

Notice of release from certain of the undertakings given by AIB Group (UK) Plc, Bank of Ireland, Barclays Bank plc, Clydesdale Bank plc, HBOS plc, HBSC Bank plc, Lloyds TSB Bank plc, Northern Bank Ltd and the Royal Bank of Scotland Group plc (the parties) to the Secretary of State for Trade and Industry and the Chancellor of the Exchequer pursuant to section 88 of the Fair Trading Act 1973

1. The Competition and Markets Authority (CMA) has a statutory duty to keep under review undertakings given under the Fair Trading Act 1973.¹ The CMA is required to consider whether, by reason of any change of circumstances, an undertaking is no longer appropriate and needs to be varied, superseded or released.
2. The parties provided [Behavioural Undertakings](#) in 2002 and [Switching Undertakings](#) in 2003 with a view to remedying concerns outlined in the [Competition Commission's \(CC\) 2002 report into SME banking](#). Together with the Transitional Undertakings, these are known as the 2002 SME Banking undertakings (the undertakings).
3. In November 2014, a Group comprising the CMA panel members conducting the retail banking market investigation commenced a review of the undertakings.
4. The CMA published a [provisional decision](#) on the review of the undertakings on 17 May 2016 and took into consideration the responses received to its provisional decision in reaching its [final decision](#), which was published on 9 August 2016.
5. The CMA decided that market and regulatory developments since the undertakings were given and the retail banking market investigation's remedies package represent changes of circumstances such that some of the undertakings can be released. The reasons for this are outlined in the final decision on the Review of the 2002 SME banking undertakings.

¹ Section 88(4) of the Fair Trading Act 1973 (as preserved in Schedule 24 to the Enterprise Act 2002).

6. The CMA gave [notice of its intention](#) to release the parties from the obligations in the Switching Undertakings on 10 August 2016.
7. The CMA gave notice on 10 August 2016 of its intention to release the parties from the obligations in:
 - (a) Undertaking 3(2) of the Behavioural Undertakings.
 - (b) Undertakings 6 to 16 of the Behavioural Undertakings.
 - (c) Undertakings 21 to 24 of the Behavioural Undertakings upon the implementation of the measures to develop and require the use of open application program interface (API) standards and data sharing through them. We expect this to occur by January 2018.
 - (d) Undertakings 25 and 26 of the Behavioural Undertakings.
8. The CMA received three written representations on its intention to release the undertakings listed in paragraphs 6 and 7 above. None suggested that we should not release them.
9. The CMA now gives notice of its decision to release the parties from the Switching Undertakings and:
 - (a) Undertaking 3(2) of the Behavioural Undertakings.
 - (b) Undertakings 6 to 16 of the Behavioural Undertakings.
 - (c) Undertakings 25 and 26 of the Behavioural Undertakings.
10. The other obligations of the Behavioural Undertakings will remain in force. For ease of reference, at Annex A we have published a text showing the effect of the changes to the Behavioural Undertakings.

(signed) ALASDAIR SMITH
Group Chairman
14 October 2016

Annex A

UNDERTAKINGS BY [AIB GROUP (UK) PLC, BANK OF IRELAND, BARCLAYS BANK PLC, CLYDESDALE BANK PLC, HBOS PLC, HSBC BANK PLC, LLOYDS TSB BANK PLC, NORTHERN BANK LTD AND THE ROYAL BANK OF SCOTLAND GROUP PLC] TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY AND THE CHANCELLOR OF THE EXCHEQUER UNDER SECTION 88 OF THE FAIR TRADING ACT 1973

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 pursuant to a request by the Secretary of State and the Chancellor, the Director has consulted with the Bank with a view to obtaining from it undertakings to take certain action to implement the remedies recommended by the Commission to address certain of the adverse effects identified in the Report;

NOW THEREFORE the Bank gives to 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 it 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:

- (a) the Competition Act 1998; or
- (b) any other law.

