

STATEMENT ABOUT THE REVIEW OF BEHAVIOURAL UNDERTAKINGS GIVEN BY THE LARGEST CLEARING BANKS FOLLOWING THE 2002 COMPETITION COMMISSION REPORT ON SME BANKING

Background

1. Alongside the market study of 2013/14 into banking services to small and medium-sized enterprises (SMEs), the CMA on its own initiative undertook an initial assessment of the undertakings given by nine clearing banks with a view to remedying concerns outlined in the Competition Commission's report of 2002 on the SME banking sector;¹ those undertakings are referred to in this statement as the 'SME banking undertakings'. This recent assessment was the work of the CMA, in contrast with the market study which was a joint project of the CMA and the FCA. The CMA has a statutory duty² to keep undertakings under review and to consider from time to time whether, by reason of any change of circumstances, an undertaking is no longer appropriate and whether one or more of the relevant parties should be released from it or whether the undertaking should be varied or superseded. As part of its consideration of whether to conduct a review, the CMA initially assesses whether there is a realistic prospect of finding that there has been a change of circumstances since the undertakings were given.
2. The CMA's findings were set out in Chapter 11 of the market study published on 18 July 2014.³ Drawing on the analysis in the market study, the CMA considered that there is a realistic prospect of finding that there has been a change of circumstances since the SME banking undertakings were given, such as to warrant a review into whether they remain appropriate in their current form or at all. The CMA's view that there is a realistic prospect of finding that there has been such a change of circumstances arises from the implementation of the Current Account Switching Service (CASS). We considered this to have made an important improvement in the switching

¹ See the [SME banking undertakings](#).

² In the case of the SME banking undertakings, this duty arises under section 88(4) of the Fair Trading Act 1973 (as preserved in Schedule 24 of the Enterprise Act 2002).

³ The CMA considered that there were four main elements of the undertakings that were particularly relevant to the assessment because they were potentially suitable for variation or termination:

- transparency undertakings (clause 21–24 of 'Behavioural Undertakings – Others')
- switching undertakings (as detailed in the entire 'Behavioural Undertakings – Switching' and Clauses 5–13 of the 'Behavioural Undertakings – Others')
- bundling undertakings (Clauses 17–20 of 'Behavioural Undertakings – Others')
- facilitating the provision of portable credit histories to SMEs (Clauses 15 & 16 of the 'Behavioural Undertakings – Others').

process and considered there to be a realistic prospect that, for those SMEs covered by CASS, it substantially supersedes the obligations regarding the switching process included in the SME banking undertakings.⁴

3. On 18 July 2014, the CMA invited comments both on this assessment and on whether a review should be an administrative priority for the CMA, by reference to its prioritisation principles.⁵ Responses were required to be submitted to the CMA by 17 September 2014.

Decision

4. Each of the respondents⁶ agreed with the CMA's assessment regarding change of circumstances and considered that a review should be an administrative priority for the CMA. In doing so, some respondents also referred to other aspects of the SME banking undertakings, in addition to obligations regarding the switching process, which they considered should be reviewed.
5. Having considered the responses, and taking account of the CMA's prioritisation principles, the CMA has decided that the SME banking undertakings in their entirety should be reviewed. This review will be undertaken by a CMA Group comprising the same CMA panel members who will conduct the market investigation into aspects of retail banking.
6. Further details about this review will appear on the CMA website.

⁴ See Chapter 11 of the [SME banking market study](#) for further details regarding the SME banking undertakings and the CMA's assessment. Chapter 3 of the Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders (*CMA11*) sets out the CMA's approach to the review of undertakings.

⁵ See the CMA's [Prioritisation Principles](#).

⁶ The responses to the consultation are published on the CMA's [Review of SME banking 2002 undertakings](#) consultation page.