷⁹

Chat extract table – 10:17:00 to 10:17:16

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
10:17:00	HSBC ([HSBC Trader]) <i>i have 73.7 mid</i>
10:17:16	Deutsche Bank ([DB Trader]) <i>me too</i>

⁷⁹ [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) discussed their participation in this gilt auction in Bloomberg chat **DB-HSBC, A-URN-007514** on 3 March 2010 (eg between 09:44:52 and 09:45:24).

DB-HSBC, A-URN-007596,⁸⁰ 10 May 2010

Disclosure of current mid-prices for a gilt asset swap (15:02:44 to 15:07:06)

- B.52 On 10 May 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Trading Conduct** in that Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their respective **current mid-prices** for a gilt asset swap involving the 4.5% 2013 gilt.
- B.53 HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]) for his mid-price for the 4.5% 2013 gilt asset swap, stating that his own mid-price was different to the prices he was observing in the market (*'where u marking 4h13 matched' 'my mid is miles away from mrket'*, at 15:02:44 and 15:02:54). [HSBC Trader] (HSBC) explained in interview that this was in the context of the gilt asset swap price having changed significantly in a short space of time and that he may have been worried that there was a problem with his pricer.⁸¹
- B.54 Deutsche Bank ([DB Trader]) responded by disclosing his **current mid-price** (*'i have 28.8 here'* at 15:03:17) and an explanation of the difference to observed trading prices (*'cos pit sold off' 'doubt he is still bidding 30' 'gilt traded for 30 to 10 in 30 secs'*, at 15:03:03, 15:04:08 and 15:04:23). [DB Trader] (Deutsche Bank)'s evidence in interview was that he disclosed his internal mid-price for the 4.5% 2013 gilt asset swap and explained that his and [HSBC Trader] (HSBC)'s mid-price were out of line with the observed market price because the gilt future had sold off quite aggressively (*'cos pit sold off'* at 15:03:03).⁸²
- B.55 At 15:03:51, HSBC ([HSBC Trader]) disclosed his **current mid-price** for the same gilt asset swap, *'ok i have 28.5'*.⁸³

Chat extract table – 15:02:44 to 15:07:06

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
15:02:44	HSBC ([HSBC Trader]) <i>where u marking 4h13 matched</i>

⁸⁰ A-URN-007596. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000386. Timestamps from the chat are recorded in GMT, which was 1 hour behind UK time on that date.

⁸¹ [HSBC Trader] (HSBC) said in interview *'... the market seems to have dropped massively which is why I've come on and said, oh, my mid looks -- I guess I'm worried, maybe I'm having another swap pricer issue...'* (B-URN-000502074, page 224).

⁸² [DB Trader] (Deutsche Bank) said in interview that *'I gave him my mid, internal mid, and I've said the pit [gilt future] -- I think the "pit sold off", which is why the mids are out of line.'* (B-URN-000502066, page 148). [HSBC Trader] (HSBC)'s evidence is aligned with that of [DB Trader] (Deutsche Bank): [HSBC Trader] said in interview *'I think what's happened here is there's been such a big move in the market, but the price we're questioning whether that old price is stale now, because you know the 30.5/30 is it stale because the markets moved so much, or is it still there and the guy just wants to do it and doesn't care about where the market is?'* (B-URN-000502074, page 226).

⁸³ [DB Trader] (Deutsche Bank) said in interview that he understood this to be a disclosure of [HSBC Trader] (HSBC)'s internal mid-price for the 4.5% 2013 gilt asset swap (B-URN-000502066, page 149).

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
15:02:54	<i>my mid is miles away from mrket</i>
15:03:03 15:03:17 15:03:30	Deutsche Bank ([DB Trader]) <i>cos pit sold off</i> <i>i have 28.8 here</i> <i>when market was 30.5/30 i was bang in middle</i>
15:03:51	HSBC ([HSBC Trader]) <i>ok i have 28.5</i>
15:04:08 15:04:23 15:07:06	Deutsche Bank ([DB Trader]) <i>doubt he is still bidding 30</i> <i>gilt traded for 30 to 10 in 30 secs</i> <i>lot of noise in these market at the mo</i>

DB-HSBC, A-URN-000238,⁸⁴ 2 June 2010

Disclosure of current mid-prices for the auction gilt (08:55:05 to 09:21:11)

