Responses to the CMA's consultation on a possible market investigation into personal current accounts and small and medium-sized enterprise (SME) retail banking sectors and a review of the 2002 SME banking behavioural undertakings

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Background

1. On 18 July 2014 the CMA published two market studies regarding personal current accounts (PCAs) and banking services to small and medium-sized enterprises (SMEs). These market studies, while recognising that there had been various improvements in the retail banking sector in recent years, found that there persisted a number of features in both segments which prevented, restricted or distorted competition.

2. On the basis of these findings, the CMA proposed to make a market investigation reference in relation to both PCAs and SME banking. We then consulted on this provisional decision, giving respondents until 17 September 2014 to make representations.

3. The CMA has published the responses which were provided in letter format on its website (excluding confidential information). The responses which were provided in email format (again excluding confidential information) are published below.

4. We also received a number of responses which were complaints about the refusal of banks to offer PCAs to expatriates or the withdrawal of existing PCAs from expatriates. Those responses are not published here as they relate to issues distinct from those specifically considered as part of the consultations. We made each of these respondents aware of the proposed EU Payment Accounts Directive, which covers some of these concerns.

5. We have split the responses into three categories for ease of reference:

   - responses from consumers
   - responses from businesses
   - responses from other bodies

6. Four bodies – Barclays, HSBC, Lloyds Banking Group and Royal Bank of Scotland PLC – also provided specific comments on the review of the 2002 SME banking behavioural undertakings.

7. The publication of the evidence of any party on the CMA website does not indicate in any way endorsement by the CMA of the views expressed in the evidence or acceptance of that evidence. Publication in this way is designed to assist public understanding of the issues.

1. Responses available via the CMA website

1.1 Barclays Bank PLC

1.2 British Chambers of Commerce

1.3 Citizens Advice Scotland

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1.5 Consumer Council for Northern Ireland

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1.7 EEF, the manufacturers' organisation

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1.25 TSB

1.26 Virgin Money

1.27 Which?

1.28 Yorkshire Building Society

1.29 Campaign for Community Banking Services

1.30 Positive Money

2. Responses from consumers

C Lees

Please find attached a letter I received after my complaint to Lloyds bank, and also a letter that I sent to Lloyds bank concerning the bank charges against debit cards used abroad.

My letter explains quite clearly the reason that I contacted the bank in February 2014. I then proceeded to contact the ombudsman, receiving a reply ten days later from them saying that I had no legitimate claim against Lloyds bank as they set out the charges etc., in their terms and conditions.

My argument was that the actual charges made to debit card purchases or commodities, were not shown separately on bank statements up until about July 2013.

The bank then started to show the actual charges made, separately, for debits for commodities. Previously the charges were included in the total amount of the actual debit to the card.

My argument was, how could the bank expect customers to check every single amount of money that you were using on a regular basis each time you purchased a commodity with your card.

The amount was shown on your statement, but you were not aware of the actual amount that it was costing a customer when you received your statement, it was only after the actual amount was being shown on your statement after June 2013, that you realised the actual cost to the ex-pats using their cards to purchase a commodity. (Taking cash from the cash machine, to purchase goods etc. is much cheaper than using your card)

If you used a card in the cash machines, your charges were shown separate from the transaction on a bank statement. and you were aware of the actual cost of the transaction.

Surely this should have been the same procedure used by the bank to print the transactions on statements for the same said debit cards used for commodities and purchases of goods.

I look forward to your comments or opinion about the banks procedures and charges on the use of Debit Cards abroad.

C O’Rourke

How disappointing that the CMA, of all people, should have joined the conspiracy of the banking industry to perpetuate the myth of “Free-if-in-credit” banking by using that phrase in its report.

The only beneficiaries of these current accounts are the providers, not the consumers who make available billions of pounds to banks at zero cost to those institutions. In turn, the banks can deposit or lend those funds at a profit to themselves.

The deliberate abuse of the English language to describe “penalty-if-in-credit” or “rip off-if-in-credit” accounts as something which is the direct opposite of actuality is disgraceful.

With the growth of on-line banking, reduction in the use of cheques and cash, and the closure of bank branches, these accounts are becoming even more profitable for the banks.

If banks are unwilling to provide interest on credit balances without other charges or conditions being affixed to the account, there should be an obligation to provide as a minimum at least one so-called “free-if-in-credit” account as an option for customers.

D Rennie

Abstract

This note describes the irresponsible and disreputable way Santander Bank conducted my daughter’s personal account, and proposes changes that should be made. Regulations need to be tightened up to prevent the dysfunctional way many banks operate their Debit Cards, and to remove the straightjacket into which the Supreme Court has put the Financial Ombudsman by their 2009 verdict on bank charges. Also so-called ‘free banking’ is a mirage that should be outlawed. And retail banks need a code of practice to guide them to behave ethically, as they once did.

