

# **Decision of the Competition and Markets Authority**

## **Competition Act 1998**

**UK government bonds: Deutsche  
Bank-Morgan Stanley 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 Some numbers have been replaced by a range.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 Names have been replaced by a general descriptor of the individual's role.

## CONTENTS

<b>1.</b>	<b>INTRODUCTION AND EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>2.</b>	<b>THE INVESTIGATION .....</b>	<b>7</b>
<b>3.</b>	<b>PARTIES AND KEY INDIVIDUALS.....</b>	<b>9</b>
A.	Deutsche Bank.....	9
A.I	[DB Trader] (Deutsche Bank).....	9
B.	Morgan Stanley .....	10
B.I	[MS Trader] (Morgan Stanley).....	10
<b>4.</b>	<b>INDUSTRY BACKGROUND.....</b>	<b>11</b>
A.	Products .....	11
B.	Parties' role as GEMMs .....	11
B.I	Trading of gilts and gilt asset swaps .....	12
B.II	Gilt buy-back auctions.....	13
C.	The determination of pricing by a Party.....	14
<b>5.</b>	<b>MARKET DEFINITION .....</b>	<b>17</b>
<b>6.</b>	<b>THE LAW.....</b>	<b>19</b>
A.	The Chapter I prohibition.....	19
B.	Undertakings .....	19
C.	Concerted practices .....	19
D.	Restriction of competition by object.....	21
D.I	Key principles.....	21
D.II	Information exchange as a 'by object' infringement .....	21
D.III	Subjective intention .....	23
D.IV	Implementation.....	23
E.	The burden and standard of proof.....	23
F.	Single infringement .....	23
G.	Appreciable restriction of competition .....	24
H.	Effect on trade within the UK.....	24
I.	Exemptions and exclusions.....	24
J.	Attribution of liability .....	25
J.I	Identification of the appropriate legal entity .....	25
J.II	Direct personal liability .....	25
J.III	Indirect personal liability .....	25
<b>7.</b>	<b>ASSESSMENT OF THE DB-MS INFRINGEMENT .....</b>	<b>27</b>
A.	Summary.....	27
B.	Assessment of evidence .....	27
C.	Undertakings .....	28
D.	The DB-MS Conduct as a concerted practice .....	28
D.I	Trading Conduct.....	29
D.II	Gilt Buy-Back Auction Conduct .....	35

D.III	The Parties remained active on the Relevant Market and did not publicly distance themselves from the disclosures of commercially sensitive information.....	37
E.	Object of restricting or distorting competition .....	38
E.I	Content of the DB-MS Conduct.....	38
E.II	Objective .....	39
E.III	Legal and economic context.....	39
E.IV	Restriction or distortion of competition by object .....	41
E.V	Conclusion on the restriction or distortion of competition .....	43
F.	The DB-MS Infringement as an appreciable restriction of competition.....	43
G.	Potential effect on trade within the UK of the DB-MS Infringement.....	43
H.	Exclusion or exemption .....	44
I.	Legal characterisation and duration of the DB-MS Infringement .....	44
J.	Conclusion on DB-MS infringement .....	45
K.	Attribution of liability .....	45
K.I	Deutsche Bank.....	45
K.II	Morgan Stanley .....	46
<b>8.</b>	<b>THE CMA'S ACTION.....</b>	<b>47</b>
A.	The CMA's decision .....	47
B.	Directions .....	47
C.	Financial penalties .....	47
C.I	Intention/negligence .....	48
C.II	Calculation of Morgan Stanley's penalty .....	49

## ANNEX

Annex A – Glossary

Annex B – Chat Evidence

# 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 Aktiengesellschaft<sup>1</sup> ('**Deutsche Bank**'); and
  - (b) Morgan Stanley & Co. International Plc<sup>2</sup> and its ultimate parent company, Morgan Stanley<sup>3</sup> (together '**Morgan Stanley**').
- 1.2 During the period 28 October 2009 to 24 June 2011 (the '**DB-MS Relevant Period**'), both Deutsche Bank and Morgan Stanley were active and competed variously in relation to:
- (a) the trading of conventional gilts (referred to as 'gilts') and gilt asset swaps with various counterparties;<sup>4</sup> and
  - (b) the sale of gilts to the Bank of England through buy-back auctions ('**gilt buy-back auctions**').
- 1.3 The CMA has found that in the DB-MS Relevant Period, Deutsche Bank and Morgan Stanley infringed the Chapter I prohibition by participating in a concerted practice, which had as its object the restriction or distortion of competition within the UK.<sup>5</sup>
- 1.4 Specifically, and as described further in Chapter 7, the CMA has found that Deutsche Bank and Morgan Stanley participated in a single and repeated infringement on the DB-MS Specific Dates<sup>6</sup> in the form of a concerted practice which comprised the disclosure by one or both of Deutsche Bank and Morgan Stanley to the other of commercially sensitive strategic information ('**commercially sensitive information**') in various communications, through a bilateral Bloomberg

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<sup>1</sup> 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.

<sup>2</sup> A public limited company registered in England and Wales with company number 02068222 and registered and trading address of Legal Department, 25 Cabot Square, Canary Wharf, London, E14 4QA.

<sup>3</sup> A company incorporated in 1981 under the laws of the State of Delaware, USA, with its registered office in The Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, USA, and its headquarters in 1585 Broadway, New York, NY 10036, USA.

<sup>4</sup> 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)).

<sup>5</sup> 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.

<sup>6</sup> See the definition of DB-MS Specific Dates in Chapter 7.

‘chatroom’,<sup>7</sup> in relation to the trading of certain gilts and gilt asset swaps and one gilt buy-back auction.<sup>8</sup>

- 1.5 Deutsche Bank applied for, and was granted, full immunity from financial penalties under the CMA’s leniency policy.<sup>9</sup> 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 Morgan Stanley under section 36 of the Act, in accordance with the terms of settlement that Morgan Stanley has reached with the CMA.<sup>10</sup>
- 1.7 The CMA has indicated in **bold** at paragraphs 7.12 and 7.14 and at Annex B the specific disclosures which it has found to comprise the infringing disclosures in the DB-MS Infringement. For the avoidance of doubt, this Decision makes no findings of fact or infringement in relation to any other matters that have been the subject of the CMA’s wider investigation (see Chapter 2).
- 1.8 A table of abbreviations and defined terms used in this Decision is provided at Annex A.

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

<sup>8</sup> All references in this Decision to the DB-MS Infringement are to the term as defined in Chapter 7.

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

<sup>10</sup> 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 Morgan Stanley.<sup>11</sup> The case was allocated to the CMA under the concurrency framework<sup>12</sup> and followed an application by Deutsche Bank for a Type A immunity marker under the CMA's leniency policy.<sup>13</sup>
- 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;<sup>14</sup> interviews of individuals previously employed by the Parties to the CMA's Investigation,<sup>15</sup> and responses to informal information requests and/or notices issued under section 26 of the Act (together, '**Requests for Information**').<sup>16</sup> The CMA also considered certain published documents.<sup>17</sup>
- 2.3 The CMA issued a Statement of Objections and Draft Penalty Statement to Deutsche Bank and Morgan Stanley on 24 May 2023.<sup>18</sup>

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

<sup>12</sup> 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).

<sup>13</sup> *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-MS Infringement.

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

<sup>15</sup> 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-000502070; B-URN-000502072; and B-URN-000502073). Each interviewed individual signed a statement of truth confirming the accuracy of their interview transcripts (including B-URN-000503013; B-URN-000503002; and B-URN-000503290).

<sup>16</sup> 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 Morgan Stanley in response to a number of Requests for Information (including B-URN-000500735; B-URN-000501019; B-URN-000501075; B-URN-000501164; B-URN-000501761; and B-URN-000502157). The CMA also issued, and received responses to, Requests for Information to the Debt Management Office (an executive agency of HM Treasury) (the '**DMO**') (see B-URN-000501301) and the Bank of England (see B-URN-000501516).

<sup>17</sup> Including versions of the DMO's guidebooks that were applicable during the DB-MS Relevant Period (see B-URN-000503293; and B-URN-000503302) and, for the purposes of market definition (see Chapter 5), market notices published by the Bank of England that were applicable during the DB-MS Relevant Period (B-URN-000503304; B-URN-000503305; and B-URN-000503306).

<sup>18</sup> 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 Morgan Stanley provided written representations on the Statement of Objections and Draft Penalty Statement in August 2023 and an oral hearing was held in November 2023.<sup>19</sup>
- 2.5 The CMA and Morgan Stanley reached a settlement on 19 February 2025, after the Statement of Objections was issued.<sup>20</sup> As part of that settlement, Morgan Stanley admitted its involvement in, and liability for, the DB-MS Infringement and agreed that a streamlined administrative procedure would apply to it for the remainder of the investigation. Morgan Stanley also agreed to withdraw its written and oral representations in relation to the Statement of Objections and Draft Penalty Statement to the extent that any such representations are not consistent with its admission of participation in, and liability for, the DB-MS Infringement under the settlement agreement.

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<sup>19</sup> 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.

<sup>20</sup> The draft infringement decision, on the basis of which Morgan Stanley reached a settlement, was provided to Deutsche Bank and Morgan Stanley in February 2025.



### 3. PARTIES AND KEY INDIVIDUALS

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

#### A. 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’*.<sup>21</sup>

- 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’**)<sup>22</sup> and was a GEMM throughout the DB-MS Relevant Period.<sup>23</sup>

##### A.1 [DB Trader] (Deutsche Bank)

- 3.4 [DB Trader] was employed by DB Group Services (UK) Limited, a subsidiary within Deutsche Bank,<sup>24</sup> from [X] to [X] ([X]).<sup>25</sup> [DB Trader] was therefore an employee of Deutsche Bank throughout the DB-MS 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.<sup>26</sup> In this role, [DB Trader] participated in the trading of gilts and gilt asset swaps and in gilt buy-back auctions on behalf of Deutsche Bank.<sup>27</sup>
- 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-MS Relevant Period, namely the

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<sup>21</sup> 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].

<sup>22</sup> See Chapter 4. During the DB-MS Relevant Period, there were between 15 and 19 wholesale GEMMs, including each of the Parties (B-URN-000503296, pages 50 to 51; B-URN-000503297, pages 42 to 43; and B-URN-000503298, pages 49 to 51). The DMO also designated a small number of retail GEMMs, which typically traded with smaller investors (B-URN-000503301, page 17). Retail GEMMs are not the subject of the CMA’s investigation, so are not considered further in this Decision.

<sup>23</sup> B-URN-000503296, page 50; B-URN-000503297, page 42; B-URN-000503298, page 49; and the DMO’s list of GEMMs available from: <https://www.dmo.gov.uk/responsibilities/gilt-market/market-participants/> [Accessed on 17 October 2024].

<sup>24</sup> 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]).

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

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

<sup>27</sup> 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 the trading of gilts and gilt asset swaps and in gilt buy-back auctions that formed part of the DB-MS Infringement.

## **B. Morgan Stanley**

3.7 Morgan Stanley is a global financial services firm that '*advises, and originates, trades, manages and distributes capital for governments, institutions and individuals*'.<sup>28</sup>

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

3.9 Morgan Stanley & Co. International Plc is a GEMM and was a GEMM throughout the DB-MS Relevant Period.<sup>29</sup>

### **B.1 [MS Trader] (Morgan Stanley)**

3.10 [MS Trader] was employed by a subsidiary within Morgan Stanley<sup>30</sup> and carried out trading activity on behalf of Morgan Stanley & Co. International Plc,<sup>31</sup> from [X] to [X] ([X]), that is throughout the DB-MS Relevant Period.<sup>32</sup>

3.11 [MS Trader] was a trader on Morgan Stanley's [desk],<sup>33</sup> working in the same [X] as a number of other traders, [X].<sup>34</sup> [MS Trader]'s role was primarily a market maker for interest rate swaps and gilt asset swaps;<sup>35</sup> however, he said in interview that he would also have traded gilts.<sup>36</sup> In this role, [MS Trader] therefore participated, on behalf of Morgan Stanley, in the trading of gilt asset swaps and occasionally participated in the trading of gilts and gilt buy-back auctions.<sup>37</sup>

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<sup>28</sup> Morgan Stanley Annual Report for the year ending 31 December 2023, page 5. Available from: <https://www.morganstanley.com/content/dam/msdotcom/en/about-us-ir/shareholder/10k2023/10k1223.pdf> [Accessed on 3 October 2024].

<sup>29</sup> B-URN-000503296, page 51; B-URN-000503297, page 43; B-URN-000503298, page 50; and the DMO's list of GEMMs available from <https://www.dmo.gov.uk/responsibilities/gilt-market/market-participants/> [Accessed on 17 October 2024]; see also B-URN-000501046, page 13.

<sup>30</sup> B-URN-000506474.

<sup>31</sup> Morgan Stanley Annual Report for the year ending 31 December 2023, page 87. Available from: <https://www.morganstanley.com/content/dam/msdotcom/en/about-us-ir/shareholder/10k2023/10k1223.pdf> [Accessed on 3 October 2024].

<sup>32</sup> B-URN-000500164, page 3; and B-URN-000502072, pages 11 to 13. [X].

<sup>33</sup> B-URN-000501046, pages 45 to 46.

<sup>34</sup> B-URN-000502072, pages 27 to 28. [MS Trader] (Morgan Stanley) also said in interview that he would talk to these [X] traders about the market '*a lot during the day*' (B-URN-000502072, pages 101 to 102).

<sup>35</sup> B-URN-000502072, pages 12 to 14 and 17.

<sup>36</sup> Specifically, [MS Trader] (Morgan Stanley) said in interview that he would have traded gilts through brokers if [X]. Although [MS Trader] (Morgan Stanley) said that he did not typically quote prices to clients for gilts, he said that there may have been the odd occasions when he would have said he was a buyer or seller of a gilt for a client if [X] (B-URN-000502072, page 27).

<sup>37</sup> B-URN-000501046, pages 45 to 46; and B-URN-000502072, pages 12, 24 to 27 and 127 to 128.

## 4. INDUSTRY BACKGROUND

### A. Products

4.1 The DB-MS Infringement<sup>38</sup> relates to the following two products:<sup>39</sup>

- (a) **Gilts:**<sup>40</sup> 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'); and<sup>41</sup>
- (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').<sup>42</sup> 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).<sup>43</sup> A dealer would use a gilt asset swap to, for example, hedge interest rate risk.<sup>44</sup>

### B. Parties' role as GEMMs

4.2 In relation to gilts, each of the Parties was designated as a GEMM during the DB-MS Relevant Period. GEMMs were subject to a number of obligations,<sup>45</sup> and were entitled to certain privileges,<sup>46</sup> in relation to the issuance and trading of gilts. The Parties played a similar, but informal, role as dealers of gilt asset swaps.<sup>47</sup>

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<sup>38</sup> This Decision uses the past tense to denote that the relevant description refers to matters as they pertained during the DB-MS Relevant Period.

<sup>39</sup> These products were interrelated. For example, their prices were linked (see footnotes 84 and 85) 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 (B-URN-000502068, pages 29 to 30; and B-URN-000502072, page 96).

<sup>40</sup> References to 'gilts' in this Decision are to conventional gilts. Since no other sub-categories of gilts are the subject of the DB-MS Infringement, they are not addressed further in this Decision. On occasion, Parties and/or the Key Individuals would refer to a gilt as a 'bond' (see B-URN-000502065, page 56).

<sup>41</sup> B-URN-000503300, page 4; and B-URN-000500865, paragraph 1.1(a). 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)).

<sup>42</sup> A gilt asset swap would also have been referred to by a number of other names, including 'asset swap', 'asw', 'swap' or 'matched maturity' (see B-URN-000502065, pages 127 to 128 and 161; and B-URN-000502072, pages 19 to 20).

<sup>43</sup> B-URN-000501195, paragraph 20.2; B-URN-000502065, pages 208 to 209; and B-URN-000502073, pages 159 to 160.

<sup>44</sup> B-URN-000501195, paragraph 20.2; and B-URN-000502072, pages 33 to 34.

<sup>45</sup> Including, 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).

<sup>46</sup> Including, 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, paragraph 26).

<sup>47</sup> B-URN-000502066, pages 13 to 15; and B-URN-000502072, page 39.

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

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

## **B.1 Trading of gilts and gilt asset swaps**

4.4 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**')<sup>48</sup> (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); and the purchase of one specific gilt asset swap and the sale of another gilt asset swap (a '**gilt asset swap box**') (such trading, individually and collectively, is referred to in this Decision as the '**trading of gilt asset swaps**').

4.5 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.<sup>49</sup>

4.6 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).<sup>50</sup> The Parties and other dealers traded through a range of channels, including:

- (a) with clients:<sup>51</sup> directly,<sup>52</sup> via agency brokers<sup>53</sup> and, in relation to gilts only, via electronic trading platforms (including Bloomberg and Tradeweb);<sup>54</sup> and

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<sup>48</sup> B-URN-000502067, page 54; and B-URN-000502072, page 32.

<sup>49</sup> 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**'.

<sup>50</sup> 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; B-URN-000501046, page 47; and B-URN-000503293, paragraph 99).

<sup>51</sup> Subject to each GEMM's obligation continually to make two-way prices (see footnote 45).

<sup>52</sup> B-URN-000502065, pages 38 to 39 and 44 to 45; B-URN-000502066, pages 12 to 13; and B-URN-000502072, pages 66 to 67.

<sup>53</sup> B-URN-000500865, paragraph 4.1(c); and B-URN-000502073, pages 214 to 215.

<sup>54</sup> B-URN-000501195, paragraphs 9.1 to 9.7; and B-URN-000501214, pages 1 to 5.

(b) with other counterparties: via brokers (including, for gilts, IDBs)<sup>55</sup> and directly (although such trading was not common).<sup>56</sup>

4.7 A dealer would typically trade for a range of strategic reasons, including to build relationships with clients,<sup>57</sup> manage risk,<sup>58</sup> 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.<sup>59</sup>

4.8 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.<sup>60</sup> Although the Parties had access to certain information about trading pricing,<sup>61</sup> when determining its own trading price in normal conditions of competition a Party would not be expected to know the trading price quoted to a client by any competing dealer.<sup>62</sup>

## **B.II Gilt buy-back auctions**

4.9 GEMMs were eligible to participate in gilt buy-back auctions conducted by the Bank of England at certain times during the DB-MS Relevant Period as part of its quantitative easing policy to stimulate the UK economy.<sup>63</sup>

4.10 At any time during the gilt buy-back auction window (typically between 14:15 and 14:45), the Parties (and other participants) could submit offers (referred to as an 'offer', 'offers' or 'offering'),<sup>64</sup> which could be amended or withdrawn up to, or very close to, the close of the gilt buy-back auction window.<sup>65</sup>

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<sup>55</sup> B-URN-000500865, paragraphs 4.1(b) to (c); B-URN-000502066, pages 8 to 10; B-URN-000501046, page 10; and B-URN-000502072, pages 64 to 66. GEMMs' obligation continually to make two-way prices applied only to clients, not with other GEMMs (see B-URN-000503293, paragraphs 96 to 97).

<sup>56</sup> B-URN-000501195, paragraph 11.3; and B-URN-000501046, page 50. The CMA has not relied on the information disclosed by the Parties for the purpose of trading directly with each other as evidence of the DB-MS Infringement (noting that such direct trades were uncommon).

<sup>57</sup> B-URN-000501046, page 8.

<sup>58</sup> B-URN-000502072, pages 33 to 34; and B-URN-000502073, pages 197 to 198.

<sup>59</sup> See footnote 45; B-URN-000500865, paragraphs 10.1 and 10.2; and B-URN-000501046, page 31. Syndication is one of the means by which gilts were issued by the DMO, who would select 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). The DB-MS Infringement does not relate to the issuance of gilts (including through syndications) so the Parties' roles in relation to syndication are not considered further in this Decision.

<sup>60</sup> B-URN-000500865, paragraph 29.1; and B-URN-000501046, page 39.

<sup>61</sup> See paragraph 4.15 below.

<sup>62</sup> Although electronic trading platforms disclosed the (anonymous) second highest price to the successful GEMM, this would only be done after the trade had completed. See, for example, B-URN-000501195, paragraphs 9.5 and 9.6; and B-URN-000501214, pages 3 to 5 (where Morgan Stanley stated that one electronic trading platform published anonymous details of trades after they were completed). The CMA notes that [DB Trader] (Deutsche Bank) stated in interview that certain, but not all, GEMM's indicative prices may have been available on occasion through a page on one of the electronic trading platforms (see B-URN-000502066, pages 24 to 26).

<sup>63</sup> B-URN-000500756, tab 'Info requests – responses'. GEMMs were under no obligation to participate and the obligations imposed, and privileges granted, by the DMO did not relate to gilt buy-back auctions.

<sup>64</sup> B-URN-000500756, tab 'Info requests – responses'; and B-URN-000503304, paragraphs 29, 32, and 42 to 43.

<sup>65</sup> B-URN-000500756, tab 'Info requests – responses' in which the Bank of England stated that '*it is in ... counterparties' interest to update pricing close to the end of the competitive auction, and counterparties have the ability in the Btender*

- 4.11 Each offer would involve a specific volume (the '**offer volume**') of a specific gilt within the relevant maturity range<sup>66</sup> (the '**offer gilt**') and the price for selling that volume of that gilt (the '**offer price**').<sup>67</sup> Each Party's offer(s) were confidential.<sup>68</sup>
- 4.12 After the gilt buy-back auction window closed, the Bank of England allocated offers for the different gilts '*based on the attractiveness of offers for each [gilt] relative to market yields for the [gilts], as published by the DMO, at the close of the auction.*'<sup>69</sup> The results would be published a few minutes after the end of the gilt buy-back auction window.<sup>70</sup>
- 4.13 The Parties, as GEMMs, therefore competed with each other (and other participants) in relation to the selling of gilts to the Bank of England via gilt buy-back auctions.