- B.56 On 2 June 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Gilt Auction Conduct** and **Trading Conduct** in that Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) disclosed to each other their respective **current mid-prices** for the auction gilt during the gilt auction window for the tap auction for the 2.75% 2015 gilt,⁸⁵ approximately ten minutes before the gilt auction ended.
- B.57 At 09:20:05⁸⁶ HSBC ([HSBC Trader]) commented on trading activity he had observed ('02 bid!').⁸⁷ HSBC ([HSBC Trader]) then disclosed his **current mid-price** for the 2.75% 2015 gilt being auctioned that day, ('*i have 97 mid*' at 09:20:09), following which Deutsche Bank ([DB Trader]) disclosed that he had the same **current mid-price** ('*me too*' at 09:20:12).⁸⁸
- B.58 [DB Trader] (Deutsche Bank) explained that this discussion took place in the context of each of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) observing a price on the broker market and having to take a decision as to whether to adjust their mid-prices in response. [DB Trader] (Deutsche Bank) said '*it's like do you adjust your price [...] that's the kind of sort of challenge*'.⁸⁹
- B.59 The CMA considers that these disclosures related to the 2.75% 2015 gilt being auctioned that day based on the evidence of [DB Trader] (Deutsche Bank), the timing of the disclosure and the context of chat:
- (a) Although [HSBC Trader] (HSBC) was unable to recall, or identify, the product being discussed,⁹⁰ [DB Trader] (Deutsche Bank)'s evidence was that the Bloomberg chat between 09:20:05 and 09:21:11 concerned the same product, namely the 2.75% 2015 gilt. In relation to HSBC ([HSBC Trader])'s comment '02 bid!' [DB Trader] (Deutsche Bank) said '*I would guess he is talking about outright cash, 2T15 bid in the broker screen. That would be what I would say, quite reasonable confidence*'. [DB Trader] (Deutsche Bank)

⁸⁴ A-URN-000238. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000405.

⁸⁵ B-URN-000500740, DMO, 'Gilt Market Issuance calendar 2010-2011'.

⁸⁶ Timestamps in this chat are recorded in UTC, which was 1 hour behind UK time on that date (BST), so 09:20:05 (UTC) should be read as 10:20:05 (BST).

⁸⁷ [DB Trader] (Deutsche Bank)'s evidence was that HSBC ([HSBC Trader]) had observed a bid for the 2.75% 2015 gilt (the auction gilt) on an IDB screen. [DB Trader] (Deutsche Bank) said in interview '*This is a bid in the secondary market from the IDB screen*' (B-URN-000502066, page 248). [HSBC Trader] (HSBC)'s evidence is consistent with the evidence provided by [DB Trader] (Deutsche Bank) on this point: [HSBC Trader] (HSBC) said in interview '*It's not clear what bond this refers to, but we're clearly commenting on some activity in the broker market. Some bond has gone "02 bid" by the looks of it [...]*' (B-URN-000502075, page 25).

⁸⁸ [DB Trader] (Deutsche Bank)'s evidence in interview was that their respective mid-price disclosures related to the same product, the 2.75% 2015 gilt (B-URN-000502066, page 248).

⁸⁹ B-URN-000502066, pages 251 to 252.

⁹⁰ B-URN-000502075, pages 25 to 26.

added *'So this is ten minutes before the auction. Ten minutes before the auction, so obviously a bid has popped up on the screen ten minutes before the auction, for whatever reason'*.⁹¹ [DB Trader] (Deutsche Bank)'s evidence was that the context of the chat also supported this explanation, noting that at 08:55:05 [DB Trader] (Deutsche Bank) had stated *'now i know why2t15 gone better'*.⁹²

- (b) The evidence of [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) shows that from the last 30 minutes, and particularly the last ten minutes of a gilt auction window, they would be occupied with the gilt auction.⁹³ This part of the Bloomberg chat took place during the last 30 minutes of the gilt auction window of the 2.75% 2015 gilt.⁹⁴
- (c) Shortly afterwards, [DB Trader] (Deutsche Bank) stated *'what they dont realise this time is that its only 2 weeks til next auction'*,⁹⁵ indicating that the disclosures were made in the context of a gilt auction.
- (d) Neither Key Individual sought clarification on the specific gilt during the chat, thereby implying that each understood at the time (from the context, such as the timing of the disclosure), the gilt to which reference was made.
- (e) Each of Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) participated in this gilt auction.⁹⁶

Chat extract table – 08:55:05 to 09:21:11

Timestamp (UTC)	Party (Key Individual) <i>Extract</i>
08:55:05	Deutsche Bank ([DB Trader]) <i>now i know why2t15 gone better</i> <i>[...]</i>
09:20:05 09:20:09	HSBC ([HSBC Trader]) <i>02 bid!</i> <i>i have 97 mid</i>
09:20:12	Deutsche Bank ([DB Trader]) <i>me too</i>
09:21:11	Deutsche Bank ([DB Trader]) <i>[...]</i> <i>what they dont realise this time is that its only 2 weeks til next auction'</i>

⁹¹ B-URN-000502066, pages 246 to 247.

⁹² B-URN-000502066, page 245.

⁹³ B-URN-000502066, page 179 and B-URN-000502077, page 12.

⁹⁴ B-URN-000500740, DMO 'Gilt Market Issuance calendar 2010-2011'.

