
Anticipated merger between Co-operative Financial Services Limited and Britannia Building Society

ME/4008-09

The OFT's decision on reference under section 33(1) given on 18 February 2009. Full text of decision published 25 February 2009.

Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **The Co-operative Bank plc**¹ (Co-op Bank) is a wholly-owned subsidiary of Co-operative Financial Services Limited (CFS). CFS is itself a subsidiary of the Co-operative Group Limited (CGL), which is active in a wide range of activities including grocery retailing, pharmacies, and funeral services. Other CFS subsidiaries include the Co-operative Insurance Society Limited and CIS Unit Managers Limited (which trades as The Co-operative Investments). The Co-op Bank provides personal customers with high street and internet banking, personal current accounts (PCAs), mortgages, credit cards and loans. The Co-op Bank also provides business banking services. Other CFS subsidiaries offer a variety of insurance products, unit trusts, investment bonds and pensions. The Co-op Bank has approximately 90 branches throughout the UK.
2. **Britannia Building Society** (Britannia) is a mutual building society incorporated under the Building Societies Act 1986. It provides financial services to personal customers including mortgages, personal savings accounts and insurance. Britannia also offers specialised services including commercial mortgage lending, lending via intermediaries, third party mortgage servicing and offshore savings. Britannia is the UK's second largest building society, and has 248 branches. Britannia's UK turnover in 2007 was £2,188.3 million.

TRANSACTION

3. CFS and Britannia agreed to merge and the proposed transaction will take effect by way of a transfer of business by Britannia to Co-op Bank pursuant to section 97 of the Building Societies Act 1986 as amended by an order made under section 3 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007. The offer was publicly announced on 21 January 2009 and is scheduled to complete on 31 July 2009. The transfer is conditional on approval by Britannia's members.
4. The parties notified the transaction to the Office of Fair Trading (OFT) by means of a Merger Notice under section 96 of the Enterprise Act 2002 on 21 January 2009. The statutory deadline for the OFT to decide whether to refer the merger to the Competition Commission (CC) expires on 18 February 2009.

JURISDICTION

5. As a result of this transaction CFS and Britannia will cease to be distinct. Both parties achieve more than two-thirds of their aggregate Community-wide turnover within the UK. Therefore, the merger does not have a Community dimension under the EC Merger Regulation. The UK turnover of Britannia exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

MARKET DEFINITION

6. The parties overlap in relation to a range of financial services, mainly in the provision of financial products to personal customers in the UK, including in the supply of savings accounts, mortgages, loans, long-term investments and insurance products. In addition, the parties overlap in [] the supply of commercial mortgages and offshore savings services [] in the UK.

¹ Which also trades as Smile, an internet bank.

Product scope

7. In a previous case,² the CC concluded that the financial services sector may be broadly categorised as follows:
 - i. financial products sold to personal customers
 - ii. financial products sold to small and medium-sized enterprises (SMEs)
 - iii. financial products sold to large firms, and
 - iv. wholesale banking (for example, money market and foreign exchange dealing).
8. The CC also determined that financial products sold to personal customers include eight separate markets: 'PCAs; deposit accounts and similar savings accounts; mortgages; other loans; credit cards; insurance (life and other); other long-term investments; and pensions'. This same approach was adopted by the OFT in several recent decisions.³
9. The OFT has not received any evidence suggesting a departure from the above market definition. Therefore, separate frames of reference will be considered for the provision of savings accounts, mortgages, loans, long-term investments and insurance to personal customers in the UK. In addition, the OFT will consider the supply of commercial mortgages and offshore savings services [] in the UK as separate frames of reference.

Geographic scope

10. The parties submitted that the relevant geographic frame of reference for the supply of financial products to personal customers is the UK. In particular, they indicated that the same financial products are generally supplied throughout the UK and that national pricing policies are adopted, creating no differentiation between regions. In addition, the parties argued that decisions are made according to centrally determined criteria, and that customers selecting the types of financial products are mainly concerned

² Competition Commission Lloyds TSB Group plc and Abbey National plc: a report on the proposed merger, July 2001, section 2, page 13 (Lloyds/Abbey).

³ OFT decision on the proposed acquisition by Nationwide Building Society of Portman Building Society, 21 November 2006; OFT decision on the proposed acquisition by Nationwide Building Society of Derbyshire Building Society, 19 November 2008 (Nationwide/Derbyshire); OFT decision on the proposed acquisition by nationwide Building Society of Cheshire Building Society, 19 November 2008 (Nationwide/Cheshire); and OFT report to the Secretary of State on the anticipated acquisition by Lloyds TSB Group plc of HBOS plc, 31 October 2008 (Lloyds/HBOS).

with the features of the product and pricing, and will pay limited or no regard to the proximity of a local branch.

11. The CC in Lloyds/Abbey concluded that the geographic market for all of the products was Great Britain, with Northern Ireland constituting a separate market.
12. Although the parties submitted that the relevant geographic market for the supply of retail banking services is national in scope, CFS provided data of local areas in which the parties overlap, based on one mile and one and a half mile radii around CFS and Britannia branches.
13. In recent cases the OFT has considered financial services market overlaps with respect to a regional frame of reference. In particular, in *Lloyds/HBOS* the parties' combined position in Scotland was considerably stronger than across the UK as a whole, such that merger effect incentives could potentially arise on a regional (that is, sub-UK) basis. A similar approach was adopted in two recent OFT decisions,⁴ where the parties' combined position in the North West of England and in the East Midlands, respectively, was stronger than across the UK as a whole. Therefore, consistent with the approach adopted in previous cases⁵ the parties provided some data based on a regional basis.
14. In *Lloyds/HBOS*, *Nationwide/Derbyshire* and *Nationwide/Cheshire*, the OFT could not rule out the possibility of competition concerns arising at the local level. In this case, given that the anticipated transaction does not raise competition concerns at either the regional or local level, the OFT does not need to conclude on the precise geographic scope and has analysed each product market on a national, regional and local basis.