### C. The determination of pricing by a Party

- 4.14 Since the vast majority of trading took place over-the-counter (see paragraph 4.6), there was no single, agreed 'market' price for each product.<sup>71</sup> Each Party was therefore required to apply its own independent judgement to determine the price at which it would be willing to offer in a gilt buy-back auction or buy or sell a product through trades<sup>72</sup> 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;<sup>73</sup>

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system to update pricing as many times as the counterparty would like while the auction is open'. [MS Trader] (Morgan Stanley) confirmed in interview that offers could be amended or withdrawn 'up until 2.45' (B-URN-000502072, page 117) however [DB Trader] (Deutsche Bank) informed the CMA that he '*generally... tried to... put [his offers in] at 14:44 because... there would be times [he would] try and tweak it after that, um, and times it would work and other times it [would] be like it would have failed*' (B-URN-000502068, page 254).

<sup>66</sup> B-URN-000503304, paragraph 22.

<sup>67</sup> B-URN-000503304, paragraph 33. Volumes of gilts were typically expressed as the nominal value (ie the face value) of the amount of the gilt (see B-URN-000503300, page 5).

<sup>68</sup> See B-URN-000502068, pages 130 to 131.

<sup>69</sup> B-URN-000503304, paragraph 23.

<sup>70</sup> B-URN-000503304, paragraph 42.

<sup>71</sup> 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).

<sup>72</sup> Prices of gilts were typically quoted as a price per £100 nominal (see footnote 67). 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-000501214, page 19). There was [a mathematical relationship] between a price and a yield (see the DMO's formulae for converting prices to yields (and vice versa): <https://www.dmo.gov.uk/media/1sljyqul/yldegns.pdf> [Accessed on 18 October 2024]).

<sup>73</sup> B-URN-000501382, pages 16 to 18; B-URN-000501195, paragraph 13.1; B-URN-000502065, page 52; and B-URN-000501214, page 10.

- (b) the Bank of England, including the results of gilt buy-back auctions;<sup>74</sup>
- (c) electronic trading platforms, including composite mid-prices<sup>75</sup> and limited details of client trading;<sup>76</sup>
- (d) IDBs and other brokers, including:
  - (i) in relation to gilts: trading prices available via that broker<sup>77</sup> and details of trades after they had completed (including the product(s) and price);<sup>78</sup>
  - (ii) in relation to gilt asset swaps: trading prices available via that broker<sup>79</sup> and details of trades after they had completed (including the product(s) and price);<sup>80</sup> and
- (e) a client on an *ad hoc* basis.<sup>81</sup>

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**’)<sup>82</sup> 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.<sup>83</sup>

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.<sup>84</sup> 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**’).<sup>85</sup> A Party’s

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<sup>74</sup> See paragraph 4.12; and B-URN-000502065, page 53.

<sup>75</sup> B-URN-000501195, paragraph 11.1; and B-URN-000501214, pages 3 to 4.

<sup>76</sup> B-URN-000501195, paragraph 9.6; and B-URN-000501214, page 4.

<sup>77</sup> B-URN-000501214, page 6.

<sup>78</sup> B-URN-000501195, paragraph 10.5; and B-URN-000501214, page 7.

<sup>79</sup> B-URN-000502066, page 8; and B-URN-000502072, pages 51 to 52.

<sup>80</sup> B-URN-000502068, pages 7 to 8; and B-URN-000502072, pages 52 to 53.

<sup>81</sup> B-URN-000500865, paragraph 36.1; B-URN-000501195, paragraph 16.3(d)(i); and B-URN-000501214, pages 13 and 19.

<sup>82</sup> Deutsche Bank’s responses to the 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)). Similarly, Morgan Stanley’s responses to the Requests for Information refer to its ‘*internal view on price*’ (see, for example, B-URN-000501214, page 13), which the CMA understands to be the same as the mid-price (for example, Morgan Stanley separately referred to its pricing methodology involving determining ‘*the current mid-price on the market*’ (B-URN-000501214, page 10) and [MS Trader] (Morgan Stanley) referred to relying on his colleagues that [§<] to provide him the ‘*correct mid*’ for the gilt (B-URN-000502072, page 83)).

<sup>83</sup> [§<], 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-[§<]). Similarly, [MS Trader] (Morgan Stanley) in interview described mid-prices as being ‘*where the market is*’ (B-URN-000502072, page 84).

<sup>84</sup> B-URN-000501195, paragraph 16.9; B-URN-000501610, paragraph 2.1; and B-URN-000501214, pages 11 and 12. In addition, a Party’s mid-price for a gilt asset swap derived from that Party’s mid-price for the relevant gilt and a similar process undertaken for the relevant interest rate swap (see B-URN-000502066, pages 28 to 29; and B-URN-000501214, page 18).

<sup>85</sup> B-URN-000501195, paragraphs 16.3 to 16.6; and B-URN-000501214, page 12. To change a gilt asset swap mid-price, an adjustment would need to be made to the gilt and/or interest rate swap pricer (B-URN-000502066, pages 29 to 30; B-URN-000501214, page 18; and B-URN-000502072 pages 82 to 83).

pricer was proprietary or confidential<sup>86, 87</sup> and a Party's mid-prices for both gilts and gilt asset swaps were not ordinarily available to other GEMMs and dealers.<sup>88</sup>

- 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.<sup>89</sup>
- 4.19 A dealer would then determine its trading price(s)<sup>90</sup> and/or its offer price(s)<sup>91</sup> for a gilt buy-back auction by reference to:<sup>92</sup>
- (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 trade or gilt buy-back auction in question, having had regard to a range of information including that specified in paragraph 4.15.
- 4.20 In determining a trading price or an offer price for a gilt buy-back auction, in addition to the mid-price, a dealer would therefore also consider a range of other factors, including, for example, its trading position and the levels of current and future demand, in the relevant, and similar, products.<sup>93</sup>

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<sup>86</sup> B-URN-000501195, paragraph 16.8; and B-URN-000501214, page 14 (the latter of which refers to the output from the 'price and position management system' as being proprietary or confidential).

<sup>87</sup> Given the nature of each Party's equivalent gilt asset swap pricer (see footnote 84), the CMA infers that it would also be considered proprietary.

<sup>88</sup> B-URN-000502067, pages 60 to 61; B-URN-000501214, page 14; and B-URN-000502072, page 84. 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.

<sup>89</sup> [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). Morgan Stanley informed the CMA that '*each trader would typically have a marginally different view on where the mid-market indication was, depending on what trading activity they had knowledge of (i.e. because they had recently traded the relevant Gilt or could infer from client or Inter-dealer Broker requests)*' (B-URN-000501214, page 9).

<sup>90</sup> Given the similarities in how gilts and gilt asset swaps were priced and traded (see paragraphs 4.6 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).

<sup>91</sup> Given the similarities between the processes for gilt buy-back auctions and gilt auctions (which involved GEMMs being able to submit, withdraw and amend bids throughout the gilt auction window with results determined by the prices quoted (see B-URN-000503293, paragraphs 40 to 56 and paragraphs 4.10 to 4.12), the CMA has inferred that a dealer would typically have considered certain similar factors when determining an offer price for a gilt buy-back auction as when determining bid and trading prices for gilts.

<sup>92</sup> B-URN-000501195, paragraphs 16.1 to 16.10; B-URN-000502066, pages 180 to 182; B-URN-000501214, pages 11 to 15; and B-URN-000502072, pages 83 to 86.

<sup>93</sup> B-URN-000500865, paragraphs 4.1(a) and 29.1(e); B-URN-000501195, paragraph 16.7(b) and (c); B-URN-000502065, page 51; B-URN-000502072, pages 87 to 88; and B-URN-000501046, pages 47 to 48.



## 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.<sup>94</sup> 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.<sup>95</sup>
- 5.2 The CMA has considered the two focal products for the DB-MS Infringement (gilts and gilt asset swaps). For the reasons set out below, the CMA has treated the relevant market for the purposes of calculating the relevant turnover to establish the level of any financial penalty (see Chapter 8) as comprising bidding for gilts in gilt auctions, trading of gilts and gilt asset swaps, and offering of gilts in gilt buy-back auctions globally (the '**Relevant Market**').
- 5.3 In relation to the relevant product market, the CMA has concluded that gilts and gilt asset swaps (of all maturities and across all market segments<sup>96</sup>) formed part of the same product market, since:
- (a) there is evidence of demand-side substitutability,<sup>97</sup> albeit that such substitutability was potentially limited and dependent on the circumstances;<sup>98</sup>
  - (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;<sup>99</sup> and

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<sup>94</sup> 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.

<sup>95</sup> *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.

<sup>96</sup> For the purposes of the CMA's investigation, the market segments are gilt auctions, trading and gilt buy-back auctions. The DMO conducted regular gilt auctions to issue new gilts, and additional volumes of existing gilts, on behalf of HM Treasury throughout the DB-MS Relevant Period. GEMMs (including the Parties) were subject to a number of obligations in relation to their participation in gilt auctions (see B-URN-000503293, paragraphs 16 and 17).

<sup>97</sup> Since GEMMs were involved in two-way trading (see paragraph 4.6; and footnote 45), the CMA has considered 'demand-side substitutability' from the perspective of clients (see paragraph 4.3(a)) and 'supply-side substitutability' and conditions of competition from the perspective of the Parties and their competitors.

<sup>98</sup> For example: (i) gilts and gilt asset swaps were interrelated (see footnote 39), but they exposed holders to different risks (see B-URN-000501373, page 7); (ii) although clients typically specified the maturity of the gilt or gilt asset swap product they were looking to trade (see, for example, B-URN-000501299, paragraphs 3.1 and 3.3; and B-URN-000501373, page 8), a client's trading strategy could have involved considerations of the liquidity and pricing of similar products (eg those with similar maturities) (see B-URN-000501299, paragraph 3.2; and B-URN-000501373, pages 3 to 7); and (iii) there was some demand-side substitutability between trading and gilt auctions, 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-000501046, page 8).

<sup>99</sup> 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-000502072, pages 27 to

- (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.<sup>100</sup>

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,<sup>101</sup> which were not tied to any particular physical location.

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28); (ii) the Parties (as GEMMs) competed against each other for all maturities of the relevant products through similar trading processes for gilts and gilt asset swaps and auction processes in gilt buy-back auctions and also in gilt auctions (see Chapter 4); and (iii) each Party's closest competitors for gilts and gilt asset swaps were GEMMs (each of the Parties identified other dealers designated as GEMMs as their closest competitors for gilts and gilt asset swaps (see B-URN-000501299, paragraphs 4.1 to 4.2; and B-URN-000501373, pages 9 to 10 (Morgan Stanley applied a proxy of interest rate swap trade data in order to prepare its list of competitors in relation to gilt asset swaps))).

<sup>100</sup> See Chapter 8.

<sup>101</sup> See footnote 99. 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-000501373, pages 10 to 12).

## 6. THE LAW

- 6.1 This Chapter sets out the key legal principles applicable to the CMA's assessment of the DB-MS Infringement.<sup>102</sup>

### 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,<sup>103</sup> unless they are excluded under, or exempt in accordance with, the Act.<sup>104</sup>

### 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.<sup>105</sup> 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 ...*'.<sup>106</sup>

### 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*'.<sup>107</sup>
- 6.5 Each undertaking must determine independently the policy that it intends to adopt on the market.<sup>108</sup> This principle precludes '*any direct or indirect contact*' between undertakings of which '*the object or effect ... is either to influence the conduct on*

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<sup>102</sup> 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.

<sup>103</sup> References to the UK are to the whole or part of the UK (section 2(7) of the Act).

<sup>104</sup> 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).

<sup>105</sup> C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraph 21.

<sup>106</sup> C-118/85 *Commission v Italian Republic*, EU:C:1987:283, paragraph 7.

<sup>107</sup> 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).

<sup>108</sup> 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’.*<sup>109</sup>

- 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.<sup>110</sup>
- 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*’.<sup>111</sup> Therefore, the mere receipt of information is sufficient to give rise to a concerted practice.<sup>112</sup> An exchange of information on a single occasion can give rise to a concerted practice.<sup>113</sup>
- 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.<sup>114</sup> Information may be commercially sensitive even if it is capable of being obtained from other sources or inaccurate.<sup>115</sup>
- 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.<sup>116</sup>

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<sup>109</sup> *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.

<sup>110</sup> 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).

<sup>111</sup> 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.

<sup>112</sup> *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.

<sup>113</sup> *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).

<sup>114</sup> T-240/17, *Campine NV and Others v Commission*, EU:T:2019:778, (*‘Campine’*), paragraph 186.

<sup>115</sup> 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].

<sup>116</sup> Case C-49/92 P *Anic Partecipazioni SpA v Commission*, EU:C:1999:356, paragraph 121. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4 at [206(x)]. The burden is on the parties concerned to adduce evidence to rebut this presumption: T-105/17 *HSBC Holdings plc a.o v Commission*, EU:T:2019:675 (*‘HSBC’*) paragraph 67 referring to *T-Mobile*, paragraph 51, and *Dole*, paragraph 127. Where an undertaking receives strategic data from a competitor it will be presumed to have accepted the information and adapted its market conduct accordingly unless it rebuts that

## D. Restriction of competition by object

### D.I Key principles

- 6.10 The Chapter I prohibition prohibits (among other matters) concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition within the UK. The term ‘object’ in this regard refers to the ‘aim’, ‘purpose’ or ‘objective’ of the coordination between the undertakings.<sup>117</sup>
- 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.<sup>118</sup> 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.<sup>119</sup>
- 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.<sup>120</sup> 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.<sup>121</sup>
- 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.<sup>122</sup>

### D.II Information exchange as a ‘by object’ infringement

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

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

<sup>117</sup> 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.

<sup>118</sup> 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.

<sup>119</sup> *Cartes Bancaires*, paragraph 50 and the caselaw cited; *HSBC*, paragraph 54; *Ping Europe Ltd v CMA* [2020] EWCA Civ 13 at paragraph 37.

<sup>120</sup> *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.

<sup>121</sup> *Cartes Bancaires*, paragraph 53.

<sup>122</sup> See, for example, joined cases 96-102, 104, 105, 108 and 110/82 *NV IAZ International Belgium and others v Commission of the European Communities*, EU:C:1983:310, paragraphs 22-25; C-209/07 *Competition Authority v Beef Industry Development Society and Barry Brothers*, EU:C:2008:643, paragraph 21. The principles arising from the caselaw in relation to agreements which are cited in this Decision also apply in relation to the concerted practice that is the subject of this Decision.

*uncertainty as to the operation of the market in question, with the result that competition between undertakings was restricted'*.<sup>123</sup>

- 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.<sup>124</sup>
- 6.16 The caselaw has also held that exchanges of information on factors relevant to pricing amount to a restriction of competition by object.<sup>125</sup> With specific regard to certain financial services products, this includes information relating to mid-prices.<sup>126</sup>
- 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'*.<sup>127</sup> It has also held that unilateral disclosures of pricing information can infringe the Chapter I prohibition: *'[t]he fact of having attended a private meeting at which prices were discussed and pricing intentions disclosed, even unilaterally, is in itself a breach of the Chapter I prohibition, which strictly precludes any direct or indirect contact between competitors having, as its object or effect, either to influence future conduct in the market or to disclose future intentions'*.<sup>128</sup>

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<sup>123</sup> 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)].

<sup>124</sup> HSBC, paragraph 62 citing *Dole*, paragraph 122; and *T-Mobile*, paragraph 41; and *Lexon (UK) Limited v CMA* [2021] CAT 5 at [187(4)].

<sup>125</sup> *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.

<sup>126</sup> HSBC, paragraphs 125 to 161. The General Court held, in the context of that case, that *'information relating to mids is relevant for pricing in the EIRD sector'* (paragraph 139) and that *'an exchange between competitors on a factor that is relevant for pricing and is not publicly available is all the more sensitive in terms of competition where it takes place between traders acting as 'market makers', in the light of the importance of such traders on the EIRD market'*. It continued that *'market makers are generally and continuously active on the EIRD market and therefore enter into a larger number of transactions than other market participants. From the point of view of competition on the market, it is particularly fundamental that prices be determined independently'* (paragraph 145).

On appeal, the Court of Justice upheld the General Court's finding on the merits of characterising the exchanges on EIRD mids as a restriction by object (C-883/19 P *HSBC Holdings and Others v Commission*, EU:C:2023:11, paragraphs 193 to 206). It is instructive to note also that the Court of Justice held that, even if it were established that a reduction in uncertainty as to the level of the market 'mid' enables traders to offer prices which are more favourable to those customers, *'such an assertion is insufficient to give rise to reasonable doubt as to whether the exchanges in question are sufficiently harmful to competition'* (paragraphs 198 and 199) and that in that case *'the HSBC companies' argument that those exchanges made it possible to offer prices which were more favourable to customers of the banks concerned does not give rise to any reasonable doubt as to the harmful nature of those exchanges with regard to competition on the market concerned'* (paragraph 205).

See also the Opinion of Advocate General Emiliou delivered on 12 May 2022 in Case C-883/19 P *HSBC Holdings plc a.o v Commission* EU:C:2022:384 at paragraphs 164 to 170, in which Advocate General Emiliou provided his opinion to dismiss the appellants' plea alleging a pro-competitive nature of the exchange of information on mid-prices in relation to the EIRD market.

<sup>127</sup> *Balmoral Tanks Limited v CMA* [2017] CAT 23, at [41].

<sup>128</sup> *JJB Sports v Office of Fair Trading* [2004] CAT 17, at [873] (cited with approval by the Competition Appeal Tribunal in *Balmoral Tanks Limited v CMA* [2017] CAT 23, at [41]).

### D.III Subjective intention

- 6.18 Intention is not a necessary factor in determining whether a concerted practice is restrictive of competition.<sup>129</sup> However, there is nothing prohibiting a competition authority from taking the parties' intentions into account.<sup>130</sup>

### 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.<sup>131</sup> The fact that a concerted practice is not implemented is not sufficient to preclude the existence of an infringement.<sup>132</sup> However, evidence of the parties' conduct demonstrating that the concerted practice was implemented may be taken into account.<sup>133</sup>

## E. The burden and standard of proof

- 6.20 The burden of proving an infringement of the Chapter I prohibition falls on the CMA.<sup>134</sup> The standard of proof is the civil standard, that is the balance of probabilities.<sup>135</sup> The burden of proof does not preclude the CMA from relying, where appropriate, on inferences or evidential presumptions.<sup>136</sup>
- 6.21 The courts have confirmed that '*the evidence must be assessed not in isolation, but as a whole*'<sup>137</sup> and that '*the evidence must be assessed in its entirety, taking into account all relevant circumstances of fact*'.<sup>138</sup>

## F. Single infringement

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

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<sup>129</sup> *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]).

<sup>130</sup> *Cartes Bancaires*, paragraph 54 and the caselaw cited.

<sup>131</sup> *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).

<sup>132</sup> 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.

<sup>133</sup> *Cityhook Limited v OFT* [2007] CAT 18 at [268]. Joined cases 96/82 etc. *NV IAZ v Commission*, EU:C:1983:310, paragraph 23.

<sup>134</sup> *Tesco Stores Limited and Others v Office of Fair Trading* [2012] CAT 31 ('Tesco') at [88].

<sup>135</sup> *Ibid.*

<sup>136</sup> *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*'.

<sup>137</sup> 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].

<sup>138</sup> T-141/94 *Thyssen Stahl v Commission*, EU:T:1999:48, paragraph 175.

infringements. These criteria include: the identical nature of the objective of the practice(s) at issue; the identical nature of the goods or services concerned; and the identical nature of the undertakings which participated in the infringement.<sup>139</sup> Whether the natural persons involved on behalf of those undertakings are identical is also a factor that may be taken into account.<sup>140</sup>

- 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.<sup>141</sup>

## **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.<sup>142</sup> 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.<sup>143</sup>

## **H. Effect on trade within the UK**

- 6.25 The Competition Appeal Tribunal has held that the effect on trade test is a purely jurisdictional test to demarcate the boundary line between the application of EU competition law and national competition law, and that there is no requirement that the effect on trade within the UK should be appreciable.<sup>144</sup>

## **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.<sup>145</sup>

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<sup>139</sup> *Campine*, paragraph 238 and the caselaw cited.

<sup>140</sup> *Campine*, paragraph 238 and the caselaw cited.

<sup>141</sup> *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).

<sup>142</sup> 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.

<sup>143</sup> *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.

<sup>144</sup> *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.

<sup>145</sup> Section 3 of the Act sets out the following exclusions: Schedule 1 covers mergers and concentrations; Schedule 2 covers competition scrutiny under other enactments; and Schedule 3 covers general exclusions. Section 6 of the Act



## **J. Attribution of liability**

### **J.I Identification of the appropriate legal entity**

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

### **J.II Direct personal liability**

6.28 Liability for an infringement of the Chapter I prohibition rests with the legal person(s) responsible for the operation of the undertaking at the time of the infringement (the 'personal responsibility' principle).<sup>146</sup>

### **J.III Indirect personal liability**

6.29 A parent company may be held jointly and severally liable for an infringement committed by its subsidiary – without the parent's knowledge or involvement<sup>147</sup> – where, as a matter of economic reality,<sup>148</sup> it exercised decisive influence over its subsidiary during its ownership period.<sup>149</sup> In such circumstances, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking.<sup>150</sup> This assessment turns not only on intervention in, or supervision of, the subsidiary's commercial conduct in the strict sense, but on the economic, organisational and legal links between the parent and subsidiary, which may be informal.<sup>151</sup>

6.30 Where a parent company holds, whether directly or indirectly,<sup>152</sup> 100% (or nearly 100%)<sup>153</sup> of the shares or voting rights<sup>154</sup> in a subsidiary, then the parent company is able to exercise decisive influence over the subsidiary and there is a

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

<sup>146</sup> T-6/89, *Enichem Anic SpA v Commission*, EU:T:1991:74, paragraphs 236-237.