3(1).- In these undertakings:

‘the Act’ means the Fair Trading Act 1973;

'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 [];

'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', 'business deposit account' and 'business loan' mean respectively, a current account, deposit account or loan denominated in sterling intended for use by businesses and excluding any current account, deposit account or loan (even if used by the SME for the purpose of its business) which is offered by the Bank as a current account, deposit account or loan intended for personal use by a natural person;

'the Chancellor' means the Chancellor of the Exchequer;

'CHAPS' or 'Clearing House Automated Payments System' means the electronic transfer system for real-time gross settlement, same-day value, inter-bank payments in the UK, as operated by CHAPS Clearing Company Limited;

'commercial mortgage' means a commercial loan used to finance or re-finance the acquisition by an SME of property, plant or equipment and which is secured over such property, plant or equipment as the case may be;

'the Commission' means the Competition Commission;

'credit history' means a statement of an SME customer's credit performance over the most recent 12 month period (or over such lesser period as it shall have maintained a business current account with the Bank), where the most recent month is the last month for which compilation of the relevant information has been completed, which, in particular, enables an SME to demonstrate to any potential supplier of banking services the extent to which it has adhered to facility limits in respect of loans and overdrafts and which, unless otherwise agreed in writing by the Director that a particular category of information may be omitted until a date which is to be no later than 31 October 2003, contains, at least, the information identified in the credit history shown, by way of example, in Schedule 1 to these undertakings;

'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 instant access to money and 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;

‘the date of the Report’ means 14 March 2002;

‘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 such sums should be deposited, and which may impose varying restrictions on the timing of, 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;

‘the Director’ means the Director General of Fair Trading;

‘feeder account’ means an account-

- (a) which has as its sole functions:
 - (i) the advancing by the Bank of funds to the SME pursuant to any loan agreement between the Bank and the SME, by remittance of those funds from an associated business loan account;
 - (ii) the collection of funds and remittance of those funds to an associated business loan account towards discharge of the periodic interest payments and/or capital reductions agreed under the terms of the associated business loan; and
 - (iii) the adjustment of any balances between the Bank and the SME in respect of such business loan;

- (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 any business loan agreement, for the sole purpose of avoiding an event of default under such loan 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% or more of its share capital or where 25% 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;

‘loan’ means a loan or lending facility denominated in sterling other than: (a) an overdraft or overdraft facility; (b) a factoring arrangement, invoice discounting arrangement, trade finance arrangement, asset finance arrangement, hire purchase arrangement or leasing arrangement; (c) a commercial mortgage; (d) credit provided through credit cards; and (e) foreign currency lending;

‘money transmission services’ means services relating to the transfer of money to or from a business current account and relating only to transactions exclusively in sterling, whether by the SME or a third party, (whether on paper or electronically or by any other means) and includes those services which are listed in Schedule 2 to these undertakings;

‘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;

‘short-term deposit account’ means a sterling business deposit account from which the customer may withdraw funds, without paying any penalty (including loss of interest), on the giving of no more than 30 days’ notice or which has a term of no more than 30 days;

'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 revenues 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 the previous 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 aggregate, in the previous complete year, either debit turnover or credit turnover (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 provided 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 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 other such bank. For the avoidance of doubt the reference above to '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.

'switching' means the transfer by an SME of its business current account to another supplier of banking services to SMEs and 'switch', 'switching' and 'switched' shall be construed accordingly;

'technical constraint' means a constraint arising from the Bank's computer, accounting or operating systems and existing at the date of the giving of these undertakings which makes the holding of a current account with the Bank a prerequisite for obtaining, maintaining or servicing a business loan or a business deposit account from it;

'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 2002) and with generally accepted banking practice.

Application

5(1).- These undertakings shall apply –

- (a) in relation to the supply of banking services in []¹ by the Bank to SMEs; and
- (b) except as otherwise provided, with effect from the day after the day of acceptance of these undertakings by the Secretary of State and the Chancellor.

5(2).- Clauses 12, 13, 15 and 24 below shall apply with effect from 1 January 2003.

¹ England and Wales, Scotland and/or Northern Ireland, depending on the bank

[...]

Limitation on bundling

17(1).- Subject to clause 18 below, the Bank shall not directly or indirectly require, agree (other than in respect of integrated products) or threaten to require, as a condition of the granting, maintaining or servicing of any business loan to, or the opening, maintaining or servicing of any business deposit account for, any SME that the SME should open or maintain any business current account with the Bank.

17(2)- For the purposes of paragraph (1) above, “integrated product” means a product (offered via any channel) made up of different types of business accounts and/or business loans which is offered as a single product to SMEs, which is generally available to SMEs and which is offered as an alternative to having a number of separate business accounts and/or business loans.

18(1).- Clause 17 above shall not apply to the extent that the holding by the SME of any business current account with the Bank as a condition of the granting of a business loan or a business deposit account is required-

- (a) in order to comply with any requirement of law having effect in the United Kingdom; or
- (b) subject to clause 19 below, by virtue of any technical constraint; or
- (c) in respect of any business loan to any particular SME, to enable the Bank to take effectively and enjoy a fixed charge over the book and other debts of that SME.

