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Anticipated acquisition by HSBC Holdings plc of Marks & Spencer  
Retail Financial Services Holdings Limited

The OFT's decision on reference under section 33 (1) given on 12 October 2004

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Please note that square brackets indicate information excised, or exact figures replaced by a range, at the parties' request

**PARTIES**

1. **HSBC Holdings plc** (HSBC) is one of the largest banking and financial services organisations in the world. It provides a comprehensive range of financial services, such as personal finance, commercial banking, corporate and investment banking and private banking. In March 2003, HSBC acquired HFC Bank Limited which specialises in consumer finance.
2. **Marks & Spencer Retail Financial Services Holdings Limited** (M&S Money) is a wholly-owned subsidiary of the Marks & Spencer Group plc, one of the largest retailers of clothes, food and home products in the UK. M&S Money provides a wide range of financial products such as store cards, credit cards, personal loans, various unit trusts, the personal reserve, life assurance, pension products and other insurance products, guaranteed capital bond and mini-cash ISA. M&S Money trades as M&S Financial Services and is branded as M&S Money.

**TRANSACTION**

3. HSBC will acquire 100 per cent of M&S Money and its subsidiaries as follows: Marks & Spencer Financial Services plc, Marks & Spencer Savings and Investments Ltd, Marks & Spencer Unit Trust Management Ltd and Marks & Spencer Life Assurance Ltd. HSBC will become the external finance provider for various financial products distributed through M&S Money. Under the terms of the share purchase agreement, HSBC will pay an up-front consideration of £275 million plus net asset value at completion. Additionally, it will pay approximately £ [ ] million for the M&S Money life assurance business.

4. The transaction was announced on 12 July 2004. The 40-day administrative deadline expires on 11 October 2004.

## **JURISDICTION**

5. HSBC and M&S Money will cease to be distinct as a result of these arrangements. The merger meets the turnover test in section 23 of the Enterprise Act 2002 (the Act) as M&S Money's UK turnover is greater than £70 million. The notified arrangements, if carried into effect, will result in the creation of a relevant merger situation.

## **BACKGROUND**

6. In March 2004 the OFT published the report of its market inquiry into the supply of store cards (the Store Cards Report). In the Store Cards Report, the OFT identified two distinct levels at which to consider market definition for the supply of store cards: the supply of store card services to retailers (the upstream level); and the supply of store cards to consumers (the downstream level). No firm conclusion was reached on whether, at the downstream level, store card credit forms a separate market or part of a wider market which would include at least credit cards.<sup>1</sup>
7. The OFT concluded that the evidence suggested there are structural features at the upstream level which prevent, restrict or distort competition. In respect of the downstream level the OFT concluded that it is possible that store card holders find the costs and benefits of store cards difficult to assess and that store card holders may make more use of them than would be expected if competition were working well. The OFT made a market investigation reference to the Competition Commission of store card credit services at the upstream and downstream levels. The Competition Commission is required to publish its final report by 17 March 2006, but expects to publish earlier, in June/July 2005.

## **RELEVANT MARKET**

8. The parties overlap primarily in the provision of store cards and credit cards.
9. Store cards allow consumers to defer payment in the shops of a particular retailer, or sometimes of a group of retailers. In addition, they provide consumers with a wide range of retailer-specific benefits, such as account opening discounts, invitations to sales previews, loyalty points, continuing discounts on purchases or other free or exclusive services (e.g. car parking and gift wrapping). Credit cards also allow consumers to defer payment but unlike store cards are accepted widely

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<sup>1</sup> Store Cards Report, paragraph 4.72.

by numerous retailers, and the additional benefits offered with some credit cards (such as air miles) are not retailer-specific.

10. The parties also overlap in the supply of personal loans, unit trusts, life assurance and pensions, non-life insurance, retail savings (including mini-cash ISAs) and foreign exchange. The parties' combined shares of supply in the UK do not amount to more than ten per cent in any of these segments. No third party concerns were raised and no competition issues are believed to arise in the supply of these products and hence these overlaps are not considered further.