My daughter gett a Debit Card to keep out of debt

Aware that my daughter, like many other people, has difficulty with numbers, I advised her to get an account with a Debit Card, not a Credit card, since (so long as she has no standing orders or direct debits) she would then never get into debt. She followed my advice and got an account with Santander bank with only a Debit Card and no overdraft arrangement.

Over a period of about a year, Santander charged my daughter fees, amounting in all to half of the very modest total of funds that entered her account. These fees were

equivalent to an interest rate of some 3000%/year on the unarranged overdraft that the bank erroneously allowed to occur.

My daughter did not realise she was being charged fees, and Santander did not write a letter to warn her what was happening until about one year too late.

It was only when my daughter kept telling me that her money was disappearing that I examined her statements. That revealed that the Debit Card was not working properly. It was allowing her to go a few pounds into the red (often less than £10), and the bank then charged her fees for an Unauthorised Overdraft - at eye-watering rates: £5/day, and £25 for each further small payment she made.

Full refund of only the previous two months feet

We went at once to the local branch and asked for a refund of all the fees. The bank only refunded the previous two months' of fees (£450), telling us we must write to their HQ for the much larger remainder.

The local branch explained that the reasons the Debit Card did not function right was that firms (including reputable ones, for example, often Sainsbury in our case) allowed small payments to go through without checking that funds were there.

Santander HQ refused a full refund

So far so good. But, when we wrote to Santander HQ, they refused to refund the rest. We wrote several more times, politely and very clearly. After foot-dragging and long delays over eight months, Santander made a token final refund equal to about one third of what was due.

The Financial Ombudsman

We took the case to the Financial Ombudsman on the following grounds:

the fact that the Debit Card does not function properly is the bank's problem, not customers'. So fees should not be charged for unauthorised overdrafts that the system fails to prevent;

any fees that are erroneously charged should be automatically refunded without customer's having to detect the error and request refunds;

Santander failed to write a warning letter when erroneous fees were charged.

Yet, several times, when unusual payment were made from the account (that all proved to be quite in order), they wrote a personal letter as a security precaution; so that Santander could claim to be informing the customer about the fees, an

inconspicuous note was added, with no heading, in smaller type than that used for some 700 words of 'small print' routinely printed on every statement. The note, printed below, *true to size,* was evidently expressly designed not to be noticed by customers:

If you find that you regularly incur charges, it might help to talk to us about ways to avoid them in the future. Please give us a call on the telephone number above.

The Ombudsman rejected our application, side-stepping the points made above on the grounds that the Supreme Court in Nov 2009 ruled that:

"...charges cannot be challenged because they are unfair or too high..."

"banks...do not have to refund any charges that are in line with the Terms and Conditions of an account."

Conclusions

Tighter regulation rather than constant switching. Overall, much tighter regulation is needed to reduce all the abuses the banks have committed in recent years. Rather than suffer the time-wasting upheaval and risks of constantly switching banks, we want to know that all banks are obliged to behave responsibly and reputably. The banks need an ethical code of practice.

Fairness. It is incongruous that the Financial Ombudsman's concise (90-word) mission statement says: "...We look at the facts, ask questions, and decided what is *fair* in each individual case." The law must be changed to permit the Ombudsman to judge on the basis of fairness.

Terms and conditions. The Ombudsman gives the banks blank cheques by saying that customers cannot challenge whatever they have written in their Terms and Conditions. The Terms and Conditions are tens of thousands of words long, so it is cynical and absurd to assume that customers read them.

Debit Cards. Banks must be obliged to make their Debit Cards function according to the dictionary definition, and to charge no fees if the cards malfunction. The CO-OP bank's *Cashminder* account already operates this system; so that proves it is possible.

'FREE' banking. FREE banking is an inequitable advertisers lie; there is no such thing as a free lunch. In practice, the well-off pay no fees but are subsidised by others. The CO-OP bank's *Cashminder* account simply charges all customers a flat rate (of £10 per month) to run an account. Lord Philips wrote in the Supreme Court report: "...it might be open to question whether it is fair to subsidise some customers whose accounts always remain in credit by levies on others who experienced events

they did not foresee when they opened their accounts.” [Proceedings, Para 81] The CMA would do well to grasp this nettle.