<sup>147</sup> 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.

<sup>148</sup> C-293/13 P *Del Monte v Commission*, EU:C:2015:416, paragraphs 75-78.

<sup>149</sup> *Akzo*, paragraph 60; C-179/12 P *Dow v Commission*, EU:C:2013:605; *Allergan Plc v CMA* [2023] CAT 56 at [172].

<sup>150</sup> *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].

<sup>151</sup> 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.

<sup>152</sup> 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.

<sup>153</sup> T-217/06 *Arkema France, Altuglas International SA, Altumax Europe SAS v Commission*, EU:T:2011:251, paragraph 53.

<sup>154</sup> 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.

rebuttable presumption in law that the parent did in fact exercise decisive influence over the commercial policy of the subsidiary.<sup>155</sup>

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<sup>155</sup> *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-MS INFRINGEMENT

### A. Summary

- 7.1 For the reasons set out in this Chapter, the CMA has found that in the DB-MS Relevant Period, Deutsche Bank and Morgan Stanley infringed 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 Morgan Stanley participated in a single and repeated infringement on specific dates<sup>156</sup> (referred to collectively as the '**DB-MS Specific Dates**') in the DB-MS Relevant Period in the form of a concerted practice which comprised the disclosure by one or both of Deutsche Bank and Morgan Stanley to the other of pricing information (ie as applicable, assessment of the trading price, current or future trading price, current mid-price as well as the parameters of the offer price) in Bloomberg chats in relation to (as applicable) the trading of certain gilts and gilt asset swaps and the offering of a certain gilt in the context of one gilt buy-back auction<sup>157</sup> (collectively the '**DB-MS Communications**') which in the specific circumstances of each disclosure, involved the disclosure of commercially sensitive information (the '**DB-MS Infringement**').<sup>158</sup>
- 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 trading and offering strategies in relation to (as applicable) the trading of certain gilts and gilt asset swaps and the offering of a certain gilt in the context of one gilt buy-back auction.<sup>159</sup>

### B. Assessment of evidence

- 7.4 In its assessment of the evidence, the CMA has taken into account its historical and technical nature and has generally placed greater weight on the natural reading of the contemporaneous documentary evidence (namely the Bloomberg chats<sup>160</sup>) in their proper context.

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<sup>156</sup> 28 October 2009, 30 November 2009, 17 March 2010, 18 May 2010, 30 June 2010, 9 March 2011, 15 March 2011 and 24 June 2011.

<sup>157</sup> See further paragraphs 7.12, 7.14 and 7.19.

<sup>158</sup> 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-MS Infringement. The CMA has also indicated **in bold** at paragraphs 7.12 and 7.14 and at Annex B the specific disclosures which it has found to comprise the infringing disclosures in the DB-MS Infringement.

<sup>159</sup> See further paragraphs 7.23 to 7.25.

<sup>160</sup> The chats comprised messages sent in a persistent bilateral Bloomberg chatroom (see Annex B). Such messages included technical, sector-specific jargon, abbreviations and shorthand. Discussions were often fast-paced (resulting in typographical errors and overlapping communications) and took place within the context of a range of available information (see Chapter 4), which the Key Individuals referenced on occasion in their communications.

- 7.5 In their respective interviews, the Key Individuals were able to explain the individual disclosures in the relevant Bloomberg chats put to them, including their relevant context, notwithstanding the passage of time since the DB-MS Relevant Period and any lack of recall was mainly isolated to specific detailed points. At certain times and in relation to certain instances, the position taken by Key Individuals was that the information disclosed was of minimal value. The CMA takes a different view.<sup>161</sup>

## C. Undertakings

- 7.6 The CMA has found that each of Deutsche Bank and Morgan Stanley constituted an undertaking for the purposes of the Chapter I prohibition during the DB-MS Relevant Period, since each of them was engaged in economic activity which included trading gilts and gilt asset swaps and offering gilts in Bank of England gilt buy-back auctions. Each of Deutsche Bank and Morgan Stanley continues to engage in economic activity.<sup>162</sup>

## D. The DB-MS Conduct as a concerted practice

- 7.7 The CMA has found that the disclosures on the DB-MS Specific Dates were made in the context of variously:
- (a) Trading: one or both of Deutsche Bank and Morgan Stanley disclosed to the other commercially sensitive information in relation to the trading of certain gilts and gilt asset swaps (**'Trading Conduct'**); and
  - (b) One gilt buy-back auction conducted by the Bank of England: Morgan Stanley disclosed to Deutsche Bank commercially sensitive information in relation to the offering of a certain gilt in one gilt buy-back auction (**'Gilt Buy-Back Auction Conduct'**),
- (collectively the **'DB-MS Conduct'**).
- 7.8 In reaching its finding that the DB-MS Conduct constituted a concerted practice, the CMA has relied on the following evidence in the DB-MS Relevant Period:

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<sup>161</sup> The CMA's view is based, in part, on the fact that such statements are internally inconsistent with other statements made by the Key Individual during the interview and/or contradicted by the contemporaneous evidence (see for example footnote 167).

<sup>162</sup> See paragraphs 3.2 to 3.3 and 3.7 to 3.9.

- (a) That the Parties were competitors in (variously) trading and offering gilts and gilt asset swaps and offering gilts in gilt buy-back auctions (see paragraphs 4.8 and 4.13)<sup>163, 164</sup>
- (b) That the disclosures of certain conduct of a competitor in the context of trading and a certain gilt buy-back auction constituted commercially sensitive information (paragraphs 7.9 to 7.17 and set out more fully in Annex B).
- (c) That the Parties remained active on the Relevant Market in the DB-MS Relevant Period and that there is no evidence that the Key Individuals expressed any reservation or objection to, or sought to publicly distance themselves from, the disclosures of commercially sensitive information in relation to (as applicable) the trading of the gilts and gilt asset swaps in question and the gilt buy-back auction in question (see paragraph 7.18 below).

## D.I Trading Conduct

- 7.9 The DB-MS Conduct as it related to Trading Conduct consisted of one or both of Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) disclosing to the other commercially sensitive information on its pricing of gilts and gilt asset swaps, specifically its assessment of the trading price, current or future trading prices as well as current mid-price. That information was both **confidential** and **strategic** in nature.
- 7.10 The information on pricing (ie as applicable, the assessment of the trading price, current or future trading prices as well as current mid-price) disclosed in the DB-MS Trading Communications (as defined below) was in each case confidential to the disclosing Party. It was not in the public domain or otherwise ordinarily available to the recipient Party at the time it was disclosed. Although some information relating to pricing was available from a number of sources (as set out in paragraph 4.15), the CMA considers that this does not undermine its view that the information disclosed on pricing, below, in the specific context of the DB-MS Trading Communications was confidential. In normal conditions of competition, each Party would have had to determine its pricing strategy independently of the other and in the context of uncertainty as to the mid-prices and trading prices of other GEMMs (see paragraphs 4.8, 4.14 and 4.17).<sup>165</sup>

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<sup>163</sup> Though [DB Trader] (Deutsche Bank) was primarily involved in gilts and [MS Trader] (Morgan Stanley) was primarily a market maker for interest rate swaps and gilt asset swaps, the evidence shows that both traders participated in the trading of gilts and gilt asset swaps and gilt buy-back auctions during the DB-MS Relevant Period (B-URN-000502065, pages 18 and 19; and B-URN-000502072, pages 17 and 26 to 27).

<sup>164</sup> The evidence shows that in the DB-MS Relevant Period the Parties on occasion discussed the same or similar trades involving gilts and gilt asset swaps and the same gilt buy-back auction (as summarised in Annex B and paragraphs 7.12, for example see **DB-MS, A-URN-007357** on 28 October 2009; see also **DB-MS, A-URN-007530** on 17 March 2010).

<sup>165</sup> See B-URN-000501046, page 50; See also B-URN-000500865, paragraph 36.1 and, on mid-prices in particular, paragraph 4.17.

- 7.11 Moreover, the information disclosed by the disclosing Party on pricing (ie as applicable, the assessment of the trading price, current or future trading prices as well as current mid-price) in the DB-MS Trading Communications was strategic in nature, including in that it provided insight into specific aspects of the disclosing Party's pricing strategies for certain gilts and gilt asset swaps and/or was capable of influencing the recipient Party's trading strategies (including pricing) in relation to (as applicable) certain gilts and gilt asset swaps. In reaching this conclusion, the CMA has taken into account the nature of the information disclosed, the content and context of the DB-MS Trading Communications and, where relevant, evidence from the Parties and the Key Individuals, noting that:
- (a) The information disclosed in the DB-MS Trading Communications (as defined below) by the disclosing Party on pricing was specific, including that it related to certain gilts and/or gilt asset swaps.<sup>166, 167</sup>
  - (b) The disclosures were made during the trading day (typically between 07:30 and 17:00)<sup>168</sup> when the Parties were actively engaged in ongoing trading and each would have been considering its trading strategies, and in circumstances in which a Party could engage in or refrain from trading very quickly, if not immediately, upon receipt of the disclosed information.
  - (c) The disclosures of future trading pricing provided the recipient Party with an insight into the disclosing Party's future pricing strategy for the relevant gilts or gilt asset swaps and were therefore liable to assist the recipient Party to maintain or adjust its pricing for the gilts or gilt asset swaps in question.
  - (d) The disclosures provided a form of reassurance, which was liable to give one or both of the Parties more confidence when formulating and executing their trading strategies (including in relation to pricing). For example, [MS Trader] (Morgan Stanley) said in interview that he would *'try to bounce ideas off someone as a sounding board'* (also referred to as a *'sounding of ideas'*)<sup>169</sup>

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<sup>166</sup> This includes the various combinations of gilt and gilt asset swap trades noted, including gilt switches and gilt asset swap boxes. The evidence shows that the information was expressed in such a way that the recipient Party would have understood that the information disclosed related (as applicable) to the disclosing Party's current trading price, future trading price, assessment or trading price and current mid-price in relation to those gilts and/or gilt asset swaps.

<sup>167</sup> The CMA has reached this conclusion notwithstanding that [MS Trader] (Morgan Stanley) denied in interview that this was case in relation to one chat (ie that the information disclosed was *'bravado'*), **DB-MS, A-URN-007860** (see B-URN-000502072, page 273). The reference to *'bravado'* in [MS Trader] (Morgan Stanley)'s interview was a reference to the line *'proper load up'* (at 10:32:45), not to the price disclosure itself in the previous line (*'my level to buy loads is 33.5 i 2t15'*). In any event, even if it could be said that the information was *'bravado'*, it would not have lost its strategic nature (see, by analogy, paragraph 6.8 for the proposition that even inaccurate information can be strategic or commercially sensitive).

<sup>168</sup> See paragraph 4.6.

<sup>169</sup> [MS Trader] (Morgan Stanley) said in interview that *'[b]ecause we were friends, we, we chatted about the market quite a lot'*. He said *'I had a relationship with [DB Trader] where I would feel -- and he was a gilt market-maker. I could feel that I could ask him whether something is where it is on the screens, et cetera'* (B-URN-000502072, pages 130 and 89; see also, B-URN-000502073, page 191). [MS Trader] (Morgan Stanley) also said in interview that *'certainly in a proprietary atmosphere you'd try to bounce ideas off someone as a sounding board'*. He also said that in a broad sense, for example, if he thought the stock market was going up and someone told him their thoughts on that *'I'd listen to them, and*

and [DB Trader] (Deutsche Bank) stated that he participated in discussions *'to test and sense check my views against those of other market participants'*.<sup>170, 171</sup>

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

(a) In Bloomberg chat **DB-MS, A-URN-007357** on 28 October 2009:<sup>172</sup>

- (i) In response to a request by Morgan Stanley ([MS Trader]) ('yes, so then 15s15s is wrong?' at 09:04:50), Deutsche Bank ([DB Trader]) disclosed his **assessment of the trading price** for the gilt switch consisting of the 2.75% and 4.75% 2015 gilts, ie his assessment that the particular price was not 'wrong' and his specific reasons for that assessment ('**no cos everyone is short of 4t15 and waiting for it to go down**', '**15s 15s eventually will go to +5**', '**maybe +7**', '**but will remain cheap for a while while they build up the size**' at 09:05:34 to 09:06:26). Morgan Stanley ([MS Trader]) subsequently stated that Deutsche Bank ([DB Trader]) had convinced him.<sup>173</sup>
- (ii) The assessment of the trading price was strategic in nature as it encompassed Deutsche Bank ([DB Trader])'s thinking on the trading price to adopt given the prevailing or anticipated trading conditions.<sup>174</sup>
- (iii) Later that same day, the Parties disclosed to each other their respective current mid-prices as part of a discussion on the pricing of two specific gilt asset swaps (the 2.75% 2015 gilt asset swap and the 2.25% 2014 gilt asset swap). Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for the 2.75% 2015 gilt asset swap ('**have them at 40.75**' at 13:39:04) and his **current mid-price** for the 2.25% 2014 gilt asset swap

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*I'd decide whether they're -- I think their reasoning is right or wrong and that might give me a stronger conviction of what I originally thought, or it might make me hesitate, but it's -- it's just a, a sounding of ideas, I think'* (B-URN-000502073, page 240).

<sup>170</sup> [DB Trader] (Deutsche Bank) stated in his letter to the CMA following his interviews that the reason he participated in these discussions *'was to test and sense check my views against those of other market participants'* (B-URN-000502208). See also: B-URN-000502070, pages 18 to 19.

<sup>171</sup> See also, for example, **DB-MS, A-URN-007397** on 30 November 2009 where Morgan Stanley ([MS Trader]) asked and discussed with Deutsche Bank ([DB Trader]) the price for the gilt asset swap box that included the 2.75% 2015 and the 4% 2015 gilts; **DB-MS, A-URN-000235** on 18 May 2010 where Deutsche Bank ([DB Trader]) asked Morgan Stanley ([MS Trader]) for his current mid-price for the 3.75% 2019 gilt asset swap which precipitated a discussion about the cheapness of a price available from a broker, [broker], for the same gilt asset swap and its eventual acquisition by Morgan Stanley; and **DB-MS, A-URN-007860** on 9 March 2011 where Deutsche Bank ([DB Trader]) disclosed his future trading price for the 2.75% 2015 gilt asset swap which precipitated a discussion about the price and strategy between Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]).

<sup>172</sup> **DB-MS, A-URN-007357** on 28 October 2009.

<sup>173</sup> Morgan Stanley ([MS Trader]) stated *'well i sold some 2t15s against 4ts'* and *'you convinced me'* (**DB-MS, A-URN-007357** at 10:58:41 and 10:59:03).

<sup>174</sup> In particular, it encompassed Deutsche Bank ([DB Trader])'s assessment given the prevailing trading conditions of, for example, likely demand for the relevant products which was closely related to Deutsche Bank ([DB Trader])'s own trading prices and other aspects of its trading strategies (see paragraph 4.20 above).

(*'with 2q14s at 44 surely they are better'* at 13:39:25). Morgan Stanley ([MS Trader]) later disclosed his **current mid-price** for the 2.75% 2015 gilt asset swap (*'2t15 i have at 39'* at 14:34:31) and that there were interested buyers around this price level (*'byes around there'* at 14:34:35).

- (iv) In light of the evidence set out at Chapter 4 and below, the CMA has found that a Party's current mid-price was strategic in nature as it was a pricing reference point in how a Party determined its trading price.<sup>175</sup>
- (b) In Bloomberg chat **DB-MS, A-URN-007397** on 30 November 2009:<sup>176</sup>
  - (i) In response to Morgan Stanley ([MS Trader])'s question (*'getting asked 2t15 v 16s?'* at 15:00:35), Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **assessment of the trading price** that Morgan Stanley ([MS Trader]) should adopt in relation to that gilt asset swap box that included the 2.75% 2015 and the 4% 2016 gilts, namely that he should bid the gilt component of the 2.75% 2015 gilt asset swap<sup>177</sup> at its mid-price (*'just bid 2t15 at mid'* at 15:02:47), and described his reasons for that assessment.<sup>178</sup> Morgan Stanley ([MS Trader]) then confirmed he had *'done that'* ie he adopted Deutsche Bank ([DB Trader])'s view of the trading price and had bid at the mid-price for the gilt component of the 2.75% 2015 gilt asset swap.<sup>179</sup>
  - (ii) The assessment of the trading price was strategic in nature as it encompassed Deutsche Bank ([DB Trader])'s thinking on the trading price to adopt given the prevailing or anticipated trading conditions (see paragraph 7.12(a)(ii)).
- (c) In Bloomberg chat **DB-MS, A-URN-007530** on 17 March 2010:<sup>180</sup>
  - (i) In response to Morgan Stanley ([MS Trader])'s question (*'how much u charge?'* at 09:09:38), Deutsche Bank ([DB Trader]) disclosed the **current trading price** he was quoting [counterparty] for a gilt put

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<sup>175</sup> See paragraphs 4.16 to 4.20 above. See also B-URN-000501195, pages 11 to 12. 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. Morgan Stanley stated that it operated *'a centralised price and position management system'* (ie a 'pricer'), which each trader could customise, but typically showed, among other things, Morgan Stanley's *'internal view on the price'* (which the CMA understands was equivalent to a mid-price) to assist its traders with pricing gilts (see B-URN-000501214, pages 10 and 13; B-URN-000502072, page 83).

<sup>176</sup> **DB-MS, A-URN-007397** on 30 November 2009.

<sup>177</sup> Being a component of the gilt asset swap box under discussion.

<sup>178</sup> For example, *'well 4 16 are offered'*, *'i dont think at these levels you have much to worry about'* at 15:01:33 and 15:01:49.

<sup>179</sup> Morgan Stanley ([MS Trader]) stated *'i've done that, we'll see what happens'* at 15:03:09.

<sup>180</sup> **DB-MS, A-URN-007530** on 17 March 2010.



through trade (*'i cant do it for flat', '0.25 tick which i think is very fair', 'on 500m'* at 09:09:38, 09:09:52 and 09:09:59).

- (ii) Two to five minutes later, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) the **current trading price** he was quoting [counterparty] for the same gilt put through trade (*'just talked to him', 'i didn't mention we talked', 'of course, told him a tick'* at 09:11:51 to 09:14:18).
  - (iii) The trading price was strategic in nature as it was the executable price at which the Parties traded a gilt (or gilt asset swap) and was therefore a key parameter on which a Party competed for the gilt (or gilt asset swap) trade (see paragraph 4.8).
- (d) In Bloomberg chat **DB-MS, A-URN-000235** on 18 May 2010:<sup>181</sup>
- (i) In response to Deutsche Bank ([DB Trader])'s question (*'hey mate', 'where do you have 3t19 matched'* at 15:19:24 and 15:19:32), Morgan Stanley ([MS Trader]) disclosed his **current mid-price** for the 3.75% 2019 gilt asset swap (*'13.5 mid'* at 15:19:46). Deutsche Bank ([DB Trader]) then disclosed that he had the same **current mid-price** (*'me too'* at 15:19:50). The request was made in the context of Deutsche Bank ([DB Trader]) trying to reconcile his current mid-price with a trading price he was observing via a broker.<sup>182, 183</sup>
  - (ii) The CMA has found that a Party's current mid-price was strategic in nature as it was a pricing reference point in how a Party determined its trading price (see paragraph 7.12(a)(iv)).
- (e) In Bloomberg chat **DB-MS, A-URN-000239** on 30 June 2010:<sup>184</sup>
- (i) Following Morgan Stanley ([MS Trader])'s statement that he showed a better bid than ask price for the 2.75% 2015 gilt asset swap (*'...i bid it', '25/27'* at 14:19:35 and 14:19:57), Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for the that gilt asset swap to explain why he thought Morgan Stanley ([MS Trader])'s trading price (on the bid side) was in fact a 'middle market' trading price<sup>185</sup> (*'thats neutr', 'i have a 26 mid'* at 14:20:05 and 14:20:09).

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<sup>181</sup> **DB-MS, A-URN-000235** on 18 May 2010.

<sup>182</sup> B-URN-000502065, pages 257 to 259.

<sup>183</sup> This presented an opportunity for Morgan Stanley ([MS Trader]) to buy said gilt asset swap. Morgan Stanley ([MS Trader]) stated: *'taking them', 'was too cheap i agree thanks for letting me know'* at 15:22:40. [DB Trader] (Deutsche Bank) said in interview that he and Morgan Stanley ([MS Trader]) discussed the fact that their mid-prices did not correspond to what was happening via the broker, which presented an opportunity for Morgan Stanley ([MS Trader]) to buy the said gilt asset swap (B-URN-000502065, pages 257 to 258).

<sup>184</sup> **DB-MS, A-URN-000239** on 30 June 2010.

<sup>185</sup> B-URN-000502072, page 148.