### **Product market**

11. In the provision of store cards, HSBC supplies store card services to high street stores including Harvey Nichols, John Lewis and James Beatties. M&S Money supplies two types of store card, the Budgetcard and the Chargecard for use only in M&S stores. In the provision of credit cards, HSBC supplies credit card services primarily to John Lewis. M&S Money supplies the Marks & Spencer branded '&more' credit card.

### **Upstream supply of store card and credit card services to retailers**

12. On the demand side, it may be considered that store cards and credit cards are substitutable to the extent that store cards also provide retailers with a means of providing customers with a deferred payment mechanism. However, as identified by the Store Cards Report, store cards are offered in conjunction with a range of different benefits, which requires close collaboration between the retailer and the store card administrator in order to promote the cards. On the demand side, therefore, it would seem that the supply of store card services to retailers form a quite distinct set of services.
13. Most retailers contract out the administration of store cards and credit cards to external finance providers. On the supply side, the parties consider that there are certain logistical and technical requirements for the provision of store card services to retailers although they submit that these do not appear to be substantially different to offering credit card services. However, in the inquiry leading to the Store Cards Report, both financial companies and retailers reported that the systems and procedures for administering store cards were different from those required for credit cards and other types of card.
14. No firm evidence has been received in this investigation to suggest departing from the approach taken by the Store Cards Report on market definition in the upstream segment. It is therefore considered that the appropriate upstream frames of

reference for assessment are the respective supply to retailers of (i) store card services and (ii) credit card services.

#### Downstream supply of store cards and credit cards to consumers

15. The parties consider that store cards form part of a wider market which includes at least credit cards and possibly other payment mechanisms such as debit cards, cheques, cash, hire-purchase and overdrafts.
16. On the demand side, the parties consider that store cards and credit cards compete with each other as well as with a range of different payment methods, primarily those that allow payment to be deferred. Most third parties share this view.
17. On the supply side, evidence from the Store Cards Report suggests that switching between store card and credit card provision is not easy due to the existence of different systems and procedures.
18. As in the Store Cards Report, this investigation reaches no firm conclusion on whether store card credit forms a separate market or is part of a wider market, which would include at least credit cards. In the event that the store card credit is not part of a wider market for consumer credit it is possible that each store card constitutes a separate market since they do not compete directly with each other: that is, they are retailer-specific. As store cards are retailer-specific and in no case do both parties offer store cards relating to the same retailer, there is no overlap on this basis. Accordingly, the assessment at the downstream level is carried out on the basis of both the overlap between the parties in the supply of credit cards and the overlap between the parties' activities in store cards and credit cards, considered together.

#### **Geographic market**

19. At the upstream level UK retailers may outsource services to foreign finance companies. Although no firm conclusion was reached in the Store Cards Report, it was considered that at its narrowest competition is UK-wide in scope. Third parties suggest that upstream providers often have activities in a number of different countries and that customers may consider sourcing from an overseas provider. In this case, overlaps between the parties in the supply of store cards and in the supply of credit cards to retailers will be considered at the national level.
20. Downstream, competition has been considered within the scope of the UK as most store cards and credit cards are issued to UK residents.

## HORIZONTAL ISSUES

### Upstream supply of store card services to retailers

21. Table one below illustrates the parties' share of supply in store card services to retailers and that of their main competitors in the UK. General Electric Consumer Finance (GECF) is by far the leading supplier in this segment with 48 per cent of cards in issue in the UK; the merged entity will be the second largest store card provider with [15-25] per cent.

**Table one: Shares of supply of store cards in the UK, June 2004**

|                        | Share of supply<br>by number of cards in issue | Share of supply<br>by outstanding balances |
|------------------------|--|--|
| HSBC                   | [0-10]   | [0-10]                                     |
| M&S Money              | [10-20]  | [0-10]                                     |
| <b>Combined</b>        | <b>[15-25]</b>                                 | <b>[10-20]</b>                             |
| GECF                   | 48.1   |  |
| Creation               | 11.9   |  |
| IKANO                  | 5.5  |  |
| Argos                  | 4.1  |  |
| RBS Style              | 3.4  |  |
| Cetelem                | 1.4  |  |
| Other                  | 4.2  |  |
| <b>Post merger HHI</b> | <b>[ &lt; 3000 ]</b>                           |  |
| <b>HHI Increment</b>   | <b>[ &lt; 250 ]</b>                            |  |

Data for the parties: parties' estimates.

