

SME Banking – Switching Undertakings

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: 27 October 2003 **Date of undertakings coming into force:** 31 of December 2003 **Press release:** DTI, 27 October 2003

5 Companies giving undertakings: AIB Group (UK) Plc, Bank of Ireland, Barclays Bank Plc, Clydesdale Bank Plc, HBOS Plc, HSBC Bank Plc, Lloyds TSB Bank Plc, Northern Bank Limited, The Royal Bank of Scotland Group Plc.

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;

AND WHEREAS the Bank gave undertakings, accepted on 31 October 2002, to the Secretary of State and the Chancellor to take certain action to implement the remedies recommended by the Commission to address certain of the adverse effects identified in the Report;

AND WHEREAS pursuant to clause 10 of the undertakings accepted on 31 October 2002, the OFT has consulted with the Bank with a view to obtaining from it further undertakings to take certain action to implement the remedies recommended by the Commission to address certain of the adverse affects identified in the Report in relation to switching of business current accounts;

NOW THEREFORE the Bank gives the Secretary of State and the Chancellor under section 88 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 is 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 the Competition Act 1998 or any other law.
3. - In there undertakings:

'the Act' means the Fair Trading Act 1973;

'at the relevant time' means, for the purposes of clauses 6 and 7 below, the time immediately prior to the carrying out of the particular task identified;

'available balance' means the credit balance of monies, taking account of any interest, charges, or benefit accrued thereon which has yet to be credited or debited, as the case may be, to the account, held by an SME in a business current account which are cleared funds, but shall not include any monies which The Bank has agreed with the SME shall be withheld by The Bank, or in respect of which The Bank has a fixed charge or a right to a set off, or which The Bank is otherwise reasonably entitled to withhold, for example to meet any interest charges, uncleared cheques, any contingent liabilities (including bonds, guarantees and indemnities), or other forms of unmet or future exposure (for example, any accrued charges for money transmission or other account activity) of The Bank in relation to the SME;

'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; either AIB Group (UK) Plc, Bank of Ireland, Barclays Bank Plc, Clydesdale Bank Plc, HBOS Plc, HSBC Bank Plc, Lloyds TSB Bank Plc, Northern Bank Limited, 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 for a business and excluding any current account (even it is 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;

'the Commission means the Competition Commission;

'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 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:

- (a) any credit card account;

- (b) any account designed for businesses, other than unincorporated associations, clubs and charities, to hold monies on behalf of third parties
- (c) any feeder account; and,
- (d) for the avoidance of doubt, any deposit account;

'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 sums should be deposited, and which may impose varying restrictions on the timing, the number of and the manner of making deposits and withdrawals, but for the avoidance of doubt any current account, any account on which the customer may borrow funds from the Bank, any account where the monies are held specifically for the purposes of Treasury Money Market deals, or any account held within the Hong Kong Universal Banking System shall not be treated as a deposit account;

'feeder account' means an account-

- (a) which has as its only functions:
 - (i) the advancing by The Bank of funds to the SME pursuant to any agreement between the Bank and the SME, other than an agreement to provide an overdraft on a business current account;
 - (ii) the collection of funds and remittance of those funds towards discharge of the periodic interest payments and/or capital reductions or other repayments agreed under the terms of any such agreement; and
 - (iii) the adjustment of any balances between The Bank and the SME in respect of such agreement
- (b) in respect of which no cheque book or debit card is issued and in respect of which no credit is provided (save for any overdraft which The Bank advances to meet payments due by the SME under such agreement, for the sole purpose of avoiding an event of default under such agreement); and
- (c) against which no interest or charges are levied other than in respect of any overdraft of the kind described in paragraph (b) above;

'group' means (a) two or more businesses that are members of a 'group of interconnected bodies corporate' as defined in section 137(5) of the Act; and (b) 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 per cent or more of its share capital or where 25 per cent 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;

'new bank' means, in respect of an SME, the supplier of banking services to which such SME is switching and which has approved such SME application to set up a business current account

'OFT' means the Office of Fair Trading

'old bank' means, in respect of an SME, the supplier of banking services from which an SME is switching;

'overdraft' means an overdraft facility provided to an SME by 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;

'secured overdraft' means an overdraft on a business account provided to an SME by The Bank in respect of which The Bank holds security;

'security' means (except for the purposes of clause 13 below) any guarantee or indemnity, or any fixed or floating charge, mortgage, assignment or other charge under which assets, whether tangible or intangible, or any interests in them are held by or given to the Bank and to which or in respect of which The Bank has recourse (which includes, without limitation, the right to sell all or any of such assets or appoint an administrator or receiver of them to take any other action to enforce the obligations accepted) in satisfaction of the balance of any lending outstanding (including all costs and interest) which the SME fails for whatever reason to repay; but, for the avoidance of doubt, excludes any items held by or given to The Bank for safe-keeping;

