
Anticipated acquisition by Barclays Bank plc of the Goldfish business of Discover Financial Services

ME/3532/08

The OFT's decision on reference under section 33(1) given on 7 March 2008. Full text of decision published on 13 March 2008.

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. **Barclays Bank plc** (Barclays) is a global financial services provider engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services.
2. **Discover Financial Services** (Discover) is a US-incorporated credit card issuer and electronic payment services company. The core activity of Discover's **Goldfish business** (Goldfish) is the issue and operation of personal credit cards to consumers in the UK under the Goldfish and Morgan Stanley brands.

TRANSACTION

3. Barclays will purchase Goldfish from Discover pursuant to a sale and purchase agreement dated 7 February 2008. The parties notified the transaction to the OFT by way of Merger Notice on 11 February 2008. The OFT's statutory deadline is 10 March 2008.

JURISDICTION

4. As a result of this transaction Barclays and Goldfish will cease to be distinct. The UK turnover of Goldfish 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 AND COMPETITIVE ASSESSMENT

5. The parties overlap in the supply of credit card services both directly to consumers and to third party partners,¹ as well as the distribution of certain insurance products to consumers. The appropriate frame of reference for each product is considered below, followed by the competitive assessment in relation to that frame of reference.

Credit card services

6. In previous cases the OFT has distinguished between the supply of credit card services to third party partners (retailers) and the supply of credit card services to consumers.² The OFT did not receive any evidence to suggest a departure from this distinction in the current investigation.

Credit card services to third party partners

7. Due to supply side considerations, the parties submit that the supply of credit card services to third party partners includes all credit card service-type relationships with third party partners. Such partnership arrangements include both co-branded and affinity cards. Co-branded cards are issued by a financial services provider with the brand of another organization (e.g. a retailer) on the card and the profits split. Affinity cards are issued by a

¹ The overlap concerns credit card **issuing** services. As Goldfish is not involved in the supply credit card **acquiring** services (i.e. the supply of card payment processing services), such services are not considered in this decision.

² See *Anticipated acquisition by HSBC Holdings plc of Marks & Spencer Retail Financial Services Holdings Limited* (October 2004) (HSBC/M&S) and *Completed acquisition by MBNA Europe Bank Limited of the credit card portfolio of Alliance and Leicester* (November 2002) (MBNA/A&L). The OFT *Store Cards* report (March 2004) and Competition Commission's *Store Cards Inquiry* (March 2006) also followed this distinction in relation to store cards. Store cards were considered to form a distinct market from credit cards in relation to retailers and consumers and so are not considered here.

financial services provider and branded with a non-profit organisation (e.g. a charity), with the provider making a donation to the charity each time the card is used. Third party competitors agreed with the parties' interpretation of the market. However, given the competitive assessment does not depend on whether affinity and co-branded partnerships are treated together or separately, the OFT has not reached a conclusion on this issue. Consistent with previous cases³ and in the absence of any submissions to the contrary, the geographical market is assessed at a national level (i.e. the UK).

8. As at the date of the parties' submission, Barclays supplies credit card services to []. These are all co-branding partnerships and Barclays has no affinity relationships. Goldfish has six partners in the UK, all of which they consider akin to affinity relationships.
9. The parties' combined share of supply in the UK for co-branded and affinity cards considered together is [0 – 10] per cent. The parties provided evidence to show that post-merger there would continue to be a number of strong competitors in the market, with substantially higher shares of supply, and that bidding data suggested a competitive market. If the market were to be segmented into co-branded cards and affinity cards separately, on the basis of the parties' assertion of their current partnership arrangements there would be no horizontal overlap between the parties on either segment (Barclays only having co-branding relationships and Goldfish only having affinity relationships).
10. No third parties, including current partners of the parties, raised concerns about the impact of the transaction on retailers. On the basis of this evidence, the OFT does not believe that the transaction will raise competition concerns in relation to the supply of credit card services to third party partners.

³ Ibid.

Credit card services to consumers

11. The supply of credit card services to consumers has been considered on a number of occasions by the OFT and by the European Commission.⁴ Previous OFT merger decisions have left open the issue of whether credit cards form part of a wider market which would include other payment mechanisms such as store cards, debit cards, cheques, cash, hire-purchase and overdrafts. While the parties submitted that these other payment mechanisms may be substitutable for credit cards, they provided share of supply information on the basis of credit cards only, on the basis that no competition concerns would arise however narrow the market in this case. The OFT has taken a cautious approach and assessed the market on this narrow basis. Consistent with previous cases,⁵ and in the absence of any submissions to the contrary, the OFT considered the appropriate geographical market to be national.
12. Post-merger, Barclays' share of supply of credit card services to consumers would be [10 – 20] per cent, with an increment of [0 – 10] per cent, the exact figures depending on whether the market is assessed by volume (cards in issue) or value (balances outstanding). This share would mean that Barclays becomes the leading provider of credit card services to consumers. However, the market is fragmented with a number of other strong competitors. Based on either volume or value there are four competitors with a share of supply above 10 per cent, and a number of smaller competitors.⁶ No third party raised concerns in relation to this market.
13. Given the fragmented market, the presence of strong competitors, the relatively small increment and the absence of third party concerns the OFT does not believe there is a realistic prospect of a substantial lessening of competition arising in relation to the supply of credit card services to consumers.