- (ii) This prompted Morgan Stanley ([MS Trader]) to ask what Deutsche Bank ([DB Trader])'s current mid-price for the 2.75% 2015 gilt was as Morgan Stanley ([MS Trader]) thought some component of his asset swap was wrong<sup>186</sup> (*'where u have bond price?' at 14:20:20*). Deutsche Bank ([DB Trader]) then disclosed that he had a **current mid-price** of '00' for the 2.75% 2015 gilt (*'00 with that drop on [broker]' at 14:20:38*).
  - (iii) Morgan Stanley ([MS Trader]) then disclosed that **his current mid-price** for the 2.75% 2015 gilt was '98', which he stated meant that his current mid-price for the 2.75% 2015 gilt asset swap must have been different to Deutsche Bank ([DB Trader])'s current mid-price (*'i got 98, my swap must be small diff to u too' at 14:20:50*).
  - (iv) A Party's current mid-price was strategic in nature as it was a pricing reference point in how a Party determined its trading price (see paragraph 7.12(a)(iv)).
- (f) In Bloomberg chat **DB-MS, A-URN-007860** on 9 March 2011:<sup>187</sup>
- (i) Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **future trading price** for a 2.75% 2015 gilt asset swap (*'my level to buy loads is 33.5 i [in] 2t15' at 10:32:22*).
  - (ii) Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) his **future trading price** for the 2% 2016 gilt asset swap (*'i've been trying to buy 2 16 at 27.5, got some other day, but hard to get them at moment there' at 10:34:54*).
  - (iii) The trading price was strategic in nature as it was the executable price at which a Party traded a gilt (or gilt asset swap) and therefore was a key parameter on which it competed for the gilt (or gilt asset swap) trade (see paragraph 4.8).
- (g) In Bloomberg chat **DB-MS, A-URN-007868** on 15 March 2011:
- (i) In response to Morgan Stanley ([MS Trader])'s question (*'what u think of these shorts?' at 10:57:07*), Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **future trading price** for the 2.75% 2015 gilt asset swap, by stating that when the trading price got to 33 basis points he would buy it (*'33 on 2t15 i buy' at 10:57:33*).

<sup>186</sup> B-URN-000502065, page 245 and B-URN-000502072, page 149.

<sup>187</sup> **DB-MS, A-URN-007860** on 9 March 2011.

- (ii) The trading price was strategic in nature as it was the executable price at which a Party traded a gilt (or gilt asset swap) and was therefore a key parameter on which it competed for the gilt (or gilt asset swap) trade (see paragraph 4.8).
- (h) In Bloomberg chat **DB-MS, A-URN-007955** on 24 June 2011:<sup>188</sup>
- (i) In response to Morgan Stanley ([MS Trader])’s question about whether Deutsche Bank ([DB Trader]) had received a client enquiry for a gilt asset swap consisting of a long-dated gilt (a 30-year gilt) and a ten year interest rate swap (*‘u getting asked 10s and longs?’* at 09:46:25), Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **current trading price** for the 30-year gilt component of a gilt asset swap consisting of a 30-year gilt and a ten-year interest rate swap (*‘made him 32/45’, ‘x06’* at 09:46:48 and 09:46:59).<sup>189</sup>
  - (ii) The trading price was strategic in nature as it was the executable price at which a Party traded) a gilt (or gilt asset swap) and therefore was a key parameter on which it competed for the gilt (or gilt asset swap) trade (see paragraph 4.8).

### **Conclusion – commercially sensitive information disclosed in relation to Trading Conduct**

- 7.13 In view of the above, in relation to the Trading Conduct, the CMA has concluded that the information disclosed by each Party in the DB-MS Trading Communications on its pricing (ie as applicable, the assessment of the trading price, current or future trading prices as well as current mid-price) in relation to certain gilts and gilt asset swaps (as applicable) was commercially sensitive information, the disclosure of which removed, or at least reduced, uncertainty as to the disclosing Party’s pricing strategies in relation to the gilts and gilt asset swaps in question and/or was capable of influencing aspects of the recipient Party’s trading strategies (including pricing) in relation to the gilts and gilt asset swaps in question.

## **D.II Gilt Buy-Back Auction Conduct**

- 7.14 The DB-MS Conduct as it related to Gilt Buy-Back Auction Conduct consisted of Morgan Stanley ([MS Trader]) disclosing to Deutsche Bank ([DB Trader]) commercially sensitive information on the parameter of his offer price for one gilt buy-back auction during the relevant gilt buy-back auction window. In summary,

<sup>188</sup> **DB-MS, A-URN-007955** on 24 June 2011.

<sup>189</sup> The CMA understands that *‘made him’* meant he was quoting the client for the 30-year gilt component of the gilt asset swap (*‘32/45’*) and how he intended to hedge the trade by reference to the gilt futures market (*‘x06’*), see Annex B.

and as set out more fully at Annex B, the disclosure occurred in the following communication (the **DB-MS Gilt Buy-Back Auction Communication**):

- (a) In Bloomberg chat **DB-MS, A-URN-007357** on 28 October 2009: during a gilt buy-back auction, in response to Deutsche Bank ([DB Trader])’s question (*‘where do you sell them?’*, *‘below the figure?’* at 14:42:44 to 14:42:49), Morgan Stanley ([MS Trader]) disclosed his view on the price the Bank of England would pay for the 4.75% 2015 gilt in the gilt buy-back auction, which the CMA infers was the **parameter of his offer price** (*‘i think they go at mids’* at 14:43:03).

7.15 The information on the offer price was **confidential** to the disclosing Party. It was not in the public domain or otherwise available to the recipient Party at the time it was disclosed.<sup>190</sup> Although the Parties had access to certain information on pricing,<sup>191</sup> the Parties would not have had access to the parameters of another participant’s offer price.<sup>192</sup> In normal conditions of competition, each Party would have had to determine its pricing strategy independently of the other and in the context of uncertainty as to the prices of others.

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

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

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<sup>190</sup> See paragraph 4.11.

<sup>191</sup> See paragraph 4.15. Examples of information to which the Parties would have had access include some information from the DMO, including composite and end-of-day mid-prices, and the Bank of England, including the results of gilt buy-back auctions.

<sup>192</sup> Since each Party’s offer price was confidential (see paragraph 4.11) and each Party’s mid-price was confidential (see paragraph 4.17), the CMA infers that the offer price parameter (being the difference between a Party’s mid-price and its offer price) was also confidential.

<sup>193</sup> See paragraph 4.11.

- (b) The information on the offer price parameter that was disclosed was specific to the gilt buy-back auction in question and was expressed in such a way that the recipient Party would have understood that the information disclosed related to the disclosing Party's offer price parameter in relation to the gilt buy-back auction in question.
- (c) The disclosure was made during the gilt buy-back auction window, being at a point in time at which the Parties were able to submit, amend or withdraw their offers up to, or very close to, the close of that gilt buy-back auction (see paragraph 4.10).<sup>194</sup>
- (d) The disclosures provided a form of reassurance, which was liable to give one or both of the Parties more confidence when formulating and executing their trading strategies (including in relation to pricing) (see paragraph 7.11(d)).

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

- 7.17 In view of the above, in relation to the Gilt Buy-Back Auction Conduct, the CMA has concluded that the information disclosed by Morgan Stanley ([MS Trader]) in the DB-MS Gilt Buy-back Auction Communication on the parameter of his offer price in relation to one gilt buy-back auction was commercially sensitive information, the disclosure of which removed, or at least reduced, uncertainty as to the disclosing Party's pricing strategy in relation to the gilt in question and/or was capable of influencing aspects of the recipient Party's offering strategy (including pricing) in relation to the gilt in question.

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

- 7.18 In the DB-MS Relevant Period the Parties remained active on the Relevant Market, through their participation in trading and gilt buy-back auctions, and there is no evidence that either Deutsche Bank ([DB Trader]) or Morgan Stanley ([MS Trader]) expressed any reservation or objection to, or sought to publicly distance themselves from, the disclosures of commercially sensitive information in the DB-MS Conduct on the DB-MS Specific Dates.<sup>195</sup> Therefore, the recipient Party is presumed to have taken account of the commercially sensitive information on

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<sup>194</sup> Despite [DB Trader] (Deutsche Bank)'s evidence (B-URN-000502068, page 254), the CMA's view is that the information disclosed remained strategic in particular because the disclosure took place during the gilt buy-back auction, and in advance of the final minute of the gilt buy-back auction. In any case, [DB Trader] (Deutsche Bank)'s evidence in interview on this was inconsistent as he also stated that, although it may have been less common to submit or amend offers in the final minute of the auction, he may have done so on occasion (B-URN-000502070, page 329).

<sup>195</sup> 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.

pricing (ie as applicable, the assessment of the trading price, current or future trading prices, current mid-price as well as the parameters of offer price) disclosed by the disclosing Party in determining the recipient Party's conduct in relation to (as applicable) the trading of the gilts and gilt asset swaps in question and the gilt buy-back auction in question.

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

- 7.19 In view of the above, in relation to the Trading Conduct and the Gilt Buy-Back Auction Conduct, taken individually and collectively, the CMA has concluded that the information disclosed by one or both of Deutsche Bank and Morgan Stanley to the other in the DB-MS Trading Communications and the DB-MS Gilt Buy-Back Auction Communication on pricing information (ie as applicable, assessment of the trading price, current or future trading price, current mid-price as well as the parameters of offer price) 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 trading of certain gilts and gilt asset swaps and the offering of a certain gilt in one gilt buy-back auction (as summarised above and set out in Annex B).
- 7.20 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 trading of the gilts and gilt asset swaps in question and the offering of a gilt in the gilt buy-back auction in question. Deutsche Bank and Morgan Stanley thereby participated in a concerted practice by which they knowingly substituted practical cooperation between them for the risks of competition.

## **E. Object of restricting or distorting competition**

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

### **E.I Content of the DB-MS Conduct**

- 7.22 The CMA has found that the content of the concerted practice consisting of the DB-MS Conduct was the disclosure by one or both of Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) to the other of commercially sensitive information on their respective pricing strategies (ie as applicable, the assessment

of the trading price, current or future trading prices current mid-prices as well as the parameters of offer price) in relation to (as applicable) trading the gilts and gilt asset swaps in question and the gilt buy-back auction in question.<sup>196</sup>

## **E.II Objective**

- 7.23 The CMA has concluded that the objective of the DB-MS Conduct was to assist one or both of the Parties in formulating and executing aspects of their respective trading and offering strategies in relation to (as applicable) the trading of certain gilts and gilt asset swaps and the offering of a certain gilt in one gilt buy-back auction.<sup>197</sup>
- 7.24 Specifically, the disclosures provided a form of reassurance, which was liable to give one or both of the Parties more confidence when formulating and executing their trading and offering strategies (including in relation to pricing) (see paragraph 7.11(d)).
- 7.25 In reaching this finding, the CMA has considered the evidence about the nature<sup>198</sup> and context<sup>199</sup> of the exchanges.

## **E.III Legal and economic context**

- 7.26 For the purposes of the ensuing analysis, the CMA sets out below the key components of the legal and economic context that apply across all the conduct comprising the DB-MS Conduct and those that are specific to each of the Trading Conduct and the Gilt Buy-Back Auction Conduct.
- 7.27 The CMA's view, for present purposes, is that there was some relationship between the Parties' activities which are the subject of this Decision,<sup>200</sup> noting the available evidence from the Parties and Key Individuals regarding the way their

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<sup>196</sup> See paragraphs 7.9 to 7.17

<sup>197</sup> As the Parties' activities across trading and gilt buy-back auctions were interrelated (see paragraph 7.27 below), the CMA finds that the objective of the DB-MS Conduct applied across the Trading Conduct and Gilt Buy-back Auction Conduct.

<sup>198</sup> Noting that certain types of pricing information (such as future and current trading prices, assessment of the trading price and current mid-prices and the parameters of the offer price) were relevant to the determination of a Party's trading and offering strategies, see paragraphs 7.31 and 7.32.

<sup>199</sup> Noting that [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley) sought 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 chat **DB-MS, A-URN-007357** on 28 October 2009, Deutsche Bank ([DB Trader]) asked Morgan Stanley ([MS Trader]) for his assistance with his pricing for a gilt buy-back auction ('where do you you sell them?', 'below the figure?' at 14:42:44 and 14:42:49) to which Morgan Stanley ([MS Trader]) responded with the parameters of his offer price for that offer gilt. See also, for example, Bloomberg chat **DB-MS, A-URN-007868** on 15 March 2011, Morgan Stanley ([MS Trader]) requested Deutsche Bank ([DB Trader])'s view on short-end gilts; Morgan Stanley ([MS Trader]) said 'what u think of these shorts?', 'is this the [counterparty] issue?' (at 10:57:07 and 10:57:12) to which Deutsche Bank ([DB Trader]) responded 'i dont think so', 'i think must be some overseas selling', '33 on 2t15 i buy' (at 10:57:19 to 10:57:33). The CMA infers from the fact that [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley) sought each other's view that they valued that view. See also, for example, B-URN-000502066, pages 34 to 35.

<sup>200</sup> That is, their activities across trading and gilt buy-back auctions (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 trading and offering strategies were set<sup>201</sup> and how they traded.<sup>202</sup> The CMA also notes that the Parties used a single persistent Bloomberg chat room to disclose the commercially sensitive information in the DB-MS Conduct.<sup>203</sup>

- 7.28 Both Parties were designated as GEMMs during the DB-MS Relevant Period and were therefore amongst each other's closest competitors for gilts and gilt asset swaps.<sup>204</sup> GEMMs had an important role in relation to gilts in supporting the issuance of government debt and liquidity in gilts.<sup>205</sup>
- 7.29 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).<sup>206</sup>
- 7.30 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 trading and gilt buy-back auctions (see paragraphs 4.16 to 4.20 and 7.12(a)(iv)).
- 7.31 In determining its trading price(s) for a gilt or gilt asset swap or its offer price(s) in a gilt buy-back auction, a Party would have had regard to its mid-price for (as applicable) the gilt or gilt asset swap being traded or the offer gilt 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

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<sup>201</sup> [MS Trader] (Morgan Stanley) said in interview that his activity in trading would be a factor he took into account when considering his bidding strategy for a gilt auction and offering strategy for a gilt buy-back auction. He said that he might decide to participate in a gilt auction or a gilt buy-back auction if he hoped he could make money on his proprietary book (B-URN-000502073, page 228). [MS Trader] (Morgan Stanley) also said in interview that he was active in gilt auctions and gilt buy-back auctions for the purposes of managing his trading book. He said that he would take account of upcoming gilt auctions and gilt buy-back auctions when considering his trading activities (B-URN-000502072, pages 26, 27, 38 and 89). [DB Trader] (Deutsche Bank) said in interview that gilt auctions and gilt buy-back auctions presented an opportunity to buy certain maturities of gilts and to take off risk or to reduce balance sheet and set up a trade that he liked (B-URN-000502068, page 30).

<sup>202</sup> For example, in Bloomberg chat **DB-MS, A-URN-000239** on 30 June 2010, the Parties disclosed the mid-prices for a gilt asset swap and its component gilt. [DB Trader] (Deutsche Bank) said in interview that a gilt asset swap consisted of a gilt price and a swap price and that the Deutsche Bank gilt asset swap pricer put those two prices together to arrive at the gilt asset swap mid-price (B-URN-000502065, pages 49 and 63 and B-URN-000502066, pages 28 to 29). [MS Trader] (Morgan Stanley) said in interview that gilt asset swaps and gilts were related instruments and that he relied on the gilt price when quoting a gilt asset swap (B-URN-000502073, pages 194 to 196). He said that as part of hedging his risk he might 'leg' a gilt asset swap in that he might trade the gilt component on its own (B-URN-000502072, pages 95 to 97). He also said that the hardest part for him quoting a price for a gilt asset swap was getting the price of the gilt component correct because he was not always actively checking how the gilts were trading (B-URN-000502072, page 83). See also paragraph 4.17.

<sup>203</sup> See Annex B, paragraph B.1 and the DB-MS Communications set out in Annex B.

<sup>204</sup> Each of the Parties identified other dealers designated as GEMMs as their closest competitors for gilts and gilt asset swaps, see paragraph 4.2 and footnote 99.

<sup>205</sup> See Chapter 4. Specifically, B-URN-000503293, paragraphs 5 and 11.

<sup>206</sup> See paragraphs 4.14 to 4.20.



sensitive information relevant to its pricing and other aspects of its trading and offering strategies (see paragraphs 4.19 and 4.20).

- 7.32 Each Party's trading and offer prices were important parameters of competition between the Parties for trading and gilt buy-back auctions, respectively.<sup>207</sup> Moreover, adopting the 'wrong' price could undermine a trader's trading or offering strategy. For example, [MS Trader] (Morgan Stanley) said in interview that not having the '*right*' pricing would mean that '*most of the time it would be you lose money*'.<sup>208</sup>
- 7.33 As regards Trading Conduct, during the DB-MS Relevant Period, the Parties competed with each other (and other dealers) both in relation to trades with clients and trades with other counterparties.<sup>209</sup> 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 in the syndication.<sup>210</sup>
- 7.34 As regards Gilt Buy-Back Auction Conduct, during the DB-MS Relevant Period, the Parties competed with each other (and other participants) in relation to the offering for sale and sale of gilts to the Bank of England via these gilt buy-back auctions.<sup>211</sup> At no point before, during or after a gilt buy-back auction were a participant's offers ordinarily disclosed to other participants, nor were they otherwise published or made available.

#### **E.IV Restriction or distortion of competition by object**

- 7.35 In view of the foregoing analysis of the content, objective and legal and economic context in which the DB-MS Conduct took place, and for the further reasons set out below, the CMA has concluded that the concerted practice consisting of the DB-MS Conduct had as its object the restriction or distortion of competition.
- 7.36 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.<sup>212</sup>

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<sup>207</sup> See paragraphs 4.8, 4.12 and 4.13.

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

<sup>209</sup> See paragraph 4.8.

<sup>210</sup> See paragraph 4.7.

<sup>211</sup> See paragraph 4.13.

<sup>212</sup> See paragraphs 4.8, 4.14, 4.17 and 7.33.

- 7.37 As regards the Gilt Buy-Back Auction Conduct, a fair and competitive gilt buy-back auction process depended on the participants submitting independently derived offers.<sup>213</sup>
- 7.38 The disclosures of commercially sensitive information in the DB-MS Trading Communications, removed, or at least reduced, uncertainty on the relevant DB-MS Specific Dates as to the disclosing Party's pricing strategies in relation to the gilts and gilt asset swaps in question and/or were capable of influencing aspects of the recipient Party's trading strategies (including pricing) in relation to the trading of those gilts and gilt asset swaps.<sup>214</sup> They also resulted in informational asymmetry between the Parties and other participants in relation to the trading of the gilts and gilt asset swaps in question,<sup>215</sup> thereby placing one or both of the Parties at a competitive advantage compared to counterparties (which included each Party's clients) and competitors.
- 7.39 The disclosures of commercially sensitive information in the DB-MS Gilt Buy-Back Auction Communication removed, or at least reduced, uncertainty as to the disclosing Party's pricing strategy in relation to the gilt in question and/or were capable of influencing the recipient Party's strategy (including pricing) in relation to the gilt in question.<sup>216</sup> They also resulted in an informational asymmetry between the Parties and the other participants in the relevant gilt buy-back auction, thereby placing one or both Parties at a competitive advantage compared to those other participants offering in the gilt buy-back auction.<sup>217</sup>
- 7.40 The disclosures, both in the DB-MS Trading Communications and the DB-MS Gilt Buy-Back Auction Communication provided the recipient Party with a form of reassurance and were liable to give one or both of the Parties more confidence (as applicable) regarding their trading strategies (including in relation to pricing) in relation to the gilts and gilt asset swaps in question and their offering strategy (including in relation to pricing) in relation to the offer gilt.
- 7.41 Such conduct was not consistent with the Parties determining their trading and offering strategies (including pricing) independently. It did not correspond to the normal conditions of competition in (as applicable) the trading of certain gilts and gilt asset swaps and a certain gilt in one gilt buy-back auction that would have been present absent the disclosures. Moreover, the disclosures of commercially sensitive information were not necessary for the proper functioning of normal

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<sup>213</sup> See paragraphs 4.11, 4.14, 4.17 and 7.34.

<sup>214</sup> See further paragraph 7.13.

<sup>215</sup> 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.

<sup>216</sup> See further paragraph 7.17.

<sup>217</sup> 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.

competition in the trading of those gilts and gilts asset swaps and to the gilt buy-back auction in question.

- 7.42 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**

- 7.43 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-MS Conduct revealed a sufficient degree of harm to competition in relation to the trading of the gilts and gilt asset swaps in question and the gilt buy-back auction in question such as to constitute a restriction or distortion of competition by object.

## **F. The DB-MS Infringement as an appreciable restriction of competition**

- 7.44 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.<sup>218</sup>
- 7.45 The CMA has found that Deutsche Bank and Morgan Stanley participated in a concerted practice that had the object of restricting or distorting competition (see paragraphs 7.19, 7.20 and 7.43). 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.<sup>219</sup>

## **G. Potential effect on trade within the UK of the DB-MS Infringement**

- 7.46 The CMA has found that the DB-MS Infringement was capable of affecting trade within the UK given the geographical scope of the DB-MS Infringement (which included the whole of the UK), the nature of the of the DB-MS Infringement, and the Parties' activities in the Relevant Market within the UK (see footnote 219).

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<sup>218</sup> See paragraph 6.24.

<sup>219</sup> In any event, and in the alternative, the CMA has found that the DB-MS Infringement constituted an appreciable restriction on competition within the UK for the purpose of the Chapter I prohibition based on the following: (i) the geographic scope of the DB-MS Infringement covered conduct within the UK; (ii) the nature of the DB-MS Infringement (see paragraphs 7.35 to 7.43); 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**

- 7.47 The CMA has found that none of the exclusions from the Chapter I prohibition apply to the DB-MS Infringement.<sup>220</sup>
- 7.48 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).
- 7.49 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.<sup>221</sup> The CMA has therefore concluded that no exemption applies in this case.

