

RETAIL BANKING MARKET INVESTIGATION

PROPOSED UNDERTAKINGS – CONSULTATION

Retail Banking Market Investigation Current Account Switch Service Remedies

Recitals

1. On 6 November 2014, the Competition and Markets Authority (CMA) board, in exercise of its power under [sections 131](#) and [133](#) of the Enterprise Act 2002 (the Act) made a reference for a market investigation into the supply of retail banking services to personal current account customers and to small and medium-sized enterprises (SMEs) in the United Kingdom (the market investigation).
2. On 10 November 2014, the CMA [appointed](#) from its panel a group of five independent members to conduct the market investigation and publish a [final report](#). The group was required to decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition and thereby has an adverse effect on competition (AEC) and if so, what action should be taken.
3. In relation to banking services to personal customers, the CMA's [terms of reference](#) included the supply of personal current accounts (PCAs), which includes overdrafts. In relation to banking services to SMEs, they included the provision of business current accounts (BCAs), overdrafts, general purpose business loans and deposit accounts, but they excluded non-lending products such as insurance, merchant acquiring, hedging and foreign exchange.
4. On 9 August 2016, the CMA published its report on the market investigation under [section 136](#) of the Act, entitled [Retail banking market investigation: Final report](#) (the Final Report), in which it concluded in accordance with [section 134](#) of the Act that:
 - (a) there are three separate (and, in certain circumstances, in combination) AECs in each of Great Britain and Northern Ireland in relation to PCAs, BCAs and SME lending;
 - (b) the CMA should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them;

- (c) in order to address the AECs and resulting customer detriment, an integrated package of remedies should be imposed consisting of:
- (i) three cross-cutting foundation measures that will underpin increased competition in the reference markets which have the object of increasing customer engagement and making it easier for personal and business customers to compare the prices and service quality of different providers and of encouraging the development of new services;
 - (ii) additional measures to make current account switching work better, including building on and improving the existing current account switch service;
 - (iii) a set of measures aimed at PCA overdraft users, a group of customers who suffer particularly from the competition failures in the PCA market; and
 - (iv) a set of measures targeted at the specific problems in SME banking, enhancing SME access to information through new comparison tools, requiring banks to offer an indicative price quote and eligibility indicator tool, requiring banks to agree and adopt a core set of standards for SMEs opening a BCA and additional published information thereby reducing the hold that incumbent banks have in the market for BCAs and SME loans.
5. On 1 December 2016, in accordance with [section 165](#) of, and paragraph 2(1)(a) of Schedule 10 to, the Act, the CMA published a Notice of its proposal to accept the Undertakings as part of a package of remedies to remedy, mitigate or prevent the AEC and any resulting customer detriment, which it had identified in the Final Report.
6. The package of remedies will be implemented by: (a) the Retail Banking Market Investigation Order 2017; (b) the Undertakings entered into by Bacs Payment Schemes Limited; and (c) recommendations to HM Treasury, the Department for Business, Energy and Industrial Strategy, and the Financial Conduct Authority.

Undertakings

Bacs now gives to the CMA the following undertakings (the Undertakings), which the CMA accepts pursuant to [sections 138](#) and [159](#) of the Act. The Undertakings may be varied, superseded or released by the CMA in accordance with [section 159\(4\)](#) or (5) of the Act.

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, the Undertakings come into force when they are accepted by the CMA.

2. Interpretation

- 2.1 The following provisions apply in the interpretation of the Undertakings.
- 2.2 The Undertakings give effect to the conclusions of the CMA set out in Section 14 of the Final Report (with the exception of the provision of transaction history, which is included in the Retail Banking Market Investigation Order 2017) as to the need for providing additional assurance to customers about the ease and benefits of switching accounts and creating a more effective governance framework for CASS which is operated by Bacs, so that the service continues to be developed and operated, through effective participation of a wide range of relevant stakeholders, in the interests of customers. The Undertakings also give effect to the CMA's conclusions set out in Figure 15.4 and paragraphs 15.139 to 15.141 of Section 15 of the Final Report as to the need to ensure that PCA providers offer a firm decision on the overdraft offered after a customer has completed the PCA provider's application process but before they switch accounts. The Undertakings shall be construed consistently with and to give effect to those conclusions. In the event of any conflict between the Undertakings and Sections 14 and 15 of the Final Report, the Undertakings prevail.
- 2.3 Words and expressions defined in the recitals to the Undertakings shall have the same meaning in the Undertakings.
- 2.4 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5 The headings used in the Undertakings are for convenience and shall have no legal effect.
- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include references to bodies of persons, whether corporate or incorporate.
- 2.7 'written' or 'in writing' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service.
- 2.8 References to a 'month' are references to a calendar month.