⁴ See for example, *Anticipated acquisition by Morgan Stanley Bank International Limited of certain assets of the Goldfish business from Lloyds TSB Bank plc* (16 February 2006), *HSBC/M&S*, the OFT Competition Act 1998 *MasterCard interchange fees infringement decision* (September 2005) and Case Comp/29.373 *Visa International* (November 2001).

⁵ See *MBNA/A&L* and *HSBC/M&S*.

⁶ The OFT also considered whether customers have a preference for a specific brand or network (i.e. MasterCard or Visa). Although this would result in a greater share of supply in relation to the Visa brand/network, even on this basis the increment arising from the transaction would be very small, as the parties each have a greater presence in opposing brands/networks.

Insurance

14. The parties overlap in travel, home, motor, identity protection and credit card payment protection insurance (PPI). The parties also have a small overlap in life insurance, but given the negligible life insurance premiums written by Goldfish in the year to November 2007 this is not considered further.

General (non-life) insurance (excluding PPI)

15. In previous cases, the OFT and the European Commission have found that non-life or general insurance constitutes a frame of reference separate from life insurance.⁷ From a demand perspective, it might be possible to identify separate markets according to the type of risk insured, although supply side considerations may support broader product markets. The parties submit that there is a single market for non-life insurance. At the narrowest level, even if the travel, home, motor and identity protection insurance segments were considered as separate frames of reference, the parties would have a combined share of supply of [0 – 10] per cent in each segment. Further, no third parties have raised competition concerns in this area. The OFT therefore does not consider that the transaction raises concerns in relation to general (non-life) insurance.

Payment protection insurance

16. The Competition Commission (CC) is currently considering PPI for credit cards as part of a market investigation. The preliminary view of the CC⁸ is that the market for the distribution of PPI is no wider than the supply of particular types of PPI by distributors to their own credit customers. This would mean there are a series of individual markets, where each distributor enjoys a monopoly over sales of PPI to its own credit card customers. Such an approach would result in there being no overlap between the parties' PPI activities on any relevant market.

⁷ See, for example, *Completed acquisition by Britannic Assurance plc of Allianz Cornhill Insurance plc's life operations* (May 2005).

⁸ Competition Commission, *Payment Protection Insurance Market Investigation: Emerging Thinking* (November 2007).

17. On the assumption of a wider market, that is the distribution of credit card PPI to consumers, the parties submit their combined market share following the merger would be [10 - 20] per cent, with an increment of [less than one] per cent. The CC's published ranges for competitors' shares of supply show three strong competitors with shares of supply between 10 - 30 per cent and three further competitors with 5 - 10 per cent. No third parties have raised concerns. The OFT therefore considers that competition issues do not arise from the merger in relation to the supply of PPI.

VERTICAL ISSUES

18. The OFT does not consider that there are any vertical effects arising from the merger.

THIRD PARTY VIEWS

19. No third party raised competition concerns in relation to the transaction.

ASSESSMENT

20. The parties overlap in the provision of credit card services to both consumers and third party partners and the distribution of certain insurance products to consumers. Consistent with previous OFT decisions, each was assessed on a national level (i.e. the UK).
21. The OFT distinguished between the supply of credit card services to third party partners (retailers) and the supply of credit card services to consumers. In relation to the former, the OFT also considered whether there was a distinction between affinity and co-branding relationships. However, the parties' share of supply was relatively small in whatever way the market was defined, and there were a number of strong competitors with substantially higher shares of supply in relation to both affinity and co-branding relationships. The OFT therefore had no competition concerns in relation to the supply of credit card services to third party partners.
22. In line with past OFT cases, the OFT took a cautious approach and considered credit card services to consumers separately from other payment mechanisms such as store cards, debit cards, cheques, cash, hire-purchase and overdrafts. On this market, post-merger Barclays would become the leading provider of credit card services to UK consumers.

However, this leading share, and the increment arising from the transaction, would be relatively modest. There would continue to be a number of strong competitors post-merger, and no third party expressed concerns in relation to this market. The OFT therefore had no competition concerns in relation to the supply of credit card services to UK consumers.

23. The parties each supply a number of life and non-life insurance products. However, with the exception of PPI the parties have a market share of [0 – 10] per cent for each of these products, and as such the OFT did not consider that competition concerns arose as a result of the transaction. In relation to PPI, the CC is currently considering the appropriate market definition in the context of a market study. Their preliminary view is that each credit card provider enjoys a monopoly over sales of PPI to its own credit card customers. This approach would result in there being no overlap between the parties' PPI activities on any relevant market. Even if there is a wider market, the distribution of PPI to consumers, the parties' combined market share would be [10 – 20] per cent, with an increment from the transaction of less than one per cent. Given this relatively small market share and increment, and the presence of a large number of stronger competitors, the OFT did not consider that competition concerns arose in relation to PPI, even if considered on the basis of this wider market.
24. 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

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