⁹⁵ The CMA infers that this was a reference to the next gilt auction for a gilt of a similar maturity, as there was a gilt auction of a 5% 2014 gilt approximately two weeks following the date of this chat (B-URN-000500740, DMO, 'Gilt Market Issuance calendar 2010-2011').

⁹⁶ [DB Trader] (Deutsche Bank) and [HSBC Trader] (HSBC) discussed their participation in this gilt auction in Bloomberg chat **DB-HSBC, A-URN-000238**, on 2 June 2010 (eg between 09:50:17 and 09:50:26).

Disclosure of current mid-price for a gilt asset swap and current mid-price of a gilt switch (15:08:05 to 15:08:57)

- B.60 On 29 June 2010, Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]) engaged in **Trading Conduct** in that Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for the 2.75% 2015 gilt asset swap and for a five-year and ten-year gilt switch.
- B.61 At 15:08:05, HSBC ([HSBC Trader]) asked Deutsche Bank ([DB Trader]) where his current mid-price was for a 2.75% 2015 gilt asset swap (*'where u got 2t15 mms?'*),⁹⁸ noting that he was asking due to experiencing problems with his pricer (*'think my pricer is [expletive]'*, 15:08:39).
- B.62 At 15:08:28, Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for that gilt asset swap, **'22'**.⁹⁹ Slightly later, at 15:08:57, Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for a five-year and ten-year gilt switch (**'with curve at 127'**). [DB Trader] (Deutsche Bank)'s evidence in interview was that he provided the latter information in order to add context as to his current pricing for the 2.75% 2015 gilt asset swap.¹⁰⁰
- B.63 HSBC ([HSBC Trader]) stated that he agreed with Deutsche Bank ([DB Trader])'s mid-price (*'22 prob right'*, at 15:08:57).¹⁰¹

⁹⁷ A-URN-007673. HSBC also produced a chat on this date between Deutsche Bank ([DB Trader]) and HSBC ([HSBC Trader]), A-URN-000401. Timestamps from the chat are recorded in GMT, which was 1 hour behind UK time on that date (BST). Therefore, 15:18:05 should be read as 16:18:05.

⁹⁸ [DB Trader] (Deutsche Bank)'s evidence in interview was that HSBC ([HSBC Trader]) was asking him for his mid-price in the gilt asset swap of the 2.75% 2015 gilt and explained that *'mms'* referred to *'matched maturity swap'*. [DB Trader] (Deutsche Bank) said in interview that *'Er, so, [HSBC Trader]'s asked me an asset swap middle -- where, where have I got an asset swap middle, of this bond.'* (B-URN-000502070, page 40). This is consistent with the evidence of [HSBC Trader] (HSBC), who said in interview *"Where have you got 2T 15 matched maturity" so that's the matched maturity spread, the asset swap.'* (B-URN-000502077, page 26).

⁹⁹ [DB Trader] (Deutsche Bank) said in interview *'Er ... I -- and I give him -- I give him my middle.'* (B-URN-000502070, page 40).

¹⁰⁰ [DB Trader] (Deutsche Bank) said in interview that *'I guess, I'm, I'm giving him some context, saying, "Okay, so, I've got the curve marked here, 127". So, you know, that -- so, my five year -- you know, five year price is -- my -- the -- my five year gilt price is with that as a curve.'* (B-URN-000502070, page 42). [HSBC Trader] (HSBC)'s evidence was consistent with this: [HSBC Trader] (HSBC) said in interview that Deutsche Bank ([DB Trader]) was disclosing *'where he's got the curve', 'you know, some kind of 5s 10s switch basically'* (B-URN-000502077, pages 27 to 28).

¹⁰¹ [DB Trader] (Deutsche Bank) said in interview *'And he saying that he's got -- he's, he's saying he's got a problem with his pricer' [...]* *'I had a 22 middle'*. (B-URN-000502070, page 40). [HSBC Trader] (HSBC)'s evidence is aligned with that of [DB Trader] (Deutsche Bank). [HSBC Trader] (HSBC) said in interview *'He says, "22". I say, "I think my pricer is broken" [...]* *'He says where he's got the curve and I say, "22 probably right" which makes sense' [...]*. *'So, erm, you know, I'm adjusting it.'* [HSBC Trader] (HSBC) said that he was adjusting his pricing following the trade he had engaged in. (B-URN-000502077, pages 26 to 27 and 29).

Chat extract table – 15:08:05 to 15:08:57

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
15:08:05	HSBC ([HSBC Trader]) <i>where u got 2t15 mms?</i>
15:08:28	Deutsche Bank ([DB Trader]) 22
15:08:39	HSBC ([HSBC Trader]) <i>think my pricer is [expletive]</i> <i>[...]</i>
15:08:57	Deutsche Bank ([DB Trader]) with curve at 127
15:08:57	HSBC ([HSBC Trader]) <i>22 prob right</i>