⁴ *Nationwide/Derbyshire* and *Nationwide/Cheshire*.

⁵ *Lloyds/HBOS*, *Nationwide/Derbyshire* and *Nationwide/Cheshire*.

HORIZONTAL ISSUES

National level

Financial Products to personal customers

	Savings	Mortgages	Loans	Long-term investments
CFS	[0-5]per cent	[0-5]per cent	[0-5]per cent	[0-5]per cent
Britannia	[0-5]per cent	[0-5]per cent	[0-5]per cent	[0-5]per cent
COMBINED PARTIES	[0-5]per cent	[0-5]per cent	[0-5]per cent	[0-5]per cent

Source: Parties, based on data from GFK-NOP and Council of Mortgage Lenders

15. The parties provided the OFT with their market shares of financial products to personal customers for 2007. Although these figures are for 2007, the OFT has no reason to believe that market shares for 2008 will be markedly different. In addition, market share estimates provided by third parties broadly support those submitted by the parties.
16. The parties overlap in the supply of saving accounts, mortgages, loans and long-term investments to personal customers in the UK. The combined share of supply in each of these markets does not exceed [0-5] per cent with an increment of less than [0-5] per cent.
17. In light of the low combined market shares and very small increments, and in the absence of any third party concerns, the OFT does not believe that the merger raises any competition concerns at the national level for the supply of these financial products to personal customers.

Insurance

18. The parties submitted that the only two areas where there is more than a negligible overlap between their insurance products relates to the retail of household insurance and life insurance to personal customers. They submitted that in neither case would the merged entity have a market share greater than [0-5] per cent.

19. In light of the low combined market shares and very small increments, and in the absence of any third party concerns, the OFT does not believe that the merger raises any competition concerns at the national level for the supply of insurance services to personal customers.

Commercial mortgages and offshore savings services

20. The parties submitted that there is a very minor overlap between their activities in relation to commercial mortgages and offshore savings services [] in the UK. In particular, they estimated that each party has [0-5] per cent share of commercial mortgage lending market. With respect to offshore savings, Britannia is only active in the Isle of Man with a share of deposits of less than [0-5] per cent, and CFS is only active in Guernsey where it has a share of deposits of less than [0-5] per cent.
21. In light of the low combined market shares and very small increments, and in the absence of any third party concerns, the OFT does not believe that the merger raises any competition concerns at the national level for the supply of commercial mortgages and offshore savings services [].

Local and regional aspects

22. The OFT examined the data submitted by the parties and concluded that save for one location (Wolstanton, in Staffordshire) where the merger reduced the number of competitors to four (discussed below), there are no locations in which there is a reduction in the number of fascia – on either a one mile or one and a half mile radius - to fewer than five. On this basis, the OFT considered there would be a sufficient number of alternative competitive fascias post-merger.
23. In relation to Wolstanton, the parties' branches are more than one mile apart,⁶ with a Lloyds TSB branch within one mile of the Britannia branch. There is also an Abbey branch 1.52 miles from the Britannia branch which has not been included in the fascia count. Therefore, the OFT concluded that the merger does not give rise to competition concerns at a local level, as the evidence available suggests that there would be a number of alternative competitor fascias post-merger.

24. Furthermore, the OFT concluded that the transaction does not raise concerns on a regional basis, given the small increments and the merged entity's relatively low market share post-merger in each of the overlapping products and services. Both parties' branch networks are reasonably spread across England and Wales, with a more limited presence in Scotland and Northern Ireland. In particular, the parties submitted that the regional picture will be no different from the national one and that their combined shares post-merger does not exceed [0-5] per cent within any regional market in the UK. Therefore the OFT ruled out competition concerns given the parties' very low combined shares and the existence of a number of alternative suppliers.

Barriers to entry and expansion

25. Given that no competition concerns arise from the merger, it is not necessary to conclude on the issue of barriers to entry.

THIRD PARTY VIEWS

26. The OFT received comments and views about the merger from a number of third parties.
27. No third parties expressed any concerns about the transaction to the OFT.

ASSESSMENT

28. CFS and Britannia overlap in the supply of a range of financial services to personal customers in the UK including savings accounts, mortgages, loans, long-term investments and insurance. They also overlap in the supply of commercial mortgages and offshore savings services [] in the UK.
29. For the purposes of this assessment, the OFT examined all these financial products on a UK-wide basis. In addition, the OFT examined information provided by the parties on local and regional areas in which the parties overlap.
30. Based on the evidence available to it, the OFT considers that no competition concerns will arise on any of these frames of reference. At the

⁶ The parties' branch locators on their websites return slightly different results for the distance between these branches – 1.37 miles and 1.61 miles.

national and regional levels, the parties have a small combined market share of supply in relation to each of the product segments with minimal or small increments in all segments. At a local level, the OFT concluded that there are no locations in which there is a reduction of fascia to less than four, and only one from five to four. Based on the local facts and the existence of a number of alternatives, no competition concerns are considered to arise in any such local areas.

31. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

32. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.