Data for competitors: Datamonitor report 'UK Private Label Cards 2004' (data as at end 2003); the parties could not estimate shares by value for competitors.

22. The post merger HHI figure and HHI increment set out in Table one are above the levels at which OFT guidance suggest that a merger may raise potential concerns. However, such data are merely indicative and, for the reasons given below, are not in this case a reliable guide to potential competitive harm.
23. At the upstream level, HSBC supplies store card services to other retailers. Pre-merger, M&S Money has focused exclusively on supplying the downstream M&S retail business (i.e. wholly captive supply) and has never provided these services to other retailers. Accordingly, HSBC and M&S Money appear never actively to have competed for third party customers.
24. M&S Money could nevertheless be regarded as a potential third party supplier in this segment given that it has the necessary infrastructure in place. Third parties,

however, indicated that they have a range of suppliers and consequently did not regard M&S Money as an important potential source of supply. In any event, absent the merger, it appears relatively unlikely that retailers would have sought to procure store cards services from the vertically-integrated M&S Money, given that such action would entail providing highly confidential customer information to a competitor in the retailing sector. Accordingly, the issue of loss of potential competition between the parties does not appear significant.

**Upstream supply of credit card services to retailers**

- 25. HSBC supplies credit card services to retailers while M&S Money only supplies its own branded credit card. As in the case of store cards, pre-merger M&S Money has never participated in a bidding process to supply credit cards to other retailers and has therefore never competed directly with HSBC or other finance providers in this segment. Third parties also raised no concerns in relation to this overlap.
- 26. The parties have been unable to supply the OFT with share of supply data on the provision of credit card services to retailers. However, for completeness, table two below lists a selection of finance providers supplying those services and highlights a number of competitors in this segment.

**Table two: Selected finance provider/retailer pairings**

| <b>Retailer</b> | <b>Finance provider</b>      | <b>Date of launch</b>   |
|-----------------|------------------------------|---|
| Marks & Spencer | M&S Money (in-house)         | Launched autumn 2003  |
| John Lewis      | HSBC                         | Launched April 2004   |
| Tesco           | Royal Bank of Scotland       |   |
| Sainsbury       | HBOS                         |   |
| Debenhams       | GECF                         | Launched trial early 2004   |
| ASDA            | GECF                         | Launched trial early 2004   |
| Harrods         | GECF                         | Launched late 2003  |
| House of Fraser | Barclaycard (from June 2007) | Plans to launch credit card when current relationship with GECF ends. |

Source: the parties

**Downstream supply of credit cards to consumers**

- 27. Table three below shows that M&S Money’s pre-merger presence in credit cards is reasonably small which is primarily explained by its recent entry. As such the

increments in this segment are low, amounting to [0-10] per cent. Supply throughout this segment remains fragmented, as suggested by the low post merger HHI and HHI increment.

**Table three: Shares of supply of credit cards in the UK by cards in issue, June 2004**

|                        | Volume data by total number of cards in issue | Value data by outstanding balance |
|------------------------|---|-----------------------------------|
| HSBC                   | [5-15]  | [0-10]                            |
| M&S                    | [0-10]  | [0-10]                            |
| <b>Combined</b>        | <b>[5-15]</b>                                 | <b>[5-15]</b>                     |
| RBS                    | 16.2  |                                   |
| Barclaycard            | 13.8  |                                   |
| Lloyds TSB             | 11.4  |                                   |
| HBoS                   | 11  |                                   |
| MBNA                   | 8.6   |                                   |
| Capital One            | 4.6   |                                   |
| Egg                    | 4.0   |                                   |
| <b>Post merger HHI</b> | <b>[ &lt; 1000]</b>                           |                                   |
| <b>HHI Increment</b>   | <b>[ &lt; 100]</b>                            |                                   |

Data for the parties: parties' estimates.