18(2).-For the avoidance of doubt, nothing in clause 17 above shall preclude the Bank from offering incentives to any SME to agree to open a business current account with the Bank when that SME is granted a business loan by, or opens a business deposit account with, the Bank; such incentives may include levying lower charges (including a lower rate of interest) for the provision of a business loan to an SME which chooses to maintain its main business current account with the Bank than the Bank would charge for a similar business loan to the same SME for so long as that SME chose not to maintain its main business current account with the Bank to the extent that the difference reflects the Bank’s reasonable assessment of the different credit risk arising in the two situations.

19.- Where the holding by the SME of any current account with the Bank as a condition of the granting of a business loan or a business deposit account is required due to a technical constraint, the Bank shall-

- (a) use all reasonable endeavours to overcome or remedy such technical constraint within 12 months of the publication of the Report and notify the Director as soon as it has overcome or remedied it; and
- (b) until such time as the technical constraint has been so overcome or remedied, specify clearly in the terms and conditions of such loan or deposit account that the requirement to hold a current account is a temporary requirement applying only as a result of a technical constraint and specify, in summary, what that technical constraint is; and
- (c) not levy any direct or indirect charges for transferring funds, in either direction, between such loan or deposit account held with the Bank and such current account.

20.- The Bank shall notify the Director of all technical constraints of which it is aware within 10 working days from, and including, the day after the day of acceptance of these undertakings by the Secretary of State and the Chancellor.

Price Information

21.- By 1 January 2003, and following any subsequent change in the information to which this clause relates, the Bank shall compile information showing:

- (a) the Bank's standard tariff charges payable by SMEs for the money transmission services listed in Schedule 2 to these undertakings;
- (b) standard rates of interest paid by it on business current accounts held by SMEs; and
- (c) standard rates of interest paid by it on short-term deposit accounts held by SMEs.

22.- The information to be compiled under clause 21 above shall, unless otherwise stated, be:

- (a) compiled within a time and in a form approved by the Director;
- (b) published within a time and in a manner approved by the Director;
and
- (c) made available to the public without charge by the Bank.

23.- The Bank shall ensure that the availability of the information compiled in accordance with clause 21 above is brought to the attention of its SME customers. The steps to be taken, and the time and manner in which these are taken, by the

Bank to draw the availability of such information to the attention of such customers shall be approved by the Director.

24(1).- The Bank shall either –

- (a) on the first occasion in any charging period that any SME incurs an unauthorised overdraft on a business current account and also incurs any charge, or a higher rate of interest, specifically for incurring such an unauthorised overdraft, inform that SME -
 - (i) that it has incurred such a charge or higher rate of interest; and
 - (ii) in respect of tariff based charges, of the amount of that charge and, where a higher rate of interest is applied, the higher rate applied; or
- (b) where any SME incurs an unauthorised overdraft, specify on that SME's statements for that account (or in a separate notice which accompanies that SME's statement for that account) or in a pre-notification notice:
 - (i) in a case where a charge (excluding interest and charges for items returned unpaid by the Bank) has been, or is to be, levied specifically for the incurring or use of an unauthorised overdraft, the amount of any such charge, shown either individually or, for each different type of charge, in total, levied, or to be levied, in respect of the charging period in question;
 - (ii) in a case where interest has been, or is to be, levied in respect of the overdraft, the total amount of interest charged, or to be charged, for the charging period in question (where part only of an overdraft is unauthorised it shall not be necessary to show separately the amount of interest charged, or to be charged, in respect of the unauthorised part of the overdraft); and
 - (iii) in a case where a higher rate of interest applies to any part of the overdraft as a result of its being unauthorised (in whole or in part), the higher rate applied and the amount of the overdraft above which such higher rate of interest applies.

Provided that, for the purpose of complying with sub-paragraph (iii), where the whole of an overdraft is unauthorised and is subject to interest at a rate charged on unauthorised overdrafts, then it shall be sufficient for the Bank to show, on each relevant statement of account (or in a separate notice accompanying each such statement) or pre-notification notice, the rate of interest applicable to such unauthorised overdraft and the total amount of interest charged.

24(2).- For the purposes of paragraph (1) above, “pre-notification notice” means a notice of interest and/or charges incurred during a charging period which are to be deducted from an SME’s business current account and which is given at least 14 days before any such deductions are made.

[...]

Compliance with these undertakings

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

28.- If the Director is of the reasonable view that the Bank has failed to comply with any of its obligations under these undertakings, he 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 to refrain from doing.