- 2.9 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.10 Reference to a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.
- 2.11 References to paragraphs or subparagraphs are references to paragraphs or subparagraphs of the Undertakings.
- 2.12 The Interpretation Act 1978 applies to the Undertakings except where words and expressions are expressly defined.
- 2.13 In the Undertakings:

'Act' means the Enterprise Act 2002;

'Arranged Overdraft' means a type of Overdraft that is agreed in advance between the customer and their provider, allowing them to borrow money up to a certain amount if there is no money left in the account;

'Bacs' means Bacs Payment Schemes Limited (company number 4961302) and any successor body. It is currently a membership company limited by guarantee, with responsibility for the schemes behind the clearing and settlement of UK automated payment methods, direct debit and Bacs direct credit, as well as the provision of managed services for third parties, such as the Cash ISA Transfer Service, and the development, management and subsequent ownership of CASS;

'Bacs Direct Credit' means the Bacs scheme by which an organisation makes payment in bulk to individual bank accounts, for example, paying salaries, pensions etc;

'BCA' means Business Current Account. These are core payment accounts denominated in sterling, generally used to make and receive payments and to manage cash flow, offered to business customers and designed to meet their everyday banking needs;

'BCA provider' means a provider of BCAs;

'CASS' means the Current Account Switch Service operated by Bacs or any subsequent equivalent creation or service operated by Bacs or its successor the purpose of which is to assist customers to switch between PCA or BCA providers;

'CASS participants' mean the PCA and BCA providers which participate in CASS;

'CHAPS' means the Clearing House Automated Payment System, which is the UK's same day high value payment system;

'cheque' means a paper instruction to transfer funds from the payer to the payee;

'CMA' means the Competition and Markets Authority;

'Commencement Day' means the day on which the Undertakings are accepted by the CMA;

'Cross-Border Payments' mean transactions that affect the payment systems, including cash, of at least two countries or transactions that involve individuals, corporations, settlement institutions, central banks or a combination thereof, in at least two different countries;

'Direct Debit' means the Bacs scheme by which an organisation collects pre-notified payments in bulk from individual payers' bank accounts, for example, utility bills or the collection of an agreed amount from a bank or building society account by a service user, on request. The amount and dates may vary from payment to payment. The payment request is sent via Bacs;

'Faster Payments' means the Faster Payments Service launched in May 2008 that allows customers to make electronic payments in near real-time, typically by phone or online banking, to transfer money between accounts, pay bills, or make regular standing order payments;

'FCA' means the Financial Conduct Authority;

'full switch' means the completion of a switch process using CASS in which the PCA or BCA customer's previous or old account is closed and which, at the Commencement Day, takes seven calendar days and customers can choose the exact date of the switch;

'HMT' means HM Treasury;

'Initial KPI' means CASS' KPIs as agreed with HMT existing as at the Commencement Day;

'KPI' means Key Performance Indicator, a type of performance measurement which evaluates the success of a particular activity and in this case, it is to measure CASS' performance. It includes the Initial KPI and any new KPIs

which will supersede and/or supplement the initial KPI pursuant to the process set out in sub-paragraph 3.10;

'Management Committee' means CASS' Management Committee which is charged with managing CASS from an operational and strategic perspective and includes representation from CASS participants, or any successor body which fulfils that function;

'Management Committee Chair' means the person appointed under sub-paragraph 3.1;

'on-us' means a payment where the payer and payee bank with the same provider (or group) and the payment transaction is not processed by one of the UK payment schemes;

'Overdraft' means a facility provided by a PCA or BCA provider when a customer has no money left in their account but their provider provides them with a limited extension of credit enabling the customer to continue to withdraw money or make payments. They can be arranged or unarranged;

'PCA' means a personal current account. This is an account marketed to individuals rather than businesses, which provides the facility to place funds, withdraw cash, hold deposits and to execute payment transaction to and from third parties but does not include any of the following types of account:

- (a) an account in which money is held on deposit in a currency other than sterling;
- (b) an account in which credit funds are held and offset against mortgage debt or a loan other than an overdraft facility, i.e. a current account mortgage;
- (c) provided that the account is not used for day-to-day payment transactions:
 - (i) savings account (including instant access savings accounts);
 - (ii) credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; and
 - (iii) e-money accounts.

'PCA provider' means a provider of PCAs;

'PSR' means the Payment Systems Regulator, as established under Financial Services (Banking Reform) Act 2013, who for the purposes of the Undertakings will provide oversight of CASS;

'SEPA Credit Transfer' means the Pan European Credit Transfer scheme that replaced domestic and cross border Euro Credit Transfers throughout the SEPA zone. It provides a consistent approach for making payments across Europe;

'SME' means small and medium-sized enterprise and 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) not exceeding £25 million. For this purpose, a 'business' shall have the same meaning as an 'undertaking' under the Competition Act 1998;

'SMEs covered by CASS' means SMEs that are eligible for CASS at any given time;

'Standing Order' means an instruction from a payer to their PCA or BCA provider to pay a set amount at regular intervals to the payee's account;

'Working Day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England.