## **I. Legal characterisation and duration of the DB-MS Infringement**

- 7.50 The CMA has found that, on the basis of the evidence taken as a whole, the DB-MS Conduct constituted a single and repeated infringement comprising the specific disclosures of commercially sensitive information in the DB-MS Communications on the DB-MS Specific Dates, namely: 28 October 2009, 30 November 2009, 17 March 2010, 18 May 2010, 30 June 2010, 9 March 2011, 15 March 2011 and 24 June 2011.
- 7.51 The CMA has relied on the following evidence to conclude that the DB-MS Conduct constituted a single infringement:
- (a) the DB-MS Conduct pursued a single objective, which was to assist one or both of the Parties in formulating and executing aspects of their respective trading and offering strategies in relation to (as applicable) the trading and offering of certain gilts and gilt asset swaps and the offering of a certain gilt in the context of one gilt buy-back auction;
  - (b) the same two Key Individuals at the same two undertakings disclosed the commercially sensitive information in the DB-MS Relevant Period using the same means of communication (a single persistent bilateral Bloomberg chatroom titled '[X]'), which existed throughout the DB-MS Relevant Period;<sup>222</sup>

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<sup>220</sup> See paragraphs 6.26.

<sup>221</sup> 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.

<sup>222</sup> See Annex B.

- (c) the products that were the subject of the DB-MS Infringement, namely gilts and gilt asset swaps, were the same or similar throughout the DB-MS Relevant Period and were traded in the same or similar ways;<sup>223</sup> and
- (d) there were certain similarities in how pricing of those products across trading and gilt buy-back auctions was determined during the DB-MS Relevant Period.<sup>224</sup>

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

7.53 In the specific circumstances of this case, the CMA has found that the disclosures of commercially sensitive information in the DB-MS Communications between Deutsche Bank and Morgan Stanley on the DB-MS Specific Dates constitute a single and repeated infringement. The CMA has therefore found that the duration of the DB-MS Infringement was 8 days.

## **J. Conclusion on DB-MS infringement**

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

## **K. Attribution of liability**

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

### **K.I Deutsche Bank**

7.56 The ultimate parent company of the undertaking is Deutsche Bank.<sup>225</sup>

7.57 During the DB-MS Relevant Period, [DB Trader]'s participation in the trading activities and gilt buy-back auctions described in this Chapter 7 was on behalf of Deutsche Bank.<sup>226</sup> Accordingly, the CMA has concluded that Deutsche Bank was

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<sup>223</sup> See paragraphs 4.4 and 4.5 and footnotes 39 and 99.

<sup>224</sup> See paragraphs 4.14 to 4.20.

<sup>225</sup> See paragraph 3.3.

<sup>226</sup> See paragraphs 3.5 and 3.6.

directly involved in, and is therefore liable for, the DB-MS Infringement. This Decision is therefore addressed to Deutsche Bank.

## **K.II Morgan Stanley**

- 7.58 [MS Trader] was employed by a subsidiary of Morgan Stanley during the DB-MS Relevant Period, and his participation in trading and the gilt buy-back auction described in this Chapter 7 was on behalf of Morgan Stanley & Co. International Plc.<sup>227</sup> Accordingly, the CMA has concluded that Morgan Stanley & Co. International Plc was directly involved in, and is therefore liable for, the DB-MS Infringement.
- 7.59 The CMA has also found that Morgan Stanley is jointly and severally liable with Morgan Stanley & Co. International Plc for the DB-MS Infringement. That is because, throughout the DB-MS Relevant Period, Morgan Stanley & Co. International Plc was owned and controlled by Morgan Stanley,<sup>228</sup> which can therefore be presumed to have exercised decisive influence over Morgan Stanley & Co. International Plc during the DB-MS Relevant Period, and thereby formed part of the same undertaking.
- 7.60 This Decision is therefore addressed to Morgan Stanley & Co. International Plc and Morgan Stanley.

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<sup>227</sup> See paragraphs 3.10 to 3.11.

<sup>228</sup> See paragraph 3.8.

## **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.<sup>229</sup>
- 8.3 As the DB-MS Infringement has come to an end, the CMA has decided not to issue directions in this case.

### **C. Financial penalties**

- 8.4 On making a decision that a concerted practice has infringed the Chapter I prohibition, the CMA may require an undertaking which is a party to that concerted practice to pay the CMA a penalty in respect of the infringement.<sup>230</sup>
- 8.5 The CMA has signed an immunity agreement with Deutsche Bank, pursuant to which Deutsche Bank admitted its involvement in the DB-MS Infringement.<sup>231</sup> 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.<sup>232</sup>
- 8.6 As part of its settlement,<sup>233</sup> Morgan Stanley has admitted its involvement in, and liability for, the DB-MS Infringement as set out in this Decision. Under the terms of the settlement, Morgan Stanley has agreed to pay a maximum total financial penalty of **£23,400,000** in relation to the DB-MS Infringement.

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<sup>229</sup> Section 32(1), read together with section 2(5) of the Act.

<sup>230</sup> Section 36(1), read together with section 2(5) of the Act.

<sup>231</sup> See paragraph 2.1.

<sup>232</sup> See Chapter 2 of this Decision. 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.

<sup>233</sup> 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,<sup>234</sup> which sets out a six-step approach for calculating the penalty to be imposed on an undertaking.<sup>235</sup>
- 8.8 The CMA has a discretion to impose financial penalties.<sup>236</sup> 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.<sup>237</sup>

## C.I 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.<sup>238</sup>
- 8.10 In view of the objective of the conduct of the Parties in respect of the DB-MS Infringement (see Chapter 7<sup>239</sup>) and the obligations the Parties, as GEMMs, were required to meet,<sup>240</sup> 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.<sup>241</sup> 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-MS Infringement was committed intentionally. In the alternative, for the same reasons, the CMA has found that the DB-MS Infringement was committed at least negligently.

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<sup>234</sup> 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).

<sup>235</sup> Penalty Guidance, paragraph 2.1.

<sup>236</sup> Penalty Guidance, paragraph 1.2.

<sup>237</sup> Penalty Guidance, paragraph 1.4.

<sup>238</sup> 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]).

<sup>239</sup> In particular, see paragraph 7.52 in relation to each Party's intentional contribution to the DB-MS Conduct and its single objective, and also each Party's awareness of the other's contribution to the DB-MS Conduct in pursuit of the single objective.

<sup>240</sup> See Chapter 4. Specifically, the DMO guidebooks in force during the DB-MS 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).

<sup>241</sup> 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 Morgan Stanley'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.<sup>242</sup>

#### *Determination of Morgan Stanley's relevant turnover*

- 8.13 The CMA has calculated Morgan Stanley's penalty using an income-based, rather than turnover-based, approach.<sup>243</sup>
- 8.14 Morgan Stanley 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),<sup>244</sup> which the CMA used to determine the categories of income that it considers appropriate to include within Morgan Stanley's relevant turnover.<sup>245</sup>
- 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).<sup>246</sup>

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<sup>242</sup> Penalty Guidance, paragraphs 2.2 to 2.13.

<sup>243</sup> 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.

<sup>244</sup> 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). Morgan Stanley 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 (that is, the products falling within the Relevant Market) from its archived reporting systems (see, for example, B-URN-000502017; and B-URN-000502351, in particular, pages 1 to 6 and 10). Morgan Stanley was able to distinguish between income from gilts and income from gilt-related derivatives, but did not book trades as gilt-related or non-gilt-related, so could not provide revenue figures specifically for gilt-related derivatives (see B-URN-000502351), so the CMA has only included gilt income in its determination of Morgan Stanley's relevant turnover.

<sup>245</sup> 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 Morgan Stanley (and other GEMMs) were remunerated for their activities within the Relevant Market (see, for example, B-URN-000502351, page 7). Given the limitations on the information available and the ways in which revenues were generated in the Relevant Market, there is no perfectly accurate way to reflect the true scale of Morgan Stanley's activities in the Relevant Market at Step 1 in this case.

<sup>246</sup> Penalty Guidance, paragraph 2.10.

However, to reduce the distortive effect of gains and losses year on year,<sup>247</sup> the CMA has taken an average of Morgan Stanley's relevant turnover across:<sup>248</sup>

- (a) the 'last business year', ie the financial year ending **31 December 2010**; and
- (b) any other financial year falling (in whole or in part) within the DB-MS Relevant Period, ie the financial years ending **31 December 2009** and **31 December 2011**.

8.16 The CMA has therefore determined that Morgan Stanley's relevant turnover was **£25,364,519**.<sup>249</sup>

#### *Assessment of seriousness of the DB-MS Infringement and the need for general deterrence*

- 8.17 The CMA considers that the DB-MS Infringement (as set out in Chapter 7) is, in terms of the Penalty Guidance, among '*the most serious types of infringement*', as it was '*likely by [its] very nature to harm competition most*' and that it would be appropriate to apply a starting point of **23%**.<sup>250</sup>
- 8.18 In making this assessment, the CMA has considered the relevant circumstances of the case,<sup>251</sup> including the nature of the product,<sup>252</sup> the structure of the market,<sup>253</sup>

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<sup>247</sup> Reported income in relation to gilts and gilt asset swaps may also reflect external factors, which may vary considerably from year to year (eg gains and losses from holding assets and liabilities (see, for example, B-URN-000502351, pages 3 to 4)). A snapshot of one year's income therefore may not accurately reflect the true scale of an undertaking's activities in the Relevant Market in that financial year (for example, Morgan Stanley reported negative income from gilt trading activities in the financial year ending 31 December 2009, despite actively participating in the markets covered by that desk, including in relation to gilts and gilt asset swaps, throughout the DB-MS Relevant Period (see B-URN-000502351) and Morgan Stanley's market share (by volume) was significantly more stable than is implied by its income data and relevant turnover (CMA calculations based on B-URN-000501386, see footnote 253)).

<sup>248</sup> The CMA has taken into account the information provided by Morgan Stanley in considering whether the use of an average of multiple years will better reflect the true scale of trading activity (see B-URN-000502351). Although there is no certainty that the fluctuations caused by external factors will in practice average out within the DB-MS Relevant Period, the CMA considers that the use of averaging is appropriate in seeking to reduce the variability in income, and therefore provides a relevant turnover figure which more closely reflects the true scale of activity.

<sup>249</sup> Based on the sum of the figures taken from rows 1 to 4 of the table in Question 1 of B-URN-000502351 for each of 2009, 2010 and 2011 (£(8.8) million, £16.9 million and £68 million respectively, converted from USD to GBP at prevailing exchange rates). Although negative income cannot reflect the true scale of Morgan Stanley's activities in the Relevant Market, in the absence of more precise information, the CMA has included negative income figures in its calculation for the purposes of determining relevant turnover at Step 1. This approach excludes certain gilt asset swap income which fell within the Relevant Market (see footnote 244).

<sup>250</sup> Penalty Guidance, paragraph 2.5; see also paragraphs 2.3 to 2.9.

<sup>251</sup> Penalty Guidance, paragraph 2.7.

<sup>252</sup> ie gilts and gilt asset swaps, which were interrelated to gilts (see footnote 39), which were issued as part of the UK government's debt management policy.

<sup>253</sup> Within which GEMMs (including Morgan Stanley) were each other's closest competitors for gilts and gilt asset swaps (see footnote 99) 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, Morgan Stanley traded gilt volumes of over £[>] billion (the CMA has calculated Morgan Stanley'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 Morgan Stanley for gilts, based on GEMMs' own submissions of turnover data to the DMO (see B-URN-000501382, questions 14, 15 and 16)).

the market coverage of the infringement,<sup>254</sup> and the potential harm from the DB-MS Infringement for competitors and consumers, whether directly or indirectly.<sup>255</sup>

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

8.20 Therefore, at the end of Step 1 Morgan Stanley's penalty is **£5,833,839**.

### **Step 2 – adjustment for duration**

8.21 The CMA has found that the duration of the DB-MS Infringement was less than one year (see paragraph 7.53) and there are no exceptional circumstances to warrant decreasing the starting point. The CMA has therefore treated the duration of the DB-MS Infringement as a full year (ie the figure reached at the end of Step 1 will be **multiplied by 1**).<sup>257</sup>

8.22 Morgan Stanley's penalty at the end of Step 2 is therefore **£5,833,839**.

### **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.<sup>258</sup> 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.<sup>259</sup>

8.24 In light of Morgan Stanley's cooperation,<sup>260</sup> the CMA has applied a reduction of 5% at Step 3. Morgan Stanley's penalty at the end of Step 3 is therefore **£5,542,147**.

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

<sup>255</sup> See Chapter 7.

<sup>256</sup> Penalty Guidance, paragraph 2.8.

<sup>257</sup> Penalty Guidance, paragraph 2.14.

<sup>258</sup> Penalty Guidance, paragraphs 2.15 to 2.17.

<sup>259</sup> 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).

<sup>260</sup> During the investigation, Morgan Stanley agreed to a streamlined access to file process, provided the CMA with a limited amount of information and documents on a voluntary basis at an early stage of the investigation, and facilitated the separate legal representation for a former employee, [MS Trader], enabling the CMA to progress the investigation more effectively than would otherwise have been possible.

#### 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.<sup>261</sup>
- 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.<sup>262</sup>
- 8.27 In relation to Morgan Stanley's specific size and financial position,<sup>263</sup> Morgan Stanley's total worldwide revenue was US\$54.1 billion (£43.5 billion) in the financial year ending 31 December 2023; and average worldwide revenue was US\$55.9 billion (£43.5 billion) for the three-year period ending 31 December 2023.<sup>264</sup>
- 8.28 Over 99% of Morgan Stanley's worldwide revenue is therefore generated outside the Relevant Market. Moreover, a penalty after Step 3 of £5,542,147 accounts for approximately 0.01% of Morgan Stanley's total worldwide revenue for the financial year ending 31 December 2023 and approximately 0.01% of its three-year average revenue.
- 8.29 Morgan Stanley'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 profit<sup>265</sup> and it is relatively small compared to Morgan Stanley's total traded gilt volumes.<sup>266</sup> A more significant adjustment is therefore necessary at Step 4.<sup>267</sup>
- 8.30 The CMA has also concluded that other specific features of this case are relevant circumstances to be taken into account,<sup>268</sup> including:

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<sup>261</sup> 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.

<sup>262</sup> 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).

<sup>263</sup> 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).

<sup>264</sup> The CMA has taken the undertaking's total worldwide turnover as the primary indicator of the size of the undertaking and its economic power (Penalty Guidance, paragraph 2.20). Unless otherwise stated, the CMA has based its assessment on publicly available financial information sourced from Morgan Stanley's consolidated financial statements for the financial year ending 31 December 2023 (source: [Morgan Stanley 2023 10-K](#)). Figures have been converted from US dollars into sterling using annual average exchange rates (source: Office of National Statistics). Averages have been calculated over the three-year period ending 31 December 2023.

<sup>265</sup> See paragraph 8.13.

<sup>266</sup> Which were over £[3<] billion for Morgan Stanley 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 253). The CMA further notes that, as set out in footnote 244, 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 Morgan Stanley's activities in the Relevant Market.

<sup>267</sup> Penalty Guidance, paragraph 2.23.

<sup>268</sup> Penalty Guidance, paragraph 2.19.

- (a) the potential harm from the DB-MS Infringement;<sup>269</sup> and
- (b) the length of time that has passed since the end of the DB-MS Infringement and the extensive compliance (and related monitoring and surveillance) measures that Morgan Stanley has introduced since then (some of which were in place well before the start of the CMA's investigation), which are highly unusual in their extent and followed significant changes in the regulatory and governance environment in the financial services sector that have occurred since the DB-MS Infringement.<sup>270</sup>

8.31 Notwithstanding Morgan Stanley's current compliance measures, the CMA has concluded that an uplift for specific deterrence is necessary 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 Morgan Stanley'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 Morgan Stanley 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]*',<sup>271</sup> the CMA has increased Morgan Stanley's penalty after Step 4 to **£26,000,000** for the DB-MS Infringement.<sup>272</sup>

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<sup>269</sup> Including the number and range of DB-MS Specific Dates (see Chapter 7) and Morgan Stanley's share of the total volume traded by GEMMs (see footnote 266).

<sup>270</sup> See, for example, B-URN-000504701, provided in response to a Request for Information (B-URN-000504645).

<sup>271</sup> Penalty Guidance, paragraph 2.19.

<sup>272</sup> The CMA acknowledges that Morgan Stanley'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 Morgan Stanley'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 0.4%) and its average worldwide profit after tax over the last three financial years (approximately 0.3%).

### **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.<sup>273</sup> 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.<sup>274</sup>
- 8.34 The CMA considers that a penalty for Morgan Stanley of £26,000,000 for the DB-MS Infringement is appropriate and proportionate in the round.<sup>275</sup> In making this assessment, the CMA has had regard to the following:<sup>276</sup>
- (a) Morgan Stanley’s specific size and financial position, as set out in paragraphs 8.27 and 8.28 and footnote 272;
  - (b) the factors set out in paragraph 8.30(a); and
  - (c) the extensive compliance (and related monitoring and surveillance) measures that Morgan Stanley has put in place since the end of the DB-MS Infringement (see paragraphs 8.30(b) and 8.31).
- 8.35 No adjustment is required as the penalty does not exceed 10% of Morgan Stanley’s worldwide revenue in the financial year ending 31 December 2023.
- 8.36 As a result of the above, after Step 5 Morgan Stanley’s penalty for the DB-MS 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.<sup>277</sup>
- 8.38 As set out in paragraph 8.6, Morgan Stanley has admitted its involvement in, and liability for, the DB-MS Infringement as set out in this Decision. In light of that admission, and Morgan Stanley’s agreement to cooperate in the process for concluding the investigation, the CMA has reduced Morgan Stanley’s financial

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<sup>273</sup> 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).

<sup>274</sup> Penalty Guidance, paragraph 2.25 and *FP McCann Limited v CMA* [2020] CAT 28 at [347].

<sup>275</sup> On the same day as this Decision is adopted, the CMA has also adopted a decision imposing a financial penalty on Morgan Stanley for its involvement in a separate infringement between it and Citi (see Chapter 2). In that separate decision, the CMA has considered the proportionality of the total penalties being imposed on Morgan Stanley in relation to the DB-MS Infringement and the separate infringement involving Morgan Stanley and Citi. It is therefore not necessary to conduct the proportionality assessment in this Decision.

<sup>276</sup> Penalty Guidance, paragraph 2.26.

<sup>277</sup> Penalty Guidance, paragraphs 2.30 and 2.31.

penalty by **10%** in relation to the DB-MS Infringement (provided that it complies with the continuing requirements of the settlement reached with the CMA<sup>278</sup>).

### **Penalties imposed by the CMA**

- 8.39 The CMA therefore requires Morgan Stanley to pay a penalty of **£23,400,000** for the DB-MS Infringement.
- 8.40 The penalty will become due to the CMA on Tuesday, 22 April 2025<sup>279</sup> and must be paid to the CMA by close of banking business on that date.<sup>280</sup>

**Juliette Enser**

**Acting Executive Director, Competition Enforcement**

**for and on behalf of the Competition and Markets Authority**

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<sup>278</sup> See paragraph 2.5.

<sup>279</sup> The next working day two calendar months from the expected date of receipt of this Decision.

<sup>280</sup> Details on how to pay are set out in the letter accompanying this Decision.

## [ANNEXES] CONTENTS

Annex A: Glossary .....	2
Annex B: Chat Evidence .....	4
Introduction.....	4
DB-MS, A-URN-007357, 28 October 2009.....	4
DB-MS, A-URN-007397, 30 November 2009 .....	11
DB-MS, A-URN-007530, 17 March 2010 .....	13
DB-MS, A-URN-000235, 18 May 2010.....	16
DB-MS, A-URN-000239, 30 June 2010.....	19
DB-MS, A-URN-007860, 9 March 2011 .....	22
DB-MS, A-URN-007868, 15 March 2011 .....	24
DB-MS, A-URN-007955, 24 June 2011.....	26



## 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
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-MS Communications	has the meaning given to it in paragraph 7.2 of this Decision
DB-MS Conduct	has the meaning given to it in paragraph 7.7 of this Decision
DB-MS Gilt Buy-Back Auction Communication	has the meaning given to it in paragraph 7.14 of this Decision
DB-MS Infringement	the infringement in which Deutsche Bank and Morgan Stanley participated, as detailed in paragraph 7.2 of this Decision
DB-MS Relevant Period	the period from 28 October 2009 to 24 June 2011
DB-MS Specific Dates	has the meaning given to it in paragraph 7.2 of this Decision
DB-MS Trading Communications	has the meaning given to it in paragraph 7.12 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 asset swap box	a trade consisting of the purchase of one specific gilt asset swap and the sale of another gilt asset swap
gilt buy-back auction	an auction conducted by the Bank of England to buy-back gilts

Term	Definition
Gilt Buy-Back Auction Conduct	has the meaning given to it in paragraph 7.7(b) of this Decision
gilt future	a derivative contract to buy or sell a gilt on a specified date at a predetermined price
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
offer / offering	submitting an offer in a gilt buy-back auction
offer gilt	a specific gilt within the relevant maturity range for a gilt buy-back auction, which can therefore be, or is, the subject of an offer
offer price	a price offered in a gilt buy-back auction for selling that volume of that gilt
offer volume	a specific volume offered in a gilt buy-back auction for an offer gilt
Party	has the meaning given to it in paragraph 1.1 of this Decision
Party to the CMA's Investigation	Each of Deutsche Bank, Morgan Stanley, Citi, HSBC 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
Requests for Information	an informal information request or a notice issued under section 26 of the Act
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(a) of this Decision
trading of gilt asset swaps	individually and collectively, the outright purchase or sale of a gilt asset swap (either a single trade or in two separate legs) and a gilt asset swap box
trading of gilts	individually and collectively, 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-MS Communications that the CMA relies on to evidence the DB-MS Conduct (as relevant to the DB-MS Infringement) as summarised in paragraphs 7.12 and 7.14. It consists of Bloomberg chats between Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) that took place in a persistent<sup>1</sup> bilateral chatroom titled '[X<]' which was opened on [X<] October 2009 and closed on [X<] April 2014.<sup>2</sup> The relevant chats are referred to by the unique reference numbers (ie URNs) assigned to them by the CMA.<sup>3</sup>
- 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-MS Infringement.<sup>4</sup>

### DB-MS, A-URN-007357,<sup>5</sup> 28 October 2009

#### Summary

- B.3 On 28 October 2009, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) engaged in the following conduct:
- (a) In relation to **Trading Conduct**:
- (i) In response to Morgan Stanley ([MS Trader]) asking Deutsche Bank ([DB Trader]) for his views on the current trading price of the gilt switch consisting of the 2.75% gilt and the 4.75% 2015 gilt, Deutsche Bank ([DB Trader]) disclosed his **assessment of the trading price**, noting

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

<sup>2</sup> The dates and titles of the Bloomberg chatroom is 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-MS Relevant Period.

