

Mr Moray McDonald
Managing Director, Personal Products
Royal Bank of Scotland

From: Adam Land
Senior Director

29 January 2018

Dear Mr McDonald

Letter of indication of prioritisation

In January 2017, the CMA made the Retail Banking Market Investigation Order 2017 (the Order) to implement the CMA's remedy decisions in the Retail Banking Market Investigation Final Report.^{1,2} Part 11 of the Order requires all providers of Business Current Accounts (BCAs) in Great Britain and Northern Ireland to i) adopt standard information and evidence requirements for SMEs applying to open a BCA (a Standard Information Set) and ii) to establish a steering group to maintain the content of the Standard Information Set.

RBS Group, in a note dated 27 November 2017, set out a request for the CMA to forebear from requiring its brand Williams & Glyn from having to comply with Part 11 of the Order.³

Background

RBS Group submitted that the agreement between the European Commission and HM Treasury on 18 September 2017 to put in place an alternative package of remedies to address the European Commission's 2009 approval of state aid measures granted to RBS Group,⁴ creates consequences for RBS Group's ability to comply with Part 11 with respect to its Williams & Glyn brand.

RBS Group explained that the alternative package of remedies is designed to encourage further competition in SME/business banking, including through encouraging SMEs to switch from RBS to challenger banks (ARP Customers). Other

¹ [Retail Banking Market Investigation Final Report](#)

² [Retail Banking Market Investigation Order 2017](#)

³ 'RBS briefing of delivery status of Part 11 requirements' 27 November 2017.

⁴ See HMT's webpage '[Introduction to the alternative remedies package: Information pack](#)' webpage for further details.

than the ARP Customers, the remainder of the W&G business is to be re-integrated into RBS.

RBS Group further explained:

'As part of the alternative package of remedies, an independent company (the "Independent Body") will be established as soon as reasonably practicable to administer the new Capability and Innovation Fund and Incentivised Switching Scheme. The alternative remedy package clearly will have a significant impact on the strategy pertaining to the ARP Customers going forward when it comes to serving new SME customers and how existing ones are managed. This has a direct impact on how RBS can comply with Part 11 of the Retail Banking Market Investigation Order 2017 (the "Order") in respect of the ARP Customers.'

Following the confirmation of the alternative remedies package Williams & Glyn announced:

1. For new to bank SME customers, BCAs will only be opened on a reactive basis. All proactive approaches for new business have been stopped.
2. If a new to bank customer approaches Williams & Glyn for a new BCA then, whilst Williams & Glyn will still on-board such customers, they will need to outline to the customer the implications of them opening a new BCA with Williams & Glyn (i.e. they may well receive communications in due course looking to encourage them to switch away from Williams & Glyn to another bank).
3. Existing customers will still continue to be served.

The arrangements outlined above are interim, being in place until the customer base eligible to participate in the Incentivised Switching Scheme is finally confirmed. This confirmation is expected to take place when the Independent Body which is to be established to administer the implementation of key elements of the alternative remedies package, the Capability and Innovation Fund and the Incentivised Switching Scheme, is in place and has launched those elements. HMT have stated this is currently expected to be during the course of Quarter 2 2018.

RBS Group submitted that the above arrangements mean that only very low volumes of customers would be impacted by a failure of Williams & Glyn to comply fully with Part 11 of the Order. RBS Group further submitted that requiring compliance would be disproportionate.

Consideration

A person to whom an Order relates has a duty to comply with it. The decision on whether to seek an injunction requiring compliance or other relief before the Courts is a decision to be made by the CMA and the decision on what, if any, remedy is appropriate to impose is ultimately for the Courts.

However, having discussed this matter with relevant CMA officials, I am willing to indicate, on the assumed set of facts submitted by RBS Group, whether in those circumstances CMA officials would be likely to recommend prioritising undertaking enforcement action under section 167(6) of the Enterprise Act 2002 to seek an injunction from the Courts to order further steps to ensure RBS Group fully complies with Part 11 with respect to the operations of Williams & Glyn.

Such an indication is limited to the assumed facts and circumstances set out in RBS Group's note. This indication may not apply if the CMA were to determine the facts and circumstances are different to those indicated by RBS Group.

Prioritisation

The CMA's mission is to make markets work well in the interests of consumers, businesses and the economy.⁵ To make the best use of our resources in terms of real outcomes for UK consumers, we need to ensure that we make appropriate decisions about the work we undertake across all areas of our responsibility. In seeking to target both our resources and enforcement strategy, the CMA needs to consider a range of factors including impact on consumers, strategic significance, risks and resources to decide if a particular enforcement case is an appropriate one to take forward. We generally prioritise according to the impact of work on consumers and according to the strategic significance of the work. We balance this against the risks and resources involved.⁶

In considering the impact on customers and strategic significance of taking enforcement action, the CMA considers the retail banking market to be strategically significant. Further, Part 11 of the Order is intended to address (in combination with other measures set out in the Order) the barriers that SMEs face when considering switching their BCAs. We consider that total non-compliance with this part of the Order could have a substantial impact on that market and SMEs.

However, in considering whether enforcement action would be likely to be proportionate or effective, the CMA has had regard to RBS Group's submission that the number of Williams & Glyn customers that may be affected would be relatively small and only for the period when the alternative package of remedies is being

⁵ Competition and Markets Authority, Annual Report and Accounts 2016/17, July 2017, page 7.

⁶ Further detail can be found in Competition and Markets Authority, CMA16: Prioritisation Principles for the CMA, April 2014.

implemented. We have also considered the unusual situation that RBS Group is in, including the implications of the alternative package of remedies which mean that Williams & Glyn are not proactively looking to attract customers and Williams & Glyn will explain to prospective customers that they may be encouraged to switch away in due course.

The CMA has also had regard to the resources that would be diverted from other work were enforcement action to be pursued. The CMA has also had regard to the constructive engagement by RBS Group with the CMA in relation to this matter and other matters relating to compliance with the Order.

Conclusion

For the reasons given above, I anticipate that CMA officials would not recommend prioritising the taking of enforcement action in relation to the breach by RBS Group discussed above.

This position is based on the representations made to the CMA in RBS Group's note of 27 November 2017. As noted above, any different facts or conditions might require the CMA to reach a different conclusion. For the avoidance of doubt this indication of prioritisation is not a decision or determination of whether a breach has occurred or will occur. Rather it is an indication of whether CMA officials would recommend prioritising the resources, on the assumed facts, to seek to require steps be taken to seek full compliance with Part 11 of the Order.

The fact that the CMA may not take enforcement action also does not prevent affected third parties from taking action pursuant to section 167(4) of the Enterprise Act 2002.

Yours sincerely

Adam Land
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