3. Reforms to CASS corporate governance

3.1 Bacs shall appoint an independent chair to the Management Committee (the Management Committee Chair).

3.2 For the purposes of sub-paragraph 3.1, a Management Committee Chair is someone who is independent from the CASS participants and Bacs.

3.3 Bacs shall ensure that the Management Committee Chair is someone with a strong reputation and customer focus, and marketing or negotiation skills, and is invited to attend relevant meetings of Bacs' Board, where decisions related to CASS are to be discussed.

3.4 Bacs shall ensure that the membership of the Management Committee and its sub-committees or groups includes independent non-bank or building society members and representatives of relevant consumer groups and intermediaries such as price-comparison websites who shall:

- (i) have adequate opportunity to voice their views and contribute in CASS decision-making; and

(ii) have voting rights, where a vote is required,

to ensure a balanced representation of the views of a wide range of stakeholders in the CASS decision-making processes.

- 3.5 Bacs shall ensure that the new non-bank or building society members and representatives of relevant consumer groups and intermediaries who are members of the Management Committee and its sub-committees or groups have suitable skills and experience to contribute effectively towards developing and implementing CASS' strategy and improving its performance.
- 3.6 Bacs shall ensure greater transparency around decisions of the Management Committee by publishing on its website within the periods specified below:
- (i) minutes of each meeting of the Management Committee and a summary of each decision taken by other sub-committees or groups reporting to the Management Committee within five Working Days of the following Management Committee meeting;
 - (ii) quarterly reports on CASS' performance against its KPIs and in the event the KPIs are not met, details of why this is and plans to enable Bacs to meet its KPIs going forward; and
 - (iii) an annual report by the Management Committee Chair detailing CASS' performance for the past year and strategy for the forthcoming year by 31 March each year starting with 2018.
- 3.7 Bacs shall provide to the PSR the information set out in sub-paragraph 3.6 by 30 June each year, or such other date as agreed by the PSR and Bacs.
- 3.8 Bacs shall provide available information as and when required by the PSR to enable it to review and/or report on CASS' performance against the KPIs and CASS' annual strategy.
- 3.9 Bacs agrees that the PSR may report to HMT and the CMA on the information received under sub-paragraphs 3.7 and 3.8, including any confidential information, and more generally about CASS' performance, and agrees that the PSR may share the information provided under sub-paragraphs 3.7 and 3.8 with the FCA.
- 3.10 Bacs shall consult with the PSR on proposed changes to the KPIs as well as its annual strategic plans.
- 3.11 Bacs shall implement the undertakings under paragraph 3 within six months of the Commencement Day with the exception of the undertaking under sub-

paragraphs 3.6 to 3.10 which Bacs undertakes to implement from the Commencement Day.

4. Extending the CASS redirection period

- 4.1 Bacs shall maintain the current 36-month CASS redirection period, which redirects payments to the current PCA or BCA for customers who have switched PCA or BCA and receive a payment into an old account, and provide a perpetual CASS redirection period for customers who have had a redirection payment within the preceding 13 months.
- 4.2 In order to comply with sub-paragraph 4.1, Bacs shall ensure that CASS provides for:
- (i) in the first 36 months after a full switch, all incoming and outgoing payments to and from a customer's old account will be automatically redirected to their new account; and
 - (ii) after the first 36 months after a full switch, if a customer has had a redirected payment from an old account within the preceding 13 months, all incoming and outgoing payments to and from a customer's old account will be automatically redirected to their new account.
- 4.3 For the purposes of sub-paragraph 4.2, a 'redirected' payment means a payment made by Bacs, i.e. Direct Debits, Bacs Direct Credits, Faster Payments which include Standing Orders and 'incoming and outgoing payments' include a redirected payment and other payment types such as CHAPS, SEPA Credit Transfers, Cross-Border Payments, cheque, and on-us.
- 4.4 Bacs shall implement the undertakings under paragraph 4 within twelve months of the Commencement Day.

