

SME Banking (Transitional)

1. Title of report: The supply of banking services by clearing banks to small and medium-sized enterprises (MMC – Cmnd 5319)

2. Published: 14 March 2002

3. Orders: N/A

4. Date of original undertakings: 18 July 2002 **Date of undertakings coming into force:** 1 January 2003 **Press release:** DTI, 18 July 2002

Amendment to undertakings: 21 December 2007

5. Companies giving undertakings: Barclays Bank Plc, HSBC Bank Plc, Lloyds TSB Bank Plc and the Royal Bank of Scotland Group Plc

6. Undertakings:

WHEREAS on 20 March 2000 the Secretary of State and the Chancellor referred to the Commission under sections 47(1), 49(1) and 51(1) of the Act the matter of the existence or possible existence of a monopoly situation in relation to the supply of banking services by clearing banks to SMEs;

WHEREAS the Report sets out adverse public interest findings in connection with the supply of banking services to SMEs within the United Kingdom by certain clearing banks;

WHEREAS the Commission recommended in the Report remedies relating to the prices charged for the provision of business current accounts in England and Wales and further recommended that the effect of such remedies be reviewed by the Director after a period of three years;

AND WHEREAS pursuant to a request by the Secretary of State and the Chancellor, the Director has consulted with the Bank with a view to obtaining from it undertakings to take

certain action to implement such remedies;

NOW THEREFORE the Bank gives to the Secretary of State and the Chancellor under section 88(2) of the Act the undertakings below to take action requisite for the purpose of remedying certain of the adverse effects specified in the Report:

Interpretation

1.- The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

2.- Compliance with these undertakings does not affect the duty on the Bank to comply with nor restrict the application of:

(1) the Competition Act 1998; or

(2) any other law.

3.- In these undertakings:

‘the Act’ means the Fair Trading Act 1973;

‘BACS’ means the bulk inter-bank electronic funds transfer processing of direct debits, direct credits and standing orders in the UK, as carried out through BACS Limited;

‘the Bank’ means Barclays Bank Plc/ HSBC Bank Plc/ Lloyds TSB Bank Plc/ the Royal Bank of Scotland Group Plc;

‘business’ means a business of any kind and includes sole traders, partnerships, limited liability partnerships, limited companies, other bodies corporate, unincorporated associations and clubs and charities;

'business current account' means a current account denominated in sterling intended for use by businesses and excludes any current account (even if used by the SME for the purpose of its business) which is offered by the Bank as a current account intended for personal use by a natural person;

'the Chancellor' means the Chancellor of the Exchequer;

'CHAPS' or 'Clearing House Automated Payments System' means the electronic transfer system for real-time gross settlement, same-day value, inter-bank payments in the UK, as operated by CHAPS Clearing Company Limited;

'the Commission' means the Competition Commission;

'core money transmission services' means the money transmission services, relating to the transfer of sterling through a business current account, listed in Part I of the Schedule to these undertakings;

'current account' means a current account denominated in sterling, under whatever name, including a current account maintained via the internet, telephone or post, features of which include instant access to money, the availability of a wide range of money transmission services, and may include the provision of credit through overdraft facilities, but excludes:

- (i) any credit card account;
- (ii) any account designed for businesses, other than unincorporated associations, clubs and charities, to hold monies on behalf of third parties; and,
- (iii) for the avoidance of doubt, any deposit account;

'the Director' means the Director General of Fair Trading;

'deposit account' means an account denominated in sterling, under whatever name, designed for depositing money generally not required for immediate use, and which

is generally interest bearing and which account may or may not impose terms as to the minimum or maximum amounts required or permitted to be deposited and as to the term for which such sums should be deposited, and which may impose varying restrictions on deposit and withdrawal instruments, but for the avoidance of doubt any current account, any account on which the customer may borrow funds from the Bank, or any accounts where the monies are held specifically for the purposes of Treasury Money Market deals shall not be treated as a deposit account;

'group' means (i) two or more businesses that are members of a 'group of interconnected bodies corporate' as defined in section 137(5) of the Act; and (ii) any business which owns or controls one or more other businesses, together with those other businesses which such business owns or controls, and for these purposes control shall be deemed to arise where a business is owned as to 25% or more of its share capital or where 25% or more of the voting rights are held by another business or jointly by two or more other businesses, except where such interests are held by public investment corporations, venture capital companies or institutional investors who exercise, whether individually or jointly, any rights they have in the business only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of the business;

'money transmission services' means services relating to the transfer of money to or from a business current account and relating only to transactions exclusively in sterling, whether by the SME or a third party, (whether on paper or electronically or by any other means) and includes those services which are listed in the Schedule to these undertakings;

'net cleared credit balance' means the cleared credit balance outstanding at the end of any particular day on a business current account after the operation of any set-off or sweep arrangements which exist between that account and other current accounts maintained by the same SME, or the group of which it is a member, with the Bank;

'the Report' means the report of the Commission on the supply of banking services

by clearing banks to small and medium-sized enterprises within the United Kingdom presented to Parliament in March 2002 (Cm 5319);

‘the Secretary of State’ means the Secretary of State for Trade and Industry;
‘SME’ (small or medium-sized enterprise) means a business that, in respect of a given financial year applying to it, has annual sales revenues (exclusive of VAT and other turnover-related taxes) of no more than £25 million. For the purposes of applying this definition, the sales revenues of a business in any given year shall be determined as follows:

- (a) where the Bank has, or has provided to it by the SME, evidence showing to the reasonable satisfaction of the Bank the level of its sales revenues in the previous year, such evidence shall be treated as determinative of the sales revenues of the business in respect of the current year; or
- (b) if the Bank does not have, or does not have provided to it, evidence showing to the reasonable satisfaction of the Bank the level of an SME’s sales revenues in the previous year, then the business may be categorised as an SME in respect of a given year if:
 - (i) it holds a business current account with the Bank which current account generated in aggregate, in the previous complete year, either debit turnover or credit turnover (inclusive of VAT and other turnover-related taxes) of no more than £25 million (or, where the current account was opened during the previous year, such proportion of £25 million as shall equate to the proportion of the year for which the account was maintained); or
 - (ii) it is a business which opens a business current account with the Bank during the year, which business the Bank reasonably expects after discussion with the business, at the time the account is opened, to generate during the year sales revenues of no more than such proportion of £25 million as shall equate to the proportion of the year

remaining from the date when the account is opened;
and provided that, in deciding whether a business is an SME, the Bank shall be entitled to treat as a single business all businesses forming part of a group; and provided that, where a business or group holds business current accounts with the Bank and with another bank and has failed to respond to a request from the Bank to provide evidence of its or the group's annual sales revenues in a given year, the Bank shall be entitled, in deciding pursuant to subparagraph (i) above whether the business' or the group's debit or credit turnover exceeds £25 million, to take into account not only the debit or credit turnover on any current account maintained with the Bank but also the Bank's reasonable estimate of the debit or credit turnover on any current account maintained by such business or group with any other such bank.

For the avoidance of doubt the reference above to 'debit turnover' shall mean the funds paid out of the business current account of the SME and 'credit turnover' shall mean the funds paid into such business current account.

'specified rate' means a percentage rate equal to Bank of England base rate for the time being minus 2.5. For so long as Bank of England base rate is 2.5% or less, then the specified rate shall be zero;

'standing charge' (sometimes referred to as an account maintenance fee) means any fee or charge for the provision or maintenance of a business current account and does not include proposition or relationship management charges or charges for the provision of electronic cash management packages;

'year' means, for the purposes of paragraph (a) of the definition of 'SME', the latest financial year of the business concerned and, for the purpose of paragraph (b) of the definition of 'SME', a year running from 1 January to 31 December.

4.- Subject to clauses 1 and 3 above, all expressions used in these undertakings shall be interpreted in accordance with the Business Banking Code (March 2002) and with generally accepted banking practice.

Application

- 5.- Except as otherwise provided in clause 6 below, these undertakings shall apply-
- (a) with effect from the date of the giving of these undertakings; and
 - (b) in respect of all SMEs which the Bank-
 - (i) supplies (for so long as it continues to supply), and
 - (ii) approves for the purpose of openinga business current account with the Bank at, or through, a branch or office of the Bank situated in England and Wales.

Amendment: Clauses 6-10 have been removed following the CCs decision to lift the temporary price controls in December 2007. Further details available at: http://www.competition-commission.org.uk/rep_pub/notices/sme_banking_release_undertakings.pdf

Increases in, or adoption of, tariff-based charges for money transmission services

11.- The Bank shall notify to the Director and publish in a manner and within such period of time as is approved by the Director:

- (a) each and every increase in any-
 - (i) tariff-based charge for any of the money transmission services listed in the Schedule to these undertakings, and
 - (ii) standing charges,taking effect as from 18 March 2002 or thereafter; and

- (b) each and every-
 - (i) new charge for any new money transmission service,
 - (ii) new charge for any of the money transmission services listed in the Schedule to these undertakings, and
 - (iii) standing charge,not levied before 18 March 2002.

Compliance with these undertakings

12.- The Bank shall, at the request of the Director, furnish promptly to the Director such information as is reasonably necessary from time to time to enable him to monitor compliance with these undertakings.

13.- If the Director is of the reasonable view that the Bank has failed to comply with any of its obligations under these undertakings, he may from time to time, in respect of such obligations, give reasonable written directions to the Bank:

(a) to take such steps within the Bank's competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or

(b) to do or refrain from doing anything so specified or described which it is required by these undertakings to do or to refrain from doing,

and the Bank shall comply promptly with such written directions.

Additional clause for The Royal Bank of Scotland Group plc only

14.- The Bank shall procure that both National Westminster Bank plc ('NatWest') and The Royal Bank of Scotland plc ('RBS') shall comply with these undertakings as if NatWest and RBS had each given these undertakings and as if the undertakings referred to NatWest and RBS respectively, instead of to the Bank.

SCHEDULE
Money Transmission Services

Part I: Core money transmission services

- Cash in over the counter or received by post
- Cash out over the counter
- Cheque deposits and cheque withdrawals
- The establishment of direct debit instructions (but excluding any direct debit services, other than auto-credit, relating to direct debits in respect of which the SME is the originator) and the payment of direct debits
- The establishment and payment of standing orders
- Non-auto credit services
- Auto-credit services (including deposits received via BACS and CHAPS)
- The transfer of funds between the business current account and other accounts denominated in sterling held by the customer with the Bank in the UK
- The provision of a debit card for the withdrawal of cash from a business current account at ATMs operated by the Bank
- The withdrawal of cash from a business current account using such a debit card

Part II: Non-core money transmission services

- The exchange of cash (sterling) for other denominations of cash (sterling)
- Dealing with stopped, returned, unpaid or recalled payments
- The provision of bank drafts
- Special presentations of cheques
- Withdrawals other than direct debits made via BACS and withdrawals made via CHAPS
- The provision of sweep (also known as auto transfers) and set-off facilities
- Copy statements
- Dealing with status enquiries
- The provision of audit letters