<sup>3</sup> 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](http://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/>).

<sup>4</sup> Other exchanges between Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) which are set out in this Annex B are included for context.

<sup>5</sup> A-URN-007357. Morgan Stanley also produced a chat on this date between [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley), A-URN-000777.

that the trading price was correct and that it would go to 5 or 'maybe' 7 basis points (at 08:40:38 to 10:59:03).

- (ii) Later that same day, Deutsche Bank ([DB Trader]) disclosed his **current mid-price** for a 2.75% 2015 gilt asset swap (at 13:39:04) and his **current mid-price** for the 2.25% 2014 gilt asset swap (at 13:39:25).
- (iii) Morgan Stanley ([MS Trader]) later disclosed his **current mid-price** for the 2.75% 2015 gilt asset swap (at 14:34:31).

(b) In relation to **Gilt Buy-Back Auction Conduct**:

- (i) In response to Deutsche Bank ([DB Trader]) asking Morgan Stanley ([MS Trader]) the price at which he was going to offer the gilts, Morgan Stanley ([MS Trader]) disclosed the **parameters of his offer price** for gilts in the gilt buy-back auction (14:43:03).

## Trading Conduct

### **Disclosure of assessment of the trading price of a gilt switch and of current mid-prices (08:40:38 to 14:34:35)**

- B.4 At 08:40:38, Morgan Stanley ([MS Trader]) started a discussion with Deutsche Bank ([DB Trader]) on the price of the new 2015 gilt, 2.75% 2015,<sup>6</sup> stating *'these new 15s look cheap'*.
- B.5 Following some discussion, at 09:04:50, Morgan Stanley ([MS Trader]) asked Deutsche Bank ([DB Trader]) if he believed that the current price of the gilt switch consisting of the 2.75% 2015 gilt and the 4.75% 2015 gilt (expressed as the spread between the two gilts in basis points) was wrong (*'yes, so then 15s15s is wrong?'*).<sup>7</sup>
- B.6 In response, at 09:05:34, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **assessment of the trading price** of the gilt switch trade, namely that it was correct, because of his view that the price of one component of that gilt switch, the 4.75% 2015 gilt, would decrease in price (***'no cos everyone is short of 4t15 and waiting for it to go down'***) and that it would go to 5 or 'maybe' 7 basis points (***'15s 15s eventually will go to +5' 'maybe +7'***).

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<sup>6</sup> This was a new gilt issued on 3 November 2009, the 2.75% 2015 gilt (B-URN-000500738, UK DMO Gilt Market Issuance Calendar 2009-2010).

<sup>7</sup> B-URN-000502065, page 154 and B-URN-000502072, pages 187 to 190. [MS Trader] (Morgan Stanley) explained in interview in relation to '15s15s': *'That's comparing 4t15, sorry the 4 and three quarter 15 bond I think into the 2t15 bond. So they're very similar maturities. We've got a new bond coming and I suppose we're talking about um, where, if the bond is cheap, you're supposed to buy it, er, how are you supposed to buy it, probably... or not.'* (B-URN-000502072, page 188). This is supported by [DB Trader] (Deutsche Bank)'s evidence in interview where he said: *'And then he [Morgan Stanley ([MS Trader])] says -- and then it goes on to the highlighted bit, where he said "yes, so then 15s 15s is wrong?" Now, he is obviously referencing -- he's looking at the new bond versus the old bond.'* (B-URN-000502065, page 154).

*'but will remain cheap for a while while they build up the size' at 09:05:50 to 09:06:26).*<sup>8</sup>

- B.7 At 09:06:35, Morgan Stanley ([MS Trader]) stated that he thought Deutsche Bank ([DB Trader]) may have been correct (*'maybe you're right'*). [DB Trader] (Deutsche Bank) explained in interview in relation to this statement: *'So [Morgan Stanley ([MS Trader])] was mainly a swap market maker, so I suspect the fact that I pointed out some things earlier on, then maybe having said they "were cheap" and I disagreed with him, maybe he's changed his mind.'*<sup>9</sup>
- B.8 Almost two hours later, at 10:58:41, Morgan Stanley ([MS Trader]) stated that he had executed the gilt switch by selling some 2.75% 2015 gilts against the 4.75% 2015 gilts (*'well i sold some 2t15s against 4ts'*).<sup>10</sup>
- B.9 In reaction to that, at 10:58:53, Deutsche Bank ([DB Trader]) stated that he thought the gilts comprising the gilt switch trade were cheap (*'i thought they were cheap'*), which corresponded to Morgan Stanley ([MS Trader])'s earlier disclosure that he thought they looked cheap (*'these new 15s look cheap'* at 08:40:38).<sup>11</sup>
- B.10 At 10:59:03, Morgan Stanley ([MS Trader]) indicated that he had changed his mind (*'you convinced me'*) based on Deutsche Bank ([DB Trader])'s assessment of the trading price of the gilt switch trade that he had disclosed earlier in the chat. [MS Trader] (Morgan Stanley) said in interview in relation to this disclosure (*'you convinced me'*) that *'...in effect I'm saying, you know, I -- I was convinced by his analysis that the new bonds will continue to get cheaper versus the olds'*.<sup>12</sup>
- B.11 Later on the same day, between 13:37:47 and 13:39:25, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **current mid-price** for the 2.75% 2015 gilt asset swap (*'these 2t15 really aren't that cheap on asw accoridng*

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<sup>8</sup> [DB Trader] (Deutsche Bank) said in interview in relation to this disclosure that here he was expressing a view on the yield difference between the two 2015 gilts. [DB Trader] (Deutsche Bank) said: *'So you've got two bonds and they both have different yields, and the "plus 5" would be the yield differential between the two bonds. So plus 5 would probably mean that the 2T15 yield 5 basis points more than the 4T15'* (B-URN-000502065, page 156). This is consistent with [MS Trader] (Morgan Stanley)'s evidence in interview where he said *'I think he's saying that the yi -- that he -- that he thinks the yield spread between those two bonds will go to 5 basis points, maybe 7 basis points'* (B-URN-000502072, page 190).

<sup>9</sup> B-URN-000502065, page 157.

<sup>10</sup> [MS Trader] (Morgan Stanley)'s and [DB Trader] (Deutsche Bank)'s evidence in interview confirmed that this related to the same gilt switch consisting of the 2.75% 2015 gilt and the 4.75% 2015 gilt that had been discussed by them earlier in the chat (B-URN-000502072, pages 191 to 193 and B-URN-000502065, pages 159 to 160).

<sup>11</sup> [DB Trader] (Deutsche Bank) explained in interview that this was a sarcastic comment to Morgan Stanley ([MS Trader]) based on his statements earlier in the chat when he had said the gilts looked cheap, saying that *'So sounds like he -- sounds like he's sold some -- some of the 2T15, 4T15. My reply "thought they were cheap", is obviously a sarcastic comment about him -- reference to the start of the conversation when he said "they look cheap."* (B-URN-000502065, page 160).

<sup>12</sup> B-URN-000502072, page 191. [DB Trader]'s (Deutsche Bank) evidence in interview confirmed this where he said: *'And then he said: "you convinced me", so my explanation afterwards, obviously changed his opinion.'* (B-URN-000502065, page 160).

to my pricer' **'have them at 40.75'**) and his **current mid-price** for the 2.25% 2014 gilt asset swap (**'with 2q14s at 44 surely they are better'**).<sup>13</sup>

- B.12 About one hour later, at 14:34:31, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) his **current mid-price** for the 2.75% 2015 gilt asset swap (**'2t15 i have at 39'**).<sup>14</sup> At 14:34:35, Morgan Stanley ([MS Trader]) also noted that there were interested buyers around this price level of 39 basis points (ie his current mid-price) (**'byes around there'**).<sup>15</sup>

**Chat extract table – 08:40:38 to 14:34:35**

Timestamp (GMT)	Party (Key Individual) <b>Extract</b>
08:40:38	<b>Morgan Stanley ([MS Trader])</b> <i>these new 15s look cheap</i>
08:52:13 to 09:04:38:	[...]
09:04:50	<b>Morgan Stanley ([MS Trader])</b> <i>yes, so then 15s15s is wrong?</i>
09:05:34 09:05:50 09:06:09 09:06:26	<b>Deutsche Bank ([DB Trader])</b> <i>no cos everyone is short of 4t15 and waiting for it to go down</i> <i>15s 15s eventually will go to +5</i> <i>maybe +7</i> <i>but will remain cheap for a while while they build up the size</i>
09:06:35	<b>Morgan Stanley ([MS Trader])</b> <i>maybe you're right</i>
09:08:57 to 09:15:18	[...]
10:58:41	<b>Morgan Stanley ([MS Trader])</b> <i>well i sold some 2t15s against 4ts</i>
10:58:53	<b>Deutsche Bank ([DB Trader])</b> <i>i thought they were cheap</i>
10:59:03	<b>Morgan Stanley ([MS Trader])</b> <i>you convinced me</i>
10:59:12 to 11:00:49	[...]

<sup>13</sup> [DB Trader] (Deutsche Bank) said in interview in relation to this disclosure that the reference was to an internal price level for a gilt asset swap, generated by his pricer, expressed in basis points: *'The pricer here will be a reference to um the pricing model...'* (B-URN-000502065, page 163). [MS Trader] (Morgan Stanley)'s evidence in interview confirmed that these disclosures related to Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) discussing prices for the 2.75% 2015 gilt asset swap. [MS Trader] (Morgan Stanley) said in interview, *'We're talking about the -- where we see the asset swap levels of the gilt.'* (B-URN-000502072, page 193).

<sup>14</sup> [MS Trader] (Morgan Stanley) said in interview in relation to this disclosure that this was his price for the gilt asset swap consisting of the 2t15 gilt. [MS Trader] (Morgan Stanley) said that he was *'Um, looking at where I have the bond versus the interest rate swap'*, further explaining that *'That's my view on the mid-price, so I would have taken a, a swap to that, that matched maturity date. And fed in whatever bond I had, price I was feeding in at the time. So whilst the yield on the bond is this, the swap yield is this, that gives me the "39".'* (B-URN-000502072, pages 195 to 197). [DB Trader] (Deutsche Bank)'s evidence in interview was that he and Morgan Stanley ([MS Trader]) were referring to levels for the same gilt asset swap, one hour apart (B-URN-000502065, pages 162 to 163).

<sup>15</sup> [DB Trader] (Deutsche Bank) said in interview that *'byes'* was likely to be a typo for *'buyers'* (B-URN-000502065, page 163). This is consistent with [MS Trader] (Morgan Stanley)'s evidence in interview where he said that *'byes around there'* meant *'I think that there's buying around that 39 level, yes'* (B-URN-000502072, page 196).

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
13:37:47 13:39:04 13:39:25	<b>Deutsche Bank ([DB Trader])</b> <i>these 2t15 really aren't that cheap on asw accoridng to my pricer</i> <b>have them at 40.75</b> <b>with 2q14s at 44 surely they are better</b>
14:34:31 14:34:35	<b>Morgan Stanley ([MS Trader])</b> <b>2t15 i have at 39</b> <i>byes around there</i>

## Gilt Buy-Back Auction Conduct

### Disclosure of a parameter of an offer price (14:36:17 to 14:54:05)

- B.13 From 14:36:17 to 14:36:20, Morgan Stanley ([MS Trader]) stated that he would offer some of his favourite gilt in the gilt buy-back auction for three- to ten-year gilts taking place that day<sup>16</sup> (*'think I will offer some' 'of my favorite bond'*). In reaction to this, at 14:36:54, Deutsche Bank ([DB Trader]) referenced the 4.75% 2015 gilt (*'4t15'*), which Morgan Stanley ([MS Trader]) confirmed at 14:37:26 was his offer gilt (*'u know it'*).<sup>17</sup>
- B.14 Shortly afterwards, at 14:42:44 to 14:42:49, which was about two minutes before the end of the gilt buy-back auction, Deutsche Bank ([DB Trader]) asked Morgan Stanley ([MS Trader]) (*'where do you you sell them?' 'below the figure?'*).<sup>18</sup> In response, at 14:43:03, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) his view on the price the Bank of England would pay for the 4.75% 2015 gilt in the gilt buy-back auction (*'i think they go at mids'*), which the CMA infers was **the parameter of his offer price** in the gilt buy-back auction, which he believed to be the market mid-price.
- B.15 [MS Trader] (Morgan Stanley) explained in interview that in this part of the chat *'He's, he's [Deutsche Bank ([DB Trader])] asking me where I think, er, the price is - er, that, the 4t15 will be sold. Um, then I replied, "I think they go at mids". I, I don't know what mids are at the time.'*<sup>19</sup> He also explained that this was *'... in a general comment I think the market, um, will sell the APF at mids'*.<sup>20</sup> He added that his

<sup>16</sup> B-URN-000500757, tab 28OCT09, which indicates that the Bank of England purchased gilts in the gilt buy-back auction taking place that day with a maturity of three to ten years.

<sup>17</sup> [DB Trader] (Deutsche Bank)'s and [MS Trader] (Morgan Stanley)'s evidence in interview was that these communications related to the Bank of England's gilt buy-back auction. [MS Trader] (Morgan Stanley) said that *'it looks like I've indicated that I'm probably going to offer some 4t15 bond in the buy back'*. (B-URN-000502072, page 198). [DB Trader] (Deutsche Bank) explained that this related to the gilt buy-back auction because of the time of day being close to the end of the gilt buy-back auction, and also because earlier in the chat (at 14:34:42), [MS Trader] (Morgan Stanley) had referred to the gilt buy-back auction (B-URN-000502065, pages 169 to 170).

<sup>18</sup> [MS Trader] (Morgan Stanley) and [DB Trader] (Deutsche Bank) explained in interview that *'the figure'* was the nearest whole number, ie the price without the decimals (B-URN-000502072, page 200 and B-URN-000502065, pages 166 to 168).

<sup>19</sup> B-URN-000502072, page 199.

<sup>20</sup> B-URN-000502072, page 199.



reference to ‘*mids*’ was to an available mid-price and that there was a [electronic trading platform] composite of everyone’s streaming prices and a DMO page with mid-prices on it at the time.<sup>21</sup>

- B.16 [DB Trader] (Deutsche Bank) said in interview that he understood ‘*mids*’ to be Morgan Stanley ([MS Trader])’s view on the price that the Bank of England would pay for gilts and that ‘*he [Morgan Stanley ([MS Trader])] thinks that the highest accepted price that the Bank of England pay, will be mid-market or, you know. So in the context of a buyback, there would be plenty of willing sellers*’. [DB Trader] (Deutsche Bank) added that the mid-price referred to here was the DMO mid-price, which was the mid-price used by the Bank of England in determining what gilts they bought in the gilt buy-back auction.<sup>22</sup>
- B.17 The CMA has inferred from the evidence set out above that Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) the **parameter of his offer price** by disclosing his view on the price the Bank of England would pay for the 4.75% 2015 gilt in the gilt buy-back auction.
- B.18 At 14:51:53, after the gilt buy-back auction had closed,<sup>23</sup> Morgan Stanley ([MS Trader]) confirmed to Deutsche Bank ([DB Trader]) that he had ‘*offered!*’ in the gilt buy-back auction. At 14:53:36 to 14:54:05, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) disclosed to each other the volume of the 2015 gilt that they had each sold to the Bank of England in the gilt buy-back auction.

**Chat extract table – 14:36:17 to 14:54:05**

Timestamp (GMT)	Party (Key Individual) <b>Extract</b>
14:36:17 14:36:20	<b>Morgan Stanley ([MS Trader])</b> <i>think i will offer some of my favorite bond</i>
14:36:54	<b>Deutsche Bank ([DB Trader])</b> <i>4t15</i>
14:37:26	<b>Morgan Stanley ([MS Trader])</b> <i>u know it</i>
14:42:44 14:42:49	<b>Deutsche Bank ([DB Trader])</b> <i>where do you you sell them? below the figure?</i>
14:43:03	<b>Morgan Stanley ([MS Trader])</b> <i>i think they go at mids</i>
14:47:10 14:47:28	<b>Deutsche Bank ([DB Trader])</b> <i>maybe depends how many shorts people have to go</i>
14:51:53	<b>Morgan Stanley ([MS Trader])</b>

<sup>21</sup> B-URN-000502072, page 199.

<sup>22</sup> B-URN-000502065, pages 168 and 170 to 171.

<sup>23</sup> B-URN-000502065, page 169.



Timestamp (GMT)	Party (Key Individual) <i><b>Extract</b></i>
	<i>offered!</i>
14:53:36	<b>Deutsche Bank ([DB Trader])</b> <i>yes ... just got 50m 15s out</i>
14:54:05	<b>Morgan Stanley ([MS Trader])</b> <i>100 here</i>

## Summary

- B.19 On 30 November 2009, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Trading Conduct**: in response to Morgan Stanley ([MS Trader])'s question regarding the trading price to quote a client for a gilt asset swap box that included the 2.75% 2015 and 4% 2016 gilts, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **assessment of the trading price** that Morgan Stanley ([MS Trader]) should adopt in relation to the gilt asset swap box.
- B.20 The chat took place the day before a gilt auction for the 2.75% 2015 gilt on 1 December 2009.<sup>25</sup>

## Disclosure of assessment of the trading price to adopt (15:00:35 to 15:03:09)

- B.21 At 15:00:35, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) that he was *'getting asked 2t15 v 16s?'* Deutsche Bank ([DB Trader]) asked if this was a gilt asset swap box (*'asw?'* at 15:01:21), which Morgan Stanley ([MS Trader]) then confirmed (*'ya'* at 15:01:21).
- B.22 [DB Trader] (Deutsche Bank) confirmed in interview that they were discussing a *'gilt asset swap switch'* consisting of the 2.75% 2015 gilt asset swap and the 4% 2016 gilt asset swap, which was also known as a *'gilt asset swap box'* or a *'box trade'*.<sup>26</sup>
- B.23 [MS Trader] (Morgan Stanley) said in interview that in this exchange he was *'probably [...] canvassing'* Deutsche Bank ([DB Trader])'s opinion *'about those bonds'*, ie the gilt components of the gilt asset swap box, namely the 4% 2016 and 2.75% 2015 gilts, as he would not have been following the price difference between those gilts closely himself.<sup>27</sup> [MS Trader] (Morgan Stanley) said further in interview that *'these kind of asset swap boxes... were very hard to price and...you prefer...probably to be defensive because they were for me a...harder thing to probably work out of over time.... and so because the auction bond's well bid, I bid the auction bond and see what happens, I guess, you know. But... I am trying to*

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<sup>24</sup> A-URN-007397. Morgan Stanley also produced a chat on this date between [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley), A-URN-000831.

<sup>25</sup> B-URN-000500738, DMO, *'Gilt Market Issuance Calendar 2009-2010'*.

<sup>26</sup> B-URN-000502070, pages 45 to 46. [MS Trader] (Morgan Stanley) confirmed in interview that the discussion related to a box trade between these two gilt asset swaps, saying that the trade related to *'Two separate asset swaps. So, someone's asking me the, the box between those two bonds'* (B-URN-000502073, page 48).

<sup>27</sup> [MS Trader] (Morgan Stanley)'s evidence in interview in relation to this communication was that *'in a way I'm ... probably, er, canvassing an opinion about those bonds and whether there's -- whether there's anything to worry about' and 'I'd been asked to make a price and I just -- I probably wouldn't have been following them. I would not have been following the, the difference between those two bonds that well. It's something that ... er, I just wouldn't have had time to follow very closely'* (B-URN-000502073, pages 47, 49 and 50).