'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 revenue 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 its previous financial 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 its previous financial 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 the previous complete year, either debit turnover in aggregate or credit turnover in aggregate (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 providing 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 financial year, The Bank shall be entitled, in deciding pursuant to subparagraph (i) above whether the business' or the group's debit or credit turnover on any current 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 such bank. For the avoidance of doubt the reference above to the '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

'substantial percentage' means a minimum of 80 per cent of the business current accounts being switched to or from the Bank as the case may be within each calendar year after these undertakings take effect;

'switching' means the transfer by an SME of the operations or functions associated with its business current account, and/or the holding of such account, with an old bank, whether or not such account with the old bank is closed, to a business current account with a new bank and 'switch' and 'switched' shall be constructed accordingly; provided that, if, when an SME requests The Bank perform any one or more of the tasks listed in the Schedule and does not indicate or has not indicated it is switching, The Bank asks the SME to indicate whether it is switching, the case shall be treated as one of switching (and these undertakings shall apply to the case) only if the SME indicates to The Bank that it is switching;

'working day' means a day which is not Saturday, Sunday or any other day on which The Bank is closed for business;

'year' means, unless otherwise stated, for the purpose 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 2003) and with generally accepted banking practice.

Application

5. - These undertakings shall apply-

- (a) in relation to the supply of banking services in [...] ¹ by The Bank to SMEs; and
- (b) with effect from no later than 31 December 2003.

Switching targets where there is no secured overdraft

6.- In respect of switches of business current accounts which do not have a secured overdraft, where The Bank is in the position of the old bank, it shall, in respect of a substantial percentage of such switches, successfully complete the tasks numbered 1,3 and-

¹ Barclays Bank, HSBC Bank, Royal Bank of Scotland (English branches), National Westminster Bank and Lloyds TSB in England and Wales; AIB Group, Bank of Ireland and Northern Bank, and Ulster Bank in Northern Ireland. Clydesdale, HBOS and the Royal Bank of Scotland (Scottish branches) in Scotland.

- (a) where the account has a credit or zero balance at the relevant time, 5, or
- (b) where the account has a debit balance at the relevant time, 7

in the table shown in the Schedule to these undertakings within the targets specified in column 4 of such table in relation to such tasks.

7.- In respect of switches of business current accounts which do not have a secured overdraft, where The Bank is in the position of the new bank, it shall, in respect of a substantial percentage of such switches, successfully complete the tasks numbered 2 and-

- (a) where the account with the old bank has a credit balance at the relevant time 4, or
- (c) where the account with the old bank has a debit balance at the relevant time, 6

in the table shown in the Schedule to these undertakings within the targets specified in column 4 of such table in relation to such tasks; provided that, where the bank has agreed to provide the SME switching with a secured overdraft, the new bank shall only be required to perform such task within such target-

- (i) where such secured overdraft needs to be available to enable the SME to operate the account, once the agreed security has been put in place; or
- (ii) otherwise, where agreed with the SME, for the purpose of providing an operational business current account without (until such time as the agreed security has been put in place) an overdraft.

Switching targets where secured overdraft is involved

8. - In respect of switches of business current accounts which have a secured overdraft, where The Bank is in the position of the old bank, it shall, in respect of a substantial percentage of such switches, successfully complete the tasks numbered 1 and 3 in the table shown in the Schedule to these undertakings within the targets specified in column 4 of such table in relation to such tasks.

9. - In respect of switches of business current accounts which have a secured overdraft, where the bank is in the position of the new bank, it shall, in respect of a substantial percentage of such switches, successfully complete the task numbered 2 in the table shown in column 4 of such table in relation to such task; provided that, where The Bank has agreed to provide the SME switching with a secured overdraft, the new bank shall only be required to perform such task within such target-

- (a) where such secured overdraft needs to be available to enable the SME to operate the account, once the agreed security has been put into place; or
- (b) otherwise, where agreed with the SME, for the purpose of providing an operational business account without (until such time as the agreed security has been put in place) an overdraft

Necessary information, etc., closing accounts and third parties

10. The targets to be met by The Bank in accordance with clauses 6 to 9 above shall only apply once The Bank, whether acting as the old bank or the new bank, has been provided with adequate authorisation, which the bank may require to be in writing, from the SME and all necessary and/or required information (for example, account details, outstanding balance and method of payment) and materials (for example, unused cheques and payment cards) to enable it to deal with the relevant request.

11. The target to be met by The Bank in respect of closing accounts under the tasks numbered 5 and 7 in the table shown in the Schedule to these undertakings shall not apply where The Bank has, either by agreement with the SME or where it is otherwise reasonably entitled to do so, withheld monies to meet any uncleared cheques and any contingent liabilities (including bonds, guarantees and indemnities) and other forms of unmet or future exposure of The Bank in relation to the SME.

12. The Bank shall not be considered to have failed to meet a switching target incumbent upon it as either the old bank or the new bank if the cause of the target not being met, whether wholly or partly, is the act or omission on the part of any person other than The Bank; provided that The Bank shall remain liable for the failure to meet such switching target where such act or omission is on the part of a third party supplier that The Bank has generally, in respect of switches, sub-contracted to perform on its behalf the whole or part of the task to which the switching targets applies.