29.- The Bank shall provide to the Director the name and contact details of a person within the Bank with whom the Director may liaise in relation to the Bank’s compliance with and obligations under-

- (a) these undertakings, and
- (b) the undertakings given by the Bank to, and accepted on 17 July 2002 by, the Secretary of State and the Chancellor.²

Such person shall have access to all relevant information relating to the Bank’s compliance with and obligations under both such undertakings. The Bank shall inform the Director of any change in the identity or contact details of such person.

Additional clause for HBOS plc only

29.- The Bank shall procure that, to the extent that these undertakings apply to and require any act or omission by Bank of Scotland, Bank of Scotland shall comply with these undertakings as if it had given these undertakings and as if these undertakings referred where appropriate to the Bank of Scotland instead of to the Bank.

² Barclays Bank plc, HSBC Bank plc, Lloyds TSB Bank plc and The Royal Bank of Scotland Group plc only.

Additional clause for The Royal Bank of Scotland Group plc only

29.- The Bank shall procure that, to the extent that these undertakings apply to and require any act or omission by any one or more Bank subsidiary, that Bank subsidiary shall comply with these undertakings as if it had given these undertakings and as if the undertakings referred where appropriate to that Bank subsidiary, instead of to the Bank.

FOR AND ON BEHALF OF []

[illegible]

Date

Name.....(Director)

.....

Name.....(Chief Executive of Business Banking)

SCHEDULE 1

Credit History

Business Name:.....[Legal Form]:.....

Business Address:

Customer since:.....

Facility agreements existing with [Name of Bank]

LOAN AGREEMENTS								
Facility Type	Initial Facility Amount £s	Date Drawn	Amount Outstanding £s	Repayment £s	Repayment Frequency	Maturity Date	Security (Y or N)	Have payments been made as agreed? ¹ (Y or N)

OVERDRAFT AGREEMENTS (other than for main current account)		
Expiry Date	Limit £s	Security (Y or N)

MAIN CURRENT ACCOUNT ONLY:

Sorting Code:

Account No:

Month	Min Ledger Bal. £s	Max Ledger Bal. £s	Av Ledger Bal. £s	Credit Turnover ² £s	Overdraft Limit £s
Jan XX					
Feb XX					
Mar XX					
Apr XX					
May XX					
Jun XX					
Jul XX					
Aug XX					
Sep XX					
Oct XX					
Nov XX					
Dec XX					

Have any cheques, standing orders or direct debits been returned unpaid for lack of funds on the main Current Account in the last 12 months? YES / NO

If YES, how many?

¹ Over the most recent 12 month period.

² Indicate whether including/excluding transfers between accounts maintained by the same SME.

SCHEDULE 2 Money Transmission Services

- Cash in over the counter or received by post
- Cash out over the counter
- Cheque deposits and cheque withdrawals
- The establishment of direct debit instructions (but excluding any direct debit services, other than auto-credit, relating to direct debits in respect of which the SME is the originator) and the payment of direct debits
- The establishment and payment of standing orders
- Non-auto credit services
- Auto-credit services (including deposits received via BACS and CHAPS)
- The transfer of funds between the business current account and other accounts denominated in sterling held by the customer with the Bank in the UK
- The provision of a debit card for the withdrawal of cash from a business current account at ATMs operated by the Bank
- The withdrawal of cash from a business current account using such a debit card
- The exchange of cash (sterling) for other denominations of cash (sterling)
- Dealing with stopped, returned, unpaid or recalled payments
- The provision of bank drafts
- Special presentations of cheques
- Withdrawals other than direct debits made via BACS and withdrawals made via CHAPS
- The provision of sweep (also known as auto transfers) and set-off facilities
- Copy statements
- Dealing with status enquiries
- The provision of audit letters

SCHEDULE 3

AIB Group (UK) plc, in respect of First Trust Bank's SME business and branches in Northern Ireland.

Bank of Ireland, in respect of its SME business and branches in Northern Ireland.

Barclays Bank plc, in respect of its SME business and branches in England and Wales.

Clydesdale Bank (a subsidiary of National Australia Bank Limited), in respect of its SME business and branches in Scotland.

HBOS plc, in respect of Bank of Scotland's SME business and branches in Scotland.

HSBC Bank plc, in respect of its SME business and branches in England and Wales.

Lloyds TSB Bank plc, in respect of its SME business and branches in England and Wales.

Northern Bank Limited (a subsidiary of National Australia Bank Limited), in respect of its SME business and branches in Northern Ireland.

The Royal Bank of Scotland Group PLC, in respect of The Royal Bank of Scotland plc's SME business and branches in England and Wales and Scotland, National Westminster Bank plc's SME business and branches in England and Wales and Ulster Bank Ltd's SME business and branches in Northern Ireland.