*pick a direction where i... if I deal it doesn't -- I'm, I'm going to have some liquidity to get out of it.*<sup>28</sup> [DB Trader] (Deutsche Bank) said in interview that he understood the reason for the conversation was to give his opinion to [MS Trader] (Morgan Stanley) given that gilts were not [MS Trader] (Morgan Stanley)'s *'forte'*.<sup>29</sup>

- B.24 Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **assessment of the trading price** that Morgan Stanley ([MS Trader]) should adopt in relation to the gilt asset swap box, namely that he should bid the gilt component of the 2.75% 2015 gilt asset swap<sup>30</sup> at its mid-price (***'just bid 2t15 at mid'*** at 15:02:47).<sup>31</sup> Morgan Stanley ([MS Trader]) then confirmed that he had bid at the mid-price for the gilt component of the 2.75% 2015 gilt asset swap (*'i've done that, we'll see what happens'* at 15:03:09).<sup>32</sup>

**Chat extract table – 15:00:35 to 15:03:09**

Timestamp (UTC)	Party (Key Individual) <i>Extract</i>
15:00:35	<b>Morgan Stanley ([MS Trader])</b> <i>getting asked 2t15 v 16s?</i>
15:01:17	<b>Deutsche Bank ([DB Trader])</b> <i>asw?</i>
15:01:21	<b>Morgan Stanley ([MS Trader])</b> <i>ya</i>
15:01:33 15:01:49	<b>Deutsche Bank ([DB Trader])</b> <i>well 4 16 are offered</i> <i>i dont think at these levels you have much to worry about</i>
15:01:50 to 15:02:32	[...]
15:02:38 15:02:47	<b>Deutsche Bank ([DB Trader])</b> <i>yeah but wont tap 4 16 and 2t1 will get tapped loads of times</i> <b><i>just bid 2t15 at mid</i></b>
15:03:09	<b>Morgan Stanley ([MS Trader])</b> <i>i've done that, we'll see what happens</i>

<sup>28</sup> B-URN-000502073, page 49.

<sup>29</sup> [DB Trader] (Deutsche Bank) said in interview *'I think he's, basically, long and short of it asking my, sort of, opinion about it because, obviously, gilts -- he was mainly a swap trader, so gilts weren't his forte.'* (B-URN-000502070, page 45).

<sup>30</sup> Being a component of the gilt asset swap box under discussion.

<sup>31</sup> [DB Trader] (Deutsche Bank) summarised this chat in interview as follows: *'Um, so, you know, I've, I've said to him, "I think, you know, you're better off buying 15s here". But then I've kind of caveated it here because, at the start, I've said, "16s are well offered" at 15:01:33. But then, later, I've said, at 15:02:36: "But won't tap the 16s and 2T15 will be tapped loads of times." So, I've sort of said to him -- I've kind of said to him, "I think you can buy 15s on middle", but I've also said that the, the flow of it is that it wo... -- there won't be any supply of 16s and there will be supply of 15s, so, you're basically probably be fine, either way'* (B-URN-000502070, page 47). [DB Trader] (Deutsche Bank) also confirmed in interview that he was advising Morgan Stanley ([MS Trader]) what he thought was the easiest trade (given that the client was not showing in which direction it wished to trade) *'basically, advised him based on what -- you know, what I think the easiest would have been to be recycled. Because he is getting asked for a two-way price, getting asked to make a bid and an offer.'* (B-URN-000502070, page 46).

<sup>32</sup> [DB Trader] (Deutsche Bank) said in interview that Morgan Stanley ([MS Trader]) meant that he had *'showed a better bid for the 15s out of 16s'* (B-URN-000502070, page 47).

## Summary

B.25 On 17 March 2010, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Trading Conduct**:

- (a) In response to Morgan Stanley ([MS Trader]) asking Deutsche Bank ([DB Trader]) the price<sup>34</sup> Deutsche Bank ([DB Trader]) was charging an identified counterparty for a gilt put-through trade, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) the **current price** he was charging the identified counterparty (at 09:08:18 to 09:09:52).
- (b) Two to five minutes later, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) the **current price** he was charging to the same identified counterparty for the same gilt put through trade (at 09:11:51 to 09:14:18).

## Disclosure of current trading price (09:08:18 to 09:14:50)

B.26 At 09:08:18, Deutsche Bank ([DB Trader]) asked Morgan Stanley ([MS Trader]) to disclose the current price he was quoting to a trader at [counterparty] (*'[Trader]'*) ([counterparty] ([Trader])) for a gilt put through trade<sup>35</sup> in the 5% 2012 gilt (*'how much you charging [Trader] for the 5 12 put thro?'*).<sup>36</sup> Following this, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) discussed this enquiry from [counterparty] ([Trader]) further, in the course of which Morgan Stanley ([MS Trader]) indicated that he had not been asked to quote a price for this trade (*'haven't done anything today'* at 09:09:02), and Deutsche Bank ([DB Trader]) confirmed that he had been asked to quote a price (at 09:09:30).<sup>37</sup>

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<sup>33</sup> A-URN-007530. Morgan Stanley also produced a chat on this date between [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley), A-URN-001008.

<sup>34</sup> In the context of this chat the Key Individuals also referred to the price as a 'fee'.

<sup>35</sup> [DB Trader] (Deutsche Bank) explained in interview that a 'put through' trade was when a trader would 'buy and sell the same notional of the bond' (page 260) without incurring any risk (page 265). [DB Trader] (Deutsche Bank) also said that a 'put through' was also known as a 'wash trade' (page 265). He added that these trades were rare and were typically done by [counterparty], for accounting reasons (page 266). (B-URN-000502065, pages 260 to 267). [MS Trader] (Morgan Stanley) confirmed in interview that this trade related to the 5% 2012 gilt and that such trades were rare (B-URN-000502072, pages 236 to 240).

<sup>36</sup> [DB Trader] (Deutsche Bank) said in interview that he may have asked Morgan Stanley ([MS Trader]) about this as he was surprised that [counterparty] ([Trader]) did not trade with him on the price quoted, as this was low. [DB Trader] (Deutsche Bank) said '... I think maybe, maybe just surprised that I thought a quarter of a cent sounded like nothing. You know, like -- you know, that you couldn't possibly get it into -- you know, other than doing it at zero, you couldn't really do any lower. [...] So, I think I was more just surprised that [[counterparty] ([Trader])] didn't do it.' (B-URN-000502065, page 267).

<sup>37</sup> [DB Trader] (Deutsche Bank) said in interview, 'So like -- it looks like I'm maybe -- from the context of the thing it looks like I ... I've had a conversation with [[counterparty] ([Trader])] and showed him a price -- [...] -- for a put through. And [[counterparty] ([Trader])] it looks like he's gone to [Morgan Stanley ([MS Trader])] or, or he's gone -- I thought he'd gone to [Morgan Stanley ([MS Trader])] to ask for a price, but it turns out he hadn't gone to [Morgan Stanley ([MS Trader])] to ask for a price yet. ... And then [Morgan Stanley ([MS Trader])] showed him a ... showed him a higher price than me. It

- B.27 At 09:09:38, Morgan Stanley ([MS Trader]) asked Deutsche Bank ([DB Trader]) to disclose the price he had quoted (*'how much u charge?'*). In response, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) the **current trading price** that he was quoting to [counterparty] ([Trader]), that being a quarter of one pence, (***'0.25 tick which i think is very fair'***<sup>38</sup> at 09:09:52).<sup>39</sup>
- B.28 A couple of minutes later, from 09:11:51, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) that he had also discussed this enquiry with [counterparty] ([Trader]) (*'just talked to him'*).<sup>40</sup>
- B.29 Morgan Stanley ([MS Trader]) later disclosed the **current price** of a 'tick', that is, one pence, he was quoting [counterparty] ([Trader]) (***'of course, told him a tick'*** 09:14:18), and that he had not told [counterparty] ([Trader]) about his conversation with Deutsche Bank ([DB Trader]) about this (*'i didn't mention we talked'* at 09:14:14).

**Chat extract table – 09:08:18 to 09:14:50**

Timestamp (GMT)	Party (Key Individual) <b>Extract</b>
09:08:18	<b>Deutsche Bank ([DB Trader])</b> <i>how much you charging [Trader] for the 5 12 put thro?</i>
09:08:48 09:08:53 09:09:02 09:09:09	<b>Morgan Stanley ([MS Trader])</b> <i>hey buddy</i> <i>if i did one?</i> <i>haven't done anything today</i> <i>or ever with him on put throughs</i>
09:09:09	<b>Deutsche Bank ([DB Trader])</b> <i>i thought he was asking you</i>
09:09:17	<b>Morgan Stanley ([MS Trader])</b> <i>naw, haven't been asked yet</i>
09:09:22	<b>Deutsche Bank ([DB Trader])</b> <i>sure he will</i>

doesn't sound like he's traded with either of us from what I can tell [...] Sounds like -- sounds like I've shown him a quarter of a tick and [Morgan Stanley ([MS Trader])] showed him a tick.' (B-URN-000502065, page 261). This is corroborated by [MS Trader] (Morgan Stanley)'s evidence in interview where he said that this related to a 'put through' and that '[Trader]'s asking for how much, would you charge, to do that' (B-URN-000502072, page 239).

<sup>38</sup> The CMA infers that '0.25 tick' refers to 0.25 pence, as [MS Trader] (Morgan Stanley) said in interview that one tick meant one pence (B-URN-000502072, pages 239 to 240). This was also confirmed by [DB Trader] (Deutsche Bank) in interview, as he said that one 'tick' was equal to one cent and explained that 'cent' was used to refer to pence in this context (B-URN-000502065, pages 262 and 181).

<sup>39</sup> [DB Trader] (Deutsche Bank) said in interview that this meant 500 million and was 'the size of the put through'. (B-URN-000502065, page 262). This is corroborated by [MS Trader] (Morgan Stanley)'s evidence in interview where he said with reference to the '500m', 'Yeah, so it'd be the size of the trade that [Trader] -- [...] the size of the put through' (B-URN-000502072, page 240).

<sup>40</sup> [MS Trader] (Morgan Stanley) said in interview that 'him' was a reference to [Trader] ([counterparty]) and that he thought this indicated that he had also been asked to provide a price for this trade ('Um, I guess he called me for a price in the -- in the put through.' (B-URN-000502072, page 242). This is corroborated by [DB Trader] (Deutsche Bank)'s evidence in interview where he said that [Trader] ([counterparty]) would 'reach out to people he knew in the street and try and find someone who would do it at a [price] level that he just deemed acceptable' (B-URN-000502065, page 268). The CMA infers that Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) were therefore competing on the price to do the trade.

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
09:09:23	<b>Morgan Stanley ([MS Trader])</b> <i>why he ask u?</i>
09:09:30	<b>Deutsche Bank ([DB Trader])</b> <i>yes</i>
09:09:38	<b>Morgan Stanley ([MS Trader])</b> <i>how much u charge?</i>
09:09:38 09:09:52	<b>Deutsche Bank ([DB Trader])</b> <i>i cant do it for flat</i> <b>0.25 tick which i think is very fair</b>
09:09:58	<b>Morgan Stanley ([MS Trader])</b> <i>yeah it is</i>
09:09:59 09:10:29 to 09:10:59	<b>Deutsche Bank ([DB Trader])</b> <i>on 500m</i> <i>[...]</i>
09:11:13 to 09:11:26	<i>[...]</i>
09:11:51 09:14:14 09:14:18	<b>Morgan Stanley ([MS Trader])</b> <i>just talked to him</i> <i>i didn't mention we talked</i> <b>of course, told him a tick</b>
09:14:50	<b>Deutsche Bank ([DB Trader])</b> <i>he told me that you were syaing same thing ... hahaha</i>

## Summary

B.30 On 18 May 2010, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Trading Conduct**:

- (a) In response to Deutsche Bank ([DB Trader])'s question on where Morgan Stanley ([MS Trader])'s current mid-price was for the 3.75% 2019 gilt asset swap (at 15:19:24 to 15:19:32), Morgan Stanley ([MS Trader]) disclosed his **current mid-price** (at 15:19:46).
- (b) Deutsche Bank ([DB Trader]) then disclosed that he had the same **current mid-price** (at 15:19:50).

## Disclosure of current mid-prices (15:19:24 to 15:23:42)

B.31 At 15:19:24 to 15:19:32, Deutsche Bank ([DB Trader]) asked Morgan Stanley ([MS Trader]) where his current mid-price was for the 3.75% 2019 gilt asset swap ('*hey mate*' '*where do you have 3t19 matched*').<sup>42</sup> [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley) each confirmed in interview that '*matched*' referred to a gilt asset swap and that Deutsche Bank ([DB Trader]) was asking for Morgan Stanley ([MS Trader])'s mid-price for that gilt asset swap.<sup>43</sup>

B.32 In response, at 15:19:46, Morgan Stanley ([MS Trader]) disclosed his **current mid-price** for that gilt asset swap ('**13.5 mid**'). At 15:19:50, Deutsche Bank ([DB Trader]) replied '**me too**', thereby disclosing that he had the same **current mid-price** of '**13.5**' for the 3.75% 2019 gilt asset swap as Morgan Stanley ([MS Trader]).<sup>44</sup>

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<sup>41</sup> A-URN-000235. Morgan Stanley also produced a chat on this date between [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley), A-URN-001140. Timestamps from the chat are recorded in GMT, which was 1 hour behind UK time on that date (BST). Therefore, 09:20:05 should be read as 10:20:05.

<sup>42</sup> [DB Trader] (Deutsche Bank)'s evidence in interview was that he initiated this exchange in order to assist him with considering his own price for this gilt asset swap in light of a price he had observed in the broker market: '*... there's a very... cheap offer in that asset swap in the broker market and I can't reconcile that with my pricer, so I have reached out to [Morgan Stanley ([MS Trader])] saying, you know, "Where do you have mid on that?" ... But I mean -- to be honest it sounds like I wasn't interested in buying them. I was just trying to understand why I had this differential*' (B-URN-000502065, pages 257 to 258). This corroborated Deutsche Bank ([DB Trader])'s statement in the chat: '*trying to work out wat happened with my pricer*' (at 15:23:00).

<sup>43</sup> B-URN-000502065, pages 257 to 258 ('*So what I'm saying in this is ... there's a very, sounds like a cheap offer in that asset swap in the broker market and I can't reconcile that with my pricer, so I have reached out to [MS Trader] saying, you know, "Where do you have mid on that?"*'). [MS Trader] (Morgan Stanley) in interview confirmed that the reference to '*matched*' was to a gilt asset swap and that Deutsche Bank ([DB Trader]) was '*asking for a mid, yeah, yeah. Where do I see mid*' (B-URN-000502072, page 228).

<sup>44</sup> [MS Trader] (Morgan Stanley) said in interview that the '*13.5 mid*' related to an '*asset swap*' and would be '*Yeah, just where I see the difference between the swap and the bond yield*' (B-URN-000502072, page 229). [DB Trader] (Deutsche Bank) confirmed in interview that each of the traders had the same mid-price – '*And he agrees with the middle*' (B-URN-000502065, page 258).

- B.33 At 15:20:13, Deutsche Bank ([DB Trader]) observed that a price was available via the broker, [broker], for the same gilt asset swap was 'cheap' ('*[broker] offer is cheap then*') in light of their current mid-prices, noting that [broker]'s bid/offer price was '14.75/15' ('*but [broker] are 14.75/15*' at 15:21:01).<sup>45</sup>
- B.34 In response, at 15:21:46, Morgan Stanley ([MS Trader]) stated that he was buying the gilt asset swap ('*taking them*') through, the CMA infers, [broker]. Morgan Stanley ([MS Trader]) then thanked Deutsche Bank ([DB Trader]) for informing him of that offer ('*was too cheap i agree thanks for letting me know*' at 15:22:40) and checked with Deutsche Bank ([DB Trader]) as to whether Deutsche Bank ([DB Trader]) wanted to trade them '*unless you wanted them*' (at 15:22:44). [MS Trader] (Morgan Stanley)'s evidence in interview was that Morgan Stanley ([MS Trader]) bought the gilt asset swap at that price through [broker] in reaction to Deutsche Bank ([DB Trader]) 'highlighting' the price to him.<sup>46</sup>

**Chat extract table – 15:19:24 to 15:23:42**

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
15:19:24 15:19:32	<b>Deutsche Bank ([DB Trader])</b> <i>hey mate</i> <i>where do you have 3t19 matched</i>
15:19:44 15:19:46	<b>Morgan Stanley ([MS Trader])</b> <i>hey</i> <b>13.5 mid</b>
15:19:50	<b>Deutsche Bank ([DB Trader])</b> <b>me too</b>
15:20:13	<b>Deutsche Bank ([DB Trader])</b> <i>[broker] offer is cheap then</i>
15:20:31 to 15:20:51	<i>[...]</i>
15:21:01	<b>Deutsche Bank ([DB Trader])</b> <i>but [broker] are 14.75/15</i>
15:21:46	<b>Morgan Stanley ([MS Trader])</b> <i>taking them</i>
15:22:19	<b>Deutsche Bank ([DB Trader])</b> <i>dont blame you</i>
15:22:40 15:22:44	<b>Morgan Stanley ([MS Trader])</b> <i>was too cheap i agree thanks for letting me know</i> <i>unless you wanted them</i>
15:22:49 to 15:22:50	<b>Deutsche Bank ([DB Trader])</b> <i>[...]</i>

<sup>45</sup> [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley) told the CMA in interview that this discussion related to a price via a broker for the 3.75% 2019 gilt asset swap, which appeared cheap (B-URN-000502065, page 257 and B-URN-000502072, pages 227 to 228). [MS Trader] (Morgan Stanley) stated that this [broker] offer was a lower price (B-URN-000502072, page 230).

<sup>46</sup> [MS Trader] (Morgan Stanley) stated in interview, '*Well, I sort of – [DB Trader] has highlighted to me something that's cheap and [...] -- I've reacted quickly and bought them*' (B-URN-000502072, page 232).



Timestamp (GMT)	Party (Key Individual) <i><b>Extract</b></i>
15:23:00 15:23:24	<i>trying to work out wat happened with my pricer you get many?</i>
15:23:42	<b>Morgan Stanley ([MS Trader])</b> <i>25 only</i>

## Summary

B.35 On 30 June 2010, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Trading Conduct**:

- (a) Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **current mid-price** for the 2.75% 2015 gilt asset swap (at 14:20:09).
- (b) In response to Morgan Stanley ([MS Trader])'s question on where Deutsche Bank ([DB Trader])'s current mid-price was for the 2.75% 2015 gilt, Deutsche Bank ([DB Trader]) disclosed his **current mid-price** (at 14:20:38).
- (c) Morgan Stanley then disclosed his **current mid-price** for the 2.75% 2015 gilt (at 14:20:50).

## Disclosure of current mid-prices (14:18:10 to 14:20:50)

B.36 At 14:18:10, Morgan Stanley ([MS Trader]) initiated a discussion in relation to the 2.75% 2015 gilt and disclosed that he was being asked to show a price for the 2.75% 2015 gilt asset swap ('*spivy accts asking*').

B.37 Following this, at 14:19:35, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) that for the 2.75% 2015 gilt asset swap he had quoted a two-way price which represented a better bid price than offer price ('... *i bid it*').<sup>48</sup> In response to a question from Deutsche Bank ([DB Trader]) ('*what you make*' at 14:19:50),<sup>49</sup> Morgan Stanley ([MS Trader]) stated that he had shown the client for the 2.75% 2015 gilt asset swap ('25/27' at 14:19:57).<sup>50</sup>

B.38 Deutsche Bank ([DB Trader]) then informed Morgan Stanley ([MS Trader]) of his view that the trading price (on the bid side) was '*neutral*'<sup>51</sup> (ie not a better bid price

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<sup>47</sup> A-URN-000239. Morgan Stanley also produced a chat on this date between [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley), A-URN-001223. Timestamps from the chat are recorded in GMT, which was 1 hour behind UK time on that date (BST). Therefore, 09:20:05 should be read as 10:20:05.

<sup>48</sup> [DB Trader] (Deutsche Bank) said in interview that by saying '*i bid it*' Morgan Stanley ([MS Trader]) was indicating that he showed a '*better*' bid price than offer price (relative to what he thought the mid-price was for this gilt asset swap) (B-URN-000502065, page 240).

<sup>49</sup> [DB Trader] (Deutsche Bank) said in interview that this question meant he was asking what price Morgan Stanley ([MS Trader]) had made on the trade (B-URN-000502065, page 239). [MS Trader] (Morgan Stanley) also confirmed this in interview when he said that this meant '*What -- "what price did you make?"*' (B-URN-000502072, page 147).

<sup>50</sup> [DB Trader] (Deutsche Bank) said in interview that these figures were '*two prices*', ie a '*bid*' and an '*offer*' price (B-URN-000502065, page 239). [MS Trader] (Morgan Stanley) also confirmed these figures were a '*bid*' and an '*ask*' price for the gilt asset swap and that this price would not have been available to other market participants via a screen or broker (B-URN-000502072, pages 151 to 152).

<sup>51</sup> [DB Trader] (Deutsche Bank) explained in interview that his comment at 14:20:05 '*that's neutr*' meant that he viewed Morgan Stanley ([MS Trader])'s price as '*neutral*' because his own mid-price for the gilt asset swap was 26 and therefore in the middle of the bid and offer prices Morgan Stanley ([MS Trader]) had quoted for the trade (B-URN-000502065, pages 239 to 240). [MS Trader] (Morgan Stanley)'s evidence in interview supports this, as he said '*He thinks -- so I, I've*

than offer price as Morgan Stanley ([MS Trader]) had thought) and he disclosed his **current mid-price** for the 2.75% 2015 gilt asset swap (*'i have a 26 mid'* at 14:20:09).<sup>52</sup>

- B.39 At 14:20:38, in response to Morgan Stanley ([MS Trader])'s question on where Deutsche Bank ([DB Trader])'s current mid-price was for the 2.75% 2015 gilt (*'where u have bond price?'* at 14:20:20),<sup>53</sup> Deutsche Bank ([DB Trader]) disclosed his **current mid-price** (*'00 with that drop on [broker]'* at 14:20:38).
- B.40 At 14:20:50, Morgan Stanley ([MS Trader]) disclosed his **current mid-price** for the same gilt (ie the 2.75% 2015 gilt), which was '98' and noted that his 2.75% 2015 gilt asset swap price must have also been slightly different to that of Deutsche Bank ([DB Trader])'s (*'i got 98, my swap must be small diff to u too'*).<sup>54</sup>
- B.41 [DB Trader] (Deutsche Bank)'s evidence in interview is that Morgan Stanley ([MS Trader]) was checking his price of the 2.75% 2015 gilt asset swap in light of Deutsche Bank ([DB Trader])'s view that Morgan Stanley ([MS Trader])'s recent trading prices of '25/27' were *'neutral'*.<sup>55</sup>

#### Chat extract table – 14:18:10 to 14:20:50

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
14:18:10	<b>Morgan Stanley ([MS Trader])</b> <i>2t15</i>
14:18:24	<b>Deutsche Bank ([DB Trader])</b> <i>yes</i>
14:18:25 to 14:18:39	<i>[...]</i>
14:18:40 14:18:44	<b>Morgan Stanley ([MS Trader])</b> <i>spivy accts asking</i> <i>[...]</i>
14:18:52 to 14:19:22	<i>[...]</i>

told him that I think I showed a better bid and I made "25/27". He's saying he has a 26 mid. So, what he's saying effectively is, I did not show a good bid, I showed a middle market price, he thinks' (B-URN-000502072, page 148).