E Bannister

In conducting this investigation, I would ask that somewhere in any subsequent recommendation for change and improvement, it be made a requirement for all banks to make available at least one “free whilst in credit” current account for individuals to access their salary or pension without charge. Otherwise there is no way that anyone can access the full amount of their pay or pension. With monthly charges being typically between ten and twenty pounds, each one of us is giving the bank £120 - £240 of our already taxed pay per annum; it’s impossible to actually receive 100% of what we have earned.

As companies in both the private and public sectors moved to “cashless pay” in the early 1980’s, a sudden windfall cash stream was eagerly seized on by the high street banks. Current accounts cost the individual nothing and the banks made money from short-term investment/ overnight markets etc. As a Civil Servant I recall being able to go to my local Barclays branch on pay day and withdraw the entire salary. However, many chose to leave a balance and save a bit. Over time I think the banks have forgotten that Government policy about staff payment arrangements in the Public Sector have played into their hands and given this enormous cashflow. They now take this for granted and levy additional charges on a hostage clientele.

Government, through its payments to staff and pensioners, controls the cashflow of millions of pounds every month going to the high street banks. If the banks won’t agree to a free whilst in credit arrangement maybe it’s time for the Government to set up something like the GiroBank of the past, and run it themselves. We could even breathe new life into the Post Offices!

Good luck with your investigation.

K Goodacre

I commend the investigation for small business, as they do require support and clear options. Having clear account information is also good for personal accounts. However I wouldn’t say that low occurences of personal banking switching was necessarily a bad thing. It may mean that customers are happy with their bank. I have been with HSBC bank since school and have always been very happy with their services. Many of my friends have changed or use other banks. However on balance I believe HSBC to be one of the best banks around and would be vey concerned if it was broken up. Obviously as a customer I prefer free banking, however if charges were implemented, I would hope they would be capped and at a low level. Not like energy companies which just go up every year.

M Pereira

I am glad that your organisation has finally taken a decision to look into the banking problems.

I wanted to add a further point to the issues that are being addressed.

When visiting the bank I have frequently wondered why there appears to be no provision when sitting with bank staff to discuss bank related matters. Confidential details are discussed in an open environment, loudly by bank staff over the counter which are very close to one another, given the rampant fraud IT intelligence.

Another issue I find is the height of intelligence when counter staff count notes above the counter level for everyone in the queue to see so that the process is recorded on a video which is placed in a ridiculous position?

Customers are forced to accept all of these random unethical practices.

On the matter of making electronic payments such as a credit card payment, banks will not commit to whether it will take 3 or 7 days for the payment to be processed. It is still very vague with uncertainties surrounding the recipient's bank. This also relates to foreign payment when the money is lost between the sending bank and the receiving bank with neither bank taking responsibility.

Like other customers, I look forward to valuable changes to the system.

P Cook

I welcome your review hopeful that the inherent dangers of overly academic or hasty recommendations are now self-evident from both the profoundly pro-cyclical impact of the Vickers report and the recent market disruption from the Mortgage Market Review.

The broad scope of the review involving two markets linked principally and perhaps only, by a perceived social contract heightens the risks of political contamination and overload. You can slip a lot of poorly judged and scrutinised recommendations into a grand 'integrative bargain' between the banks and the ghostly 'decision guidelines' of politicians, just as surely as you can smuggle a lot of bad credits into a collateralised obligation. Separating out the features of each market and articulating a desire to throw light on the industry's economics, whilst explicitly shunning the role of grand arbiter for a more socially useful banking model will be a critical success factor.

I suggest there are other success factors. The frame of reference needs careful and explicit analysis from outside itself. One danger is in exchanging what lies outside the remit for inferior solutions that lie within. An industry dominated by regulation is

not easy to analyse with purely economic tools. Identifying and informing what regulators and the courts could, but have failed to do, may be a more valid outcome than a novel approach, rich in unknowns. Solely achieving better cost transparency plus an illumination of the factors driving consumer inertia should be explicitly a valid option for the enquiry.

The current industry is a small genetic pool but its convergent evolution tells a lot about the forces which shaped it. Understanding what drives their business model (and their indirect competitors) will yield better outcomes than a quest to show more – more players, more account turnover - is better. The tools for such analysis must go beyond the accounting financials. The expectation value for our banking decisions may include a heightened sense of risk – an area where human decision making often appears least rational without understanding the customer's hopes and fears.

International comparators are worthy of study. The Italian multi bank model is much maligned by its citizens as a ruinously expensive toll on money movement. No one said oligopolists had to be few. In fact I doubt you will find citizens anywhere delighted with their banks. We could do a lot worse. This review has ample scope for making it worse.

Scope

I address only the personal market here, save to suggest that in relation to SME banking the impact of the overturning of Siebe v Barclays, should be given a thorough examination.