Communication

13. Throughout each switch in which The Bank is in the position of either the old bank or the new bank, The Bank shall use the most expedient means of communication (including first class post, telephone or electronic means) available to it at the relevant time with the other supplier of banking services to SMEs involved; provided that such means of communication shall be appropriate and proportionate, taking into account the confidential nature of any communication and the level of security offered by the different means of communication available.

Failure to meet switching targets

14. - Subject to clause 12 above, The Bank shall establish a scheme under which an SME can apply (such application may be required in writing) for a payment from The Bank for a failure by The Bank, in respect of the SME's switch from The Bank, to meet any one or more of the relevant targets of the

old bank specified in column 4 of the table shown in the Schedule to these undertakings.

15.- By December 31 2003, and at the time any subsequent change in the scheme to which the clause takes account, The Bank shall publish on its website and make available in its branches details of the scheme established by it in accordance with clause 14 above.

16. - Where The Bank, acting as either the old bank or the new bank in respect of a particular switch, imposes any charge (including interest) on the SME customer concerned in circumstances where such charge has only been incurred because of a failure on the part of The Bank to meet a relevant switching target, it shall cancel such charge and, where the SME has already paid any such charge, reimburse the SME with the total amount of such charge.

Publication of performance objectives

17. - The Bank shall publish details of each of the targets which is applicable to it in its capacity as the old bank, or as the case may be, the new bank in accordance with the targets specified in column 4 of the table shown in the schedule to these undertakings, in literature which is available to SME's explaining the process of switching to or from The Bank.

18. The Bank shall compile information showing its performance objectives in relation to successfully completing all of the old bank's targets and, as the case may be, all of the new bank's targets, as specified in column 4 of the table shown in the schedule to these undertakings, and its success in achieving such performance objectives, measured either by exception based reporting, sampling, or any other appropriate means.

19. - The information to be compiled under clause 18 above shall be compiled every six months and published on The Bank's website.

Compliance with these Undertakings

20. - The Bank shall at the request of the OFT, furnish promptly to the OFT such information as is reasonably necessary from time to time to enable it to monitor these undertakings.

21.- If the OFT is of the reasonable view that The Bank has failed to comply with any of it's obligations under these undertakings, it 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 might be required by these undertakings to do or refrain from doing.

22. - The Bank shall provide to the OFT the name and contact details of a person within the bank with whom the OFT may liaise in relation to the Bank's compliance with and obligations under these undertakings. Such person shall have access to all relevant information relating to the Bank's compliance with and obligations under these undertakings. The Bank shall inform the OFT of any change in the identity or contact details of such person.

SCHEDULE

Switching targets

Column 1 Task Number	Column 2 Tasks of old bank	Column 3 Tasks of new bank	Column 4 Target
1.	Forward new bank, and/or SME as requested, details of SME's existing direct debits('DDs') and standing orders ('SOs') following receipt of request to do so from SME or new bank(authorised by SME).		By close of business on the second working day following the working day of receipt of the request.
2.		Following receipt of details of regular payments (DDs and SOs) from old bank or SME set up, in accordance with any instructions from SME, new SO's and DD's, in relation to the latter by sending a transfer advice to DD originators advising them of details of both the old bank and the new bank.	By close of business on the third working day following the working day of receipt of details of such regular payments or, where a later date for action is specified by, or agreed with, SME, by such date.
3.	Action request by new bank (authorised by SME to cancel DDs and SOs.		By close of business on the second working day following the working day of receipt of the request or, where a later date for action is specified by, or agreed with, new bank or SME, by such later date
4.		Where applicable and requested by SME, send request to old bank to transfer it to the available balance remaining in SME's account with old bank.	By close of business on the second working day following the working day of receipt of the request to do so by SME or, where a later target date for the transfer has been agreed with SME, in

			sufficient time to enable the transfer to take place by such later date.
5.	Where applicable, action request by new bank (authorised by SME) or by SME to transfer, in the manner requested, the available balance remaining in SME's account with it to new bank or to SME. If requested by SME or by new bank (authorised by SME), close account.		By close of business on the third working day following the working day of receipt of the request. An additional working day is applicable where the SME or new bank (authorised by SME) has requested closure of the account (i.e. a total of four working days to close the account whether it has a credit or zero balance).
6.		Where applicable, and provided SME has put new bank in a position to do so, action request to transfer to old bank funds, in accordance with SME's instructions, to clear balance of SME's overdraft (including interest and costs) remaining in SME's account with old bank	By close of business on the second working day following the working day of receipt of the request or, where a later date for the transfer has been agreed with SME, by such later date.
7.	Where applicable, on receipt of sufficient cleared funds from new bank or SME to clear balance of SME's overdraft (including interests and costs), level off SME's account (showing the balance as zero) and, if, in addition, requested by SME or new bank (authorised by SME), close account		Within 3 working days following the working day of receipt of the funds from SME or new bank. An additional working day is applicable where the SME or new bank (authorised by SME) has requested closure of the account.