Data for competitors: Datamonitor Report 'UK Plastic Cards 2004' (data as at end 2003).

### **Downstream supply of store cards and credit cards to consumers**

28. Table four below outlines the parties' respective shares of supply in store cards and credit cards in the UK, if considered together. While the merged entity will become the largest supplier, supply remains very fragmented.

**Table four: Shares of supply of store cards and credit cards in the UK, June 2004**

|                        | Volume data by total number of cards in issue | Value data by outstanding balance |
|------------------------|---|-----------------------------------|
| HSBC                   | [5-15]  | [0-10]                            |
| M&S                    | [0-10]  | [0-10]                            |
| <b>Combined</b>        | <b>[5-15]</b>                                 | <b>[5-15]</b>                     |
| Barclays               | 12.4  |                                   |
| GE Consumer Finance    | 11.4  |                                   |
| RBS                    | 11.3  |                                   |
| Lloyds TSB             | 8.7   |                                   |
| HBOS                   | 8.4   |                                   |
| MBNA                   | 6.6   |                                   |
| Capital One            | 3.5   |                                   |
| Egg                    | 3.1   |                                   |
| Creation               | 2.8   |                                   |
| Co-op Bank             | 1.9   |                                   |
| <b>Post merger HHI</b> | <b>[ &lt; 1000]</b>                           |                                   |
| <b>HHI Increment</b>   | <b>[ &lt; 100]</b>                            |                                   |

Data for the parties: parties' estimates.

Data for competitors: Datamonitor Report 'UK Plastic Cards 2004' and 'UK Private Label Cards 2004' (data as at end 2003).

### **Barriers to Entry and Buyer Power**

#### Upstream supply of store card and credit card services to retailers

29. A de novo entrant would need to obtain a consumer credit licence and fund the costs of financing, sales and marketing, the back office, provision of the credit facility through the retailer, robust collection procedures and credit control as well as the physical provision of cards.
30. The customer base for store card and retailer branded credit card services is reasonably small, limited to the largest retailers and chain stores. Given the long duration of contracts and high degree of inertia it is likely that retailers benefit from a degree of buyer power over store card providers eager to win contracts when they arise.

#### Downstream supply of store cards and credit cards to consumers

31. Once entry has been achieved at the upstream level, barriers to entering downstream appear relatively low. In the credit cards segment, there is a reasonably high incidence of entry in this segment with new entrants capturing



share from the traditional banking sector in recent years. Particularly notable entrants include MBNA, Capital One and Egg.

32. The customer base of credit cards is very fragmented and the incidence of switching between providers has increased markedly in recent years particularly given the growth in the number of companies giving interest free periods on balance transfers. The ability to switch or credible threat of switching by consumers may exert at least some competitive pressure on suppliers which is unlikely to be diminished by the merger.
33. In the store cards segment, no evidence presented in this inquiry tends to undermine the view the OFT took in the Store Cards Report, i.e. that consumers may be making more use of their store cards than they would be if competition were working well.

### **THIRD PARTY VIEWS**

34. Third parties were unconcerned about this merger.

### **ASSESSMENT**

35. The parties overlap primarily in the supply of store cards and credit cards and to a lesser extent in a range of other financial products. As the parties' combined share of supply in each of these other financial products will be low (under ten per cent), these other products have not been considered in detail above.
36. Pre-merger, M&S Money has only been active in supplying store card and credit card services in-house and hence does not and has not competed directly with HSBC. Post-merger, HSBC will be the second largest provider of store card services to retailers, with around [15-25] per cent of store cards based on volume, some way behind the leading supplier, GECF. In the upstream supply of credit card services to retailers, there are a number of potential suppliers. Although barriers to entry would appear high given the long duration of contracts and the high degree of inertia, it is likely that retailers enjoy some degree of buyer power.
37. At the downstream level, the increments resulting from the merger are low and the supply of both store cards and credit cards is highly fragmented. In recent years there has also been a reasonably high incidence of entry in the credit cards segment with new players winning share from the traditional banks.
38. Finally, as noted above, third parties raised no concerns about any aspect of the merger.

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

#### **DECISION**

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