<sup>52</sup> [DB Trader] (Deutsche Bank) said in interview that the mid-price being discussed came from his gilt asset swap pricer (B-URN-000502065, page 241). He also said 'So then I say -- I said to him "That's neutral", so at that point he thinks that some component of his asset swap is wrong, and that's why he asked me what the bond price is' (B-URN-000502065, page 245).

<sup>53</sup> [MS Trader] (Morgan Stanley) explained in interview that by asking someone 'where they had' something this was effectively asking them what their mid-price was (B-URN-000502072, pages 148 to 149).

<sup>54</sup> [MS Trader] (Morgan Stanley) said in interview that this is the mid-price for the gilt which he would have used to provide a price for the gilt asset swap, although he was uncertain of whether he would have used Morgan Stanley's internal price or based this on observed prices. [MS Trader] (Morgan Stanley) said 'he's a gilt market maker and he's got his -- he marks gilts depending on where they are in the broker screens. And he's saying that he thinks the bond mid is 00. I'm getting 98 and I'm probably taking it from my [desk], or the [electronic trading platform] composite, I'm not sure, at the time, or [electronic trading platform], I'm not -- again I'm not sure. I'm not sure what price was feeding into those at -- at the time.' (B-URN-000502072, pages 150 to 152).

<sup>55</sup> B-URN-000502065, page 245). This is consistent with [MS Trader] (Morgan Stanley)'s evidence, where he said in interview that he was asking 'Where does -- where does he [Deutsche Bank ([DB Trader])] think the middle is of the bond price [...] if he's got a 26 mid [for the gilt asset swap]' (B-URN-000502072, page 149).

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
14:19:31 14:19:35	<b>Morgan Stanley ([MS Trader])</b> <i>[...]</i> <i>[...] i bid it</i>
14:19:50	<b>Deutsche Bank ([DB Trader])</b> <i>what you make</i>
14:19:57	<b>Morgan Stanley ([MS Trader])</b> <i>25/27</i>
14:20:05 14:20:09	<b>Deutsche Bank ([DB Trader])</b> <i>thats neutr</i> <i>i have a 26 mid</i>
14:20:20	<b>Morgan Stanley ([MS Trader])</b> <i>where u have bond price?</i>
14:20:38	<b>Deutsche Bank ([DB Trader])</b> <i>00 with that drop on [broker]</i>
14:20:50	<b>Morgan Stanley ([MS Trader])</b> <i>i got 98, my swap must be small diff to u too</i>

## Summary

B.42 In a chat taking place on 9 March 2011, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Trading Conduct**:

- (a) Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **future trading price** for a 2.75% 2015 gilt asset swap (at 10:32:22).
- (b) Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) his **future trading price** for the 2% 2016 gilt asset swap (at 10:34:54).

## Disclosure of future trading price (10:32:22 to 10:34:54)

B.43 Between 10:32:22 and 10:32:45, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **future trading price**, indicating that he intended to purchase a large volume of the 2.75% 2015 gilt asset swap when the yield spread reached 33.5 basis points (*'my level to buy loads is 33.5 i 2t15' 'is [if] it gets there then i proper load up'*).<sup>57</sup> In reaction, Morgan Stanley ([MS Trader]) agreed with Deutsche Bank ([DB Trader]) that this was a good strategy (*'yeah def' that would be pretty cheap'* at 10:33:04 to 10:33:09).<sup>58</sup>

B.44 At 10:34:54, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) his **future trading price** for the 2% 2016 gilt asset swap (*'i've been trying to buy 2 16 at 27.5, got some other day, but hard to get them at moment there'*). [MS Trader] (Morgan Stanley) told the CMA that this disclosure related to the trading price at which he would be interested in buying the 2% 2016 gilt asset swap.<sup>59</sup> Both [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley) explained that the two gilt asset swaps trades being discussed were similar.<sup>60</sup>

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<sup>56</sup> A-URN-007860. Morgan Stanley also produced a chat on this date between [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley), A-URN-001498.

<sup>57</sup> [DB Trader] (Deutsche Bank) said in interview that 'is' was a typo for 'if' (B-URN-000502065, page 305). [DB Trader] (Deutsche Bank) said in interview that in this segment of the chat he was disclosing his trading strategy to 'buy lots' of the 2.75% 2015 gilt asset swap if the market reached 33.5bps. [DB Trader] (Deutsche Bank) explained his view that this related to the 2.75% 2015 gilt asset swap level, rather than the gilt itself (B-URN-000502065, pages 306 to 308). (Deutsche Bank) further explained that he knew this was a gilt asset swap rather than an outright gilt because of the way these products were traded (on the broker market) and what was a typical gilt asset swap trade at the time (B-URN-000502065, page 311). [MS Trader] (Morgan Stanley) said in interview that the product being discussed was a gilt asset swap and not the underlying gilt (B-URN-000502072, page 274).

<sup>58</sup> [MS Trader] (Morgan Stanley) said in interview that *'I don't think he's, er, going to actually properly load up. [...] I think there's a bit of bravado there'* and *'You know, he's like "If it sells off a basis point, I'm going to buy a lot". So in -- in that sense it's not an amazing comment'* (B-URN-000502072, pages 273 and 275).

<sup>59</sup> B-URN-000502072, page 278). [DB Trader] (Deutsche Bank) also confirmed in interview that this was a reference to a gilt asset swap in the five-year sector (B-URN-000502065, page 309).

<sup>60</sup> [DB Trader] (Deutsche Bank) explained in interview that the underlying gilts being referred to were different bonds but *'fundamentally the same kind of idea'* and both statements related to *'buying gilt asset swaps in the five-year sector'* (B-URN-000502065, page 309). [MS Trader] (Morgan Stanley) explained in interview that this 2% 2016 gilt asset swap and

**Chat extract table – 10:32:22 to 10:35:54**

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
10:32:22 10:32:45	<b>Deutsche Bank ([DB Trader])</b> <i>my level to buy loads is 33.5 i 2t15</i> <i>is it gets there then i proper load up</i>
10:33:04 10:33:09	<b>Morgan Stanley ([MS Trader])</b> <i>yeah def</i> <i>that would be pretty cheap</i>
10:33:41 to 10:34:53	[...]
10:34:54	<b>Morgan Stanley ([MS Trader])</b> <i>i've been trying to buy 2 16 at 27.5, got some other day, but <b>hard to get them at moment there</b></i>

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the 2.75% gilt asset swap discussed by Deutsche Bank ([DB Trader]) were both 'asset swaps in the front end' involving gilts of similar maturities which were 'definitely related instruments' although this did not 'always mean they move together' (B-URN-000502072, pages 276 to 278). When asked in interview whether he was likely to want to trade with Deutsche Bank ([DB Trader]) on either of these gilt asset swaps [MS Trader] (Morgan Stanley) said that in this case he would not because 'we're both trying to go the same direction' (B-URN-000502072, pages 286 to 287).

## DB-MS, A-URN-007868,<sup>61</sup> 15 March 2011

### Summary

B.45 On 15 March 2011, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Trading Conduct**: in response to Morgan Stanley ([MS Trader])'s request for Deutsche Bank ([DB Trader])'s view on short-end gilts, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **future trading price** for the 2.75% 2015 gilt asset swap (at 10:57:33).

### Disclosure of future trading price (10:57:07 to 13:51:38)

B.46 At 10:57:07, Morgan Stanley ([MS Trader]) asked Deutsche Bank ([DB Trader]) for his views on the trading of short-end gilts (*'what u think of these shorts?'*).<sup>62</sup> In response, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **future trading price** in relation to the 2.75% 2015 gilt asset swap stating **'33 on 2t15 i buy'** (at 10:57:33), which meant that when the price of the 2.75% 2015 gilt asset swap got to 33bps he intended to buy it.<sup>63</sup> <sup>64</sup>

B.47 Approximately three hours later, at 13:51:38, Deutsche Bank ([DB Trader]) stated that, reflecting his earlier disclosure in respect of the 2.75% 2015 gilt asset swap,<sup>65</sup>

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<sup>61</sup> A-URN-007868. Morgan Stanley also produced a chat on this date between [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley), A-URN-001510.

<sup>62</sup> [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley) said in interview that this discussion related to short end gilts which appear to have been trading under pressure/trading poorly that day (B-URN-000502065, page 334 and B-URN-000502072, page 298).

<sup>63</sup> [DB Trader] (Deutsche Bank) said in interview that ('33') was the price level at which he would like to buy the 2.75% 2015 gilt asset swap (B-URN-000502065, page 334). [MS Trader] (Morgan Stanley) also confirmed in interview that the trade being discussed was a gilt asset swap (B-URN-000502072, page 299). In interview, [MS Trader] (Morgan Stanley) and [DB Trader] (Deutsche Bank) were both unsure regarding whether, at that time, trading at that price might have been occurring, and visible, through brokers. Nonetheless, [DB Trader] (Deutsche Bank) confirmed that this was his *'target to buy'* (B-URN-000502065, page 337). [DB Trader] (Deutsche Bank) said, *'Um, so they're trading weakly, so they're cheapening. What I've said to him was like if they get to a certain level, I don't know if they're there or not, um, then I would have an interest in -- buying them on asset swap'* (B-URN-000502065, page 334). [MS Trader] (Morgan Stanley) said, *'That's -- that's what he's doing at the time. I -- at 10:57, yeah, I, I don't know where 2t15 was at the time or whether it was like above there and he was saying, "I'm going to buy it because it's down there" or not. I don't -- I don't know. Or if it was there -- it also looks like spreads maybe they'd bounced for a couple of hours and then they went back down. So, something like that'* (B-URN-000502072, page 301).

<sup>64</sup> In Bloomberg chat **DB-MS, A-URN-007860** dated 9 March 2011 (six days earlier), Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his future trading price and future trading activity for the same 2.75% 2015 gilt asset swap, saying he would purchase large volumes of the gilt asset swap when the price reached 33.5 basis points. When discussing the current Bloomberg chat A-URN-007868 in interview, [MS Trader] (Morgan Stanley) noted the link saying *'Um, which is a bit funny because its below the level he was going to load up on a couple of days ago, but...'* (B-URN-000502072, page 299).

<sup>65</sup> [DB Trader] (Deutsche Bank) confirmed in interview that this was likely to relate to the same 2.75% 2015 gilt asset swap trade as had been discussed earlier at 10:57:33 and that it was a reference to a bid he had on with a broker (B-URN-000502065, pages 336 to 338). [MS Trader] (Morgan Stanley) confirmed this when he said in interview that Deutsche Bank ([DB Trader]) had told Morgan Stanley ([MS Trader]) where his bid was in 2.75% 2015 gilts and that this was likely to relate to the same product as discussed earlier (B-URN-000502072, pages 299 to 300).

he was bidding 33 basis points with a broker for the 2.75% 2015 gilt asset swap ('*bidding 33 for 2t15*').<sup>66</sup>

**Chat extract table – 10:57:07 to 10:57:33**

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
10:57:07 10:57:12	<b>Morgan Stanley ([MS Trader])</b> <i>what u think of these shorts?</i> <i>is this the [counterparty] issue?</i>
10:57:19 10:57:27 10:57:33	<b>Deutsche Bank ([DB Trader])</b> <i>i dont think so</i> <i>i think must be some overseas selling</i> <b>33 on 2t15 i buy</b>

**Chat extract table – 13:51:38**

Timestamp (GMT)	Party (Key Individual) <i>Extract</i>
13:51:38	<b>Deutsche Bank ([DB Trader])</b> <i>bidding 33 for 2t15</i>

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<sup>66</sup> [DB Trader] (Deutsche Bank) said in interview, in relation to his comment '*bidding 33 for 2t15*' that '*... that's obviously a reference to a bid I've put on the broker market.*' (B-URN-000502065, page 335).



## Summary

B.48 On 24 June 2011, Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) engaged in the following **Trading Conduct**: Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **current trading price** for the 30-year gilt component of a gilt asset swap consisting of a 30-year gilt and a ten-year interest rate swap (at 09:46:48 to 09:46:59).

### Disclosure of current trading price in relation to a gilt asset swap consisting of a 30-year gilt and a ten-year interest rate swap (09:46:25 to 09:47:01)

B.49 At 09:46:25, Morgan Stanley ([MS Trader]) asked Deutsche Bank ([DB Trader]) if he had received a client enquiry for a gilt asset swap consisting of a long-dated gilt (a 30-year gilt) and a ten-year interest rate swap (*'u getting asked 10s and longs?'*).<sup>68, 69</sup> Deutsche Bank ([DB Trader]) confirmed that he had (*'yeah'* at 09:46:34). [DB Trader] (Deutsche Bank) said in interview that both he and Morgan Stanley ([MS Trader]) were getting asked for a price for the same gilt asset swap from the same client.<sup>70</sup> [DB Trader] confirmed in interview that, as it was a client enquiry, he would not know the identities of the other dealers the client had asked for a price.<sup>71</sup>

B.50 Deutsche Bank ([DB Trader]) and Morgan Stanley ([MS Trader]) then discussed their views on the direction the client was likely to want to trade, ie whether it was

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<sup>67</sup> A-URN-007955. Morgan Stanley also produced a chat on this date between [DB Trader] (Deutsche Bank) and [MS Trader] (Morgan Stanley), A-URN-001710. A-URN-007957 is another DB duplicate. A-URN-007957 incorporates A-URN-007955 but starts before and ends after A-URN-007955. Timestamps from the chat are recorded in GMT, which was 1 hour behind UK time on that date (BST). Therefore, 09:46:25 should be read as 10:46:25.

<sup>68</sup> In interview, [DB Trader] (Deutsche Bank) confirmed his understanding of the products involved in this trade, *'So, longs means 10-year against 30-year gilt curve. 10s I think he means 10-year swap. I'm not sure whether he means 10 years, asset swap -- [...] -- or 10-year swap. I think he means 10-year swap would be my interpretation'* (B-URN-000502065, page 270). In interview, [MS Trader] (Morgan Stanley) said *'I think it means in this context 10-year swaps, 10-year interest rate swaps, um, er, probably versus an outright 30-year gilt'* (B-URN-000502072, page 244). [MS Trader] (Morgan Stanley) said that the *'long gilt'* was likely to be a single 30-year gilt and he believed that he and [DB Trader] would have known which gilt at the time (B-URN-000502072, page 251).

<sup>69</sup> In interview, [DB Trader] (Deutsche Bank) explained that this type of enquiry *'would be on [electronic trading platform], [electronic trading platform] Chat'*. Clients who wanted a two-way price (where both a bid and an offer price are requested so that the client did not have to disclose which direction it wanted to trade in ie whether to buy or to sell) would typically set up a *'blast list'* (where the same price enquiry was sent to multiple banks at once). [DB Trader] (Deutsche Bank) said it was not possible to ask for a two-way price via [electronic trading platform] at that time because to use [electronic trading platform] the client would need to specify a direction (B-URN-000502065, pages 279 to 280).

[DB Trader] (Deutsche Bank) also confirmed that banks would not have been able to see which other banks had been asked to quote (B-URN-000502065, page 281).

<sup>70</sup> B-URN-000502065, pages 278 to 279. [DB Trader] (Deutsche Bank) explained that the client would have sent the same enquiry to several banks at the same time, *'So, that they would -- they -- what the client would do they sent -- set up a blast list and they might ask like x number of banks at that time, "what price are you in this?"'* (B-URN-000502065, page 279).

<sup>71</sup> B-URN-000502065, page 281.

a buyer or seller of the constituent components of the gilt asset swap.<sup>72</sup> At 09:46:37, Deutsche Bank ([DB Trader]) stated *'gotta be a buyer right'*. [DB Trader] (Deutsche Bank) told the CMA that by saying *'gotta be a buyer right'* he was making a guess on which direction the client would want to trade (whether the client would be a buyer or a seller), and his guess was that the client was a buyer of a 30-year gilt versus a ten-year swap.<sup>73</sup> Morgan Stanley ([MS Trader]) agreed with this view (*'i think so'* at 09:46:40) and added that he thought the client was likely to buy the fixed interest rate leg of the ten-year swap versus the floating interest rate leg of the interest rate swap (*'and payer 10s i think'* at 09:46:44).<sup>74</sup>

- B.51 Shortly afterwards, Deutsche Bank ([DB Trader]) disclosed to Morgan Stanley ([MS Trader]) his **current trading price** that he was quoting the client for the 30-year gilt component of the gilt asset swap (*'made him 32/45'* at 09:46:48) and how he intended to hedge the trade by reference to the gilt futures market (*'x06'* at 09:46:59).<sup>75</sup> [DB Trader] (Deutsche Bank) confirmed in interview that this was the price he had made the client and that it involved a position in the ten-year gilt future.<sup>76</sup>
- B.52 In reaction, at 09:47:01, Morgan Stanley ([MS Trader]) disclosed to Deutsche Bank ([DB Trader]) that he had quoted a price for the interest rate swap component of the gilt asset swap and that his current trading price indicated that he was interested in buying (*'i just did swap and bid it, not come back yet'*). [MS Trader] (Morgan Stanley) said that this meant that he had priced the interest rate swap component of the gilt asset swap and had *'showed a better bid'* but that he had not yet heard back from the client on that price.<sup>77 78</sup>

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<sup>72</sup> [DB Trader] (Deutsche Bank) stated in interview that he believed the client had asked for a two-way price, *'in this scenario it sounds like the client has asked a two-way price. So, without revealing their direction, um, often the client will make, you know, will -- will show direction, just ask you for a bid, ask you for an offer. In this scenario it looks like they've asked for a bid and an offer. And they decide if they want to buy or sell'* (B-URN-000502065, pages 272 to 273). [MS Trader] (Morgan Stanley) also explained that the client had requested a two-way price (B-URN-000502072, page 254).

<sup>73</sup> B-URN-000502065, pages 272 to 273.

<sup>74</sup> [MS Trader] (Morgan Stanley) stated that he believed the client would be a 'payer' of the interest rate swap element: *'So that'll be a payer of the, the 10-year interest-rate swap. [...] I guess I think that the client's trying to pay fixed'* (B-URN-000502072, pages 245 to 246).

<sup>75</sup> [DB Trader] (Deutsche Bank) said in interview that he would have quoted a price for the gilt component of the gilt asset swap, namely a 30-year gilt, and Deutsche Bank's swaps desk would have quoted the swap component, namely a ten-year interest rate swap (B-URN-000502065, page 270).

<sup>76</sup> B-URN-000502065, pages 273 to 274. [MS Trader] (Morgan Stanley) also confirmed in interview that *'32/45'* was [DB Trader] (Deutsche Bank)'s bid and offer price for the gilt component (B-URN-000502072, page 255). [MS Trader] (Morgan Stanley) further explained that *'32'* was the bid price for the gilt and *'45'* was the offer price for the gilt (B-URN-000502072, page 255). [DB Trader] (Deutsche Bank) said that the figures *'32'* and *'45'* were the last two digits of the price for the gilt (B-URN-000502065, pages 273 to 274).

<sup>77</sup> B-URN-000502072, pages 248 to 249. [DB Trader] (Deutsche Bank) said that *'Bid it'* meant that *'it was a two-way price showing a better bid for the ten-year swap than his offer. So his price would have reflected that he was the buyer [...] And his bid would be better relative to his offer'* (B-URN-000502065, page 275).

<sup>78</sup> [MS Trader] (Morgan Stanley) said in interview that he would have quoted a price for the swap component of the gilt asset swap and Morgan Stanley's [desk] would have quoted a price for a 30-year gilt component, thereby providing the client with a price for the gilt asset swap. [MS Trader] (Morgan Stanley) also said in interview that Morgan Stanley's sales desk would have helped co-ordinate the pricing for the client and that he would have been talking to the [desk] (B-URN-000502072, pages 246 and 256).

**Chat extract table – 09:46:25 to 10:01:44**

Timestamp (UTC)	Party (Key Individual) <b>Extract</b>
09:46:25	<b>Morgan Stanley ([MS Trader])</b> <i>u getting asked 10s and longs?</i>
09:46:34 09:46:37	<b>Deutsche Bank ([DB Trader])</b> <i>yeah</i> <i>gotta be a buyer right</i>
09:46:40 09:46:44	<b>Morgan Stanley ([MS Trader])</b> <i>i think so</i> <i>and payer 10s i think</i>
09:46:48 09:46:59	<b>Deutsche Bank ([DB Trader])</b> <b><i>made him 32/45</i></b> <b><i>x06</i></b>
09:47:01	<b>Morgan Stanley ([MS Trader])</b> <i>i just did swap and bid it, not come back yet</i>