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**Second breach by Danske Bank (a trading name of Northern Bank Limited) of the [Small and Medium-sized Enterprise \(SME\) Banking Undertakings 2002 \(the Undertakings\)](#)**

I am writing to you on behalf of the Competition & Markets Authority concerning a breach of the Undertakings by Danske Bank in relation to loans under the Bounce Back Loan Scheme (the Scheme), affecting SME banking customers.

**The breach**

In 2002, Danske Bank undertook not to require, agree or threaten to require that customers open or maintain a business current account with it as a condition of receiving, servicing or maintaining a loan; a process known as bundling.

The UK Government launched the Bounce Back Loan Scheme on 4 May 2020 to enable smaller businesses to access finance more quickly during the Covid-19 pandemic.

On 30 April 2021 Danske notified the CMA of a breach of the Undertakings. The breach began on 4 May 2020 when Danske started providing bounce back loans and continued until the end of the Scheme on 31 March 2021.

The breach arose because Danske's Relationship Managers informed prospective loan applicants that a Danske business current account was necessary to apply for a

bounce back loan. This resulted in up to 205 SME customers<sup>1</sup> opening Danske business current accounts in order to apply for bounce back loans.

Danske identified evidence that bank staff had made records on the bank's system to indicate bundling of business current accounts and loan applications. The CMA notes that impacted customers were told the only way they could access the loan would be through opening a Danske business current account. The CMA was informed that, in Danske Bank's view, this was the most robust way to promptly meet the demand for support from these SMEs while simultaneously meeting its 'know your business' legal obligations and the fraud checking requirements of the scheme.

In assessing the circumstances of this breach and in similar previous breaches concerning the provision of loans under Scheme, the CMA has been mindful of the unique circumstances related to the Covid-19 pandemic in which this breach occurred and the vital support these loans have provided to smaller businesses in the UK.

### **The CMA's concerns**

The Undertakings prohibit bundling loans and business current accounts for small businesses. The Undertakings help to preserve choice for small businesses about the banking services they use, enabling small businesses to select their preferred business account provider independently of any lending relationships, and prevent the large banks from restricting competition. Consequently, the CMA found that Danske breached the Undertakings by informing 205 SME customers of a requirement to hold a business current account in order to apply for a bounce back loan.

This requirement by Danske led to potential harm to the competitive process in the business current account market and impacted customers incurring charges on their business current accounts with Danske when there should have been no requirement to open a Danske business current account. Those charges could have been avoided.

Danske is subject to the Undertakings which have been in force for 19 years and Danske is subject to an enhanced compliance regime under the 2014 Agreement<sup>2</sup>

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<sup>1</sup> Danske confirmed it has so far provided refunds of BCA fees and charges to a total of 121 affected customers. 115 customers of the 205 customers were automatically refunded by Danske because they were identified as having opened a Danske BCA and applied for a BBL within a 30 day time period. Danske had written to the remaining 90 customers identified as having opened a Danske BCA and applied for a BBL after a 30 day time period. Danske has asked those 90 customers to get in contact with Danske if they opened a BCA in order to obtain the loan, i.e. if they have been subject to bundling by Danske and therefore would be eligible for refunds. To date 6 further customers have responded to this further request.

<sup>2</sup> The 2014 Agreement can be viewed on pages 22 and 23 of the CMA's report on banks' compliance 2020 - [SME banking 2002 behavioural undertakings: reports on compliance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/SME_banking_2002_behavioural_undertakings_reports_on_compliance_-_GOV.UK_(www.gov.uk).pdf)

which focuses on internal compliance auditing and annual written reminders to staff about the bundling Undertakings. Given the above, Danske should be familiar with the obligations and clear about what might constitute a breach.

This is a second breach reported to the CMA by Danske concerning the provision of bounce back loans. This second breach was identified as a result of the publicity arising from the CMA's [announcement](#) of the first breach on 30 March 2021.

Following the CMA's announcement, a number of Danske SME customers contacted the bank with queries concerning eligibility for refunds of BCA charges.

The CMA is concerned that Danske did not investigate the first breach in sufficient detail so as to identify all its channels for bounce back loan applications and all affected customers. This breach notified on 30 April might not have come to light had Danske SME customers not seen the CMA's [30 March 2021 announcement](#) of the first breach and subsequently contacted the bank. While a lack of knowledge among relationship managers of the Undertakings may be part of the cause, it is at least in part due to Danske's failures in investigating the first breach.

While Danske considered its approach to be appropriate for offering bounce back loans to customers, this was not consistent with the Undertakings. Other banks subject to the Undertakings were able to offer bounce back loans in a compliant manner, and the Scheme was designed with awareness of the Undertakings and ongoing compliance in mind.

### **The bank's actions to end the breach**

For the Danske breach notified on 30 April 2021, Danske applied the same approach as the first breach which was to write to impacted customers offering refunds of BCA charges and fees incurred since the opening of the BCA and an option to switch to a fee-free loan servicing account. Danske confirmed that the total figure paid to date to affected customers in relation to this breach is over £9,000. Combined with the refunds to affected customers in Danske's first breach, the total amount refunded to affected customers for the two breaches by Danske is around £26,000.

Key messages were also provided to impacted customers that it is not a requirement to open or maintain a Danske BCA in order to obtain or keep a loan with it.

The CMA has worked closely with Danske to agree a number of actions set out in Danske's Action Plan with timeframes for completion, which is published alongside this letter. The CMA considers that action in the following areas is necessary to prevent the risk of further breaches of the Undertakings:

- Improving the training for staff on awareness and implications of the Undertakings on the bank's business, including ensuring all relevant staff involved in dealing with SMEs participate in such training, and that there are

appropriate processes in place for this training and assessment of staff capabilities; and

- An independent audit of compliance controls, practices, and products in scope of the Undertakings within the bank.

Given the challenging circumstances of responding to the Covid-19 pandemic, in combination with the constructive approach taken by Danske to ending the breach and preventing further breaches, the CMA does not consider it appropriate to take formal enforcement action at this time.

### **Next Steps**

The CMA will monitor Danske's progress on completing the actions set out in its [Action Plan](#) and reserves the right to take formal enforcement action should Danske Bank fail to adhere to its Action Plan.

Yours sincerely

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