5. Measures to increase awareness of and confidence in CASS

- 5.1 Bacs shall work with CASS participants to ensure their commitment to its long-term promotional campaign to meet and then exceed the KPIs.
- 5.2 Bacs shall ensure that its future promotional activity reflects:
- (i) any changes made to CASS as a result of the current account switching remedies set out in the Final Report and that it aligns with the CMA's measures (including where relevant the work of the FCA on customer prompts) to increase customer awareness of the potential benefits of switching; and

- (ii) communicates to customers the security and convenience of using CASS to switch accounts.
- 5.3 Bacs shall continue to target promotional activity at customer groups that have low awareness of CASS and/or could benefit most from switching current account providers, including SMEs covered by CASS, Overdraft users, customers with high credit balances, the young and the financially disadvantaged.
- 5.4 In order to comply with sub-paragraph 5.3, Bacs shall:
 - (i) establish effective ways in which customers could be segmented and targeted through paid, owned and earned media;
 - (ii) tailor activity directly for and design specific campaigns for the target customer groups; and
 - (iii) allocate a suitable proportion of its annual budget to the target customer groups and ensure that its annual and longer-term business plans reflect this allocation.
- 5.5 Bacs shall establish, and review periodically, awareness and confidence metrics to measure customers' understanding of the switching process and the number of customers actively looking at offers in the market.
- 5.6 Bacs shall implement the undertakings under paragraph 5 within six months of the Commencement Day, with the exception of the undertaking under sub-paragraph 5.5 which shall be implemented within twelve months of the Commencement Day.

6. Measures to facilitate PCA searching and switching

- 6.1 Bacs shall work with CASS participants to ensure that PCA providers give a firm decision to a customer on the Arranged Overdraft offered after a customer has completed the PCA provider's application process but before they switch accounts.
- 6.2 Bacs shall work with CASS participants to review the account switching process to make it more suitable to the needs of Overdraft users.
- 6.3 In order to comply with sub-paragraph 6.2, Bacs shall:
 - (i) undertake further research to understand Overdraft customers' concerns about the switching process that could inhibit switching; and

- (ii) work with CASS participants to introduce common processes aiming at ensuring that PCA providers provide Overdraft customers with a clear message about the process and the decision steps.

6.4 Bacs shall implement the undertakings under paragraph 6 within six months of the Commencement Day.

7. Monitoring and compliance reporting

7.1 In relation to the Undertakings, Bacs shall provide the CMA with bi-monthly progress reports detailing what it is doing to comply with the Undertakings, and after 12 months from the Commencement Day, annual reports to be provided within 5 Working Days of the Commencement Day anniversary confirming compliance with the Undertakings.

7.2 Bacs agrees that the CMA may share these reports with the PSR to enable the PSR to review and/or report on CASS' performance against the KPIs and CASS' annual strategy.

7.3 The reports referred to in sub-paragraph 7.1 shall include:

- (i) steps taken to put in place the Management Committee Chair;
- (ii) a list of Management Committee and sub-committee and group members and their roles;
- (iii) links to where the items listed at sub-paragraph 3.6 can be found on Bacs' website;
- (iv) details of the long-term promotional campaign to increase awareness of and confidence in CASS;
- (v) details of how the long-term promotional campaign is targeted at customer groups described at sub-paragraph 5.3; and
- (vi) details of the development of Bacs' awareness and confidence metrics.

7.4 Bacs shall comply with such reasonable written directions as the CMA may from time to time give and to take such steps within its reasonable competence as may be required for the purpose of carrying out or securing compliance with the Undertakings.

7.5 Unless approved in advance by the CMA, Bacs shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or is likely to result in the

Undertakings no longer applying to the activities that are the subject matter of the Undertakings.

8. Effect of invalidity

8.1 Bacs undertakes that should any provision of the Undertakings be contrary to law or invalid for any reason, Bacs shall continue to observe the remaining provisions.

9. Provision of information to the CMA

9.1 Bacs shall provide, as soon as practicable, to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under the Undertakings or under the Act.

9.2 If Bacs at any time becomes aware that it is in breach or likely to be in breach of any provision of the Undertakings, it shall notify the CMA within five Working Days to advise the CMA that there has been or is likely to be a breach and of all the circumstances of that breach within its knowledge and what it is doing to rectify the breach and ensure it is not repeated.

10. Service

10.1 Bacs hereby authorises its Chief Executive Officer to accept, on its behalf, service of all documents connected with the Undertakings (including any document of any kind which falls to be served on or sent to Bacs in connection with any proceedings in courts in the United Kingdom, orders, requests, notifications or other communications connected with the Undertakings); and service shall be deemed to have been acknowledged by Bacs if it is acknowledged by its Chief Executive Officer or other appointed nominee.

10.2 Any communication from Bacs to the CMA under the Undertakings shall be addressed to Remedies Manager, Competition and Markets Authority, Victoria House, 37 Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing and shall include email communication to RemediesManager@cma.gsi.gov.uk or such other address as the CMA may direct in writing.

11. Governing law

11.1 Bacs agrees that the Undertakings shall be governed and construed in all respects in accordance with English law.

11.2 In the event that dispute arises concerning the Undertakings, Bacs shall submit to the courts of England and Wales.

12. Termination

12.1 Bacs agrees that the Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.

12.2 Bacs agrees that the variation, supersession or release of the Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

FOR AND ON BEHALF OF BACS

(signed)

(signed)

[Name]

[Name]

Authorised signatory

Authorised signatory

[Date]

[Date]