Presumptions

The behaviour of banks and low turnover in banking, combined with so many areas of concern fully justify a review. But we need to be careful about the presumptions we make.

Those areas where work will illuminate otherwise non transparent issues, particularly the costs of money transmission systems and the real costs behind suspiciously high charges must be presumed good. But beyond this great care is needed.

Most of, at least in some narrow sense, have been well served by the free banking model (free accounts, free cash machines, free transfers and with bank profits insuring for free all but the reckless, against fraud and loss). It is likely worth one to perhaps a few hundred pounds a year. It is an obstacle to new "full service" entrants – how can a free product not be? But impoverishing good customers to fund a bank breeding program or a social insurance model is likely to be folly not least because it can't deliver a better priced core product or cure underlying social ills. The

presumption that the bird in the hand is worth two in the bush should be your starting point in making recommendations. The trap will come with the trade-offs. It should be an explicit presumption that glib assumptions about the impact of remedies are not true unless otherwise shown to be the case. Some ready examples come to mind. That a bank required or empowered to make account charges will pass on the cash, that customers with chaotic finances will ultimately benefit from enlightened cross subsidy and that the incentive to cross-sell will be diminished by adding a further profit centre i.e. current accounts charges.

Concentration and Competition

A changing business environment should give rise to business model mutations if those changes create profitable niches or segments. But the dominant banking trend of the last 60 years is consolidation. The suspect list includes greedy citizens voting out mutuality, nervous central bankers quietly cutting liquidity lines, capital markets shunning small illiquid issues, ambitious executives correlating bonuses with scale, mountains of fixed cost regulation and, what may be the most crucial a combination of mountains of fixed cost regulation and scale of computer projects to replace the clerk's ever rising wage bill. Central bankers and regulators may be changing their tune but the rest is either history or in some "inevitable" sense linked to market or regulatory forces (and sometimes progressive.) The presence of fewer players does not necessarily mean less choice; there are many different account offerings but it must tell you something about the forces shaping the industry.

The less well observed trend is the new entrants and innovations over the last 30 years which have illuminated the competitive landscape of and around banking. In an industry, the *domestic* scale of which is largely linked to GDP they show new entrant innovation is alive, often with a nasty kick. Below is my perception of some of those entrants. The main observables are there have been new entrants in both current account banking and in other products (which by deduction may be the golden geese subsidising free banking); and there is huge diversity in approach from technology solutions (First Direct, internet and mobile apps), white label manufacture (supermarket banks and store cards), brand-differentiated offerings (Virgin, Co-op), financial product innovation (Northern Rock), product features (free FX on accounts, free balance transfers) and even money transfer led businesses (Paypal).

Even a cursory recall of the last few decades shows the scale of entry, exit, innovation and change in the wider market. The building societies (and lots of them) emerged into mainstream UK banking mainly with me too models which often sank in merger.

The Scots entered some markets aggressively after the recession around 1990 whilst later deploying second tier capital and highly rated paper to buy establishment players. (And with Northern rock pioneered the ever shortening maturity SPV funding

structures which dumped so much risk on the taxpayer.) They also innovated in partnering with supermarkets and phone based insurers whilst every high street name launched a store card. Lloyds set about repairing its damaged balance sheet after the same recession by reengineering itself, hollowing out branch decision making and focusing ruthlessly on cost/income ratios, a trend followed by the pack. Every bank, most notoriously Abbey, discovered the fun of using its treasury as a profit centre. Accounts everywhere proliferated, often exchanging loyalty or payment for dubious benefits. Meanwhile second tier lenders, peer to peer models, pawnbrokers and payday lenders have waxed and waned over the period. HSBC rescued the Midland folding it into an innovative new telephone based technology model, whilst Barclays launched a free ISP service, created the debit card, built an investment bank post big-bang and bought into electronic stockbroking and equity savings, along with most other banks and a hoard of new comers. Various foreign banks made forays in asset finance and savings accounts. Start-ups like virgin and a VC backed competitor sought to sell mortgages. More recently the trend for players to attack the banks' hidden earners like Life and other often unneeded insurances has extended to FX purchasing and pre-paid FX cards. There are also other serious names to conjure with like the Post Office, Co-op, Alliance and Leicester, Santander, IF, Tesco, Nationwide, internet and mobile banking apps and Paypal plus sundry private equity players circling to buy assets cheap because of distress or forced divestitures. As a whole it is a diverse and vibrant market and even in the sphere of the dull current account there has been a good deal of innovation.

Conduct

There clearly are customer injustices. Transgressors are penalised excessively. Gullibility and inertia are ruthlessly exploited by high margin cross selling or bait and switch tactics. Transparency is weak when security failures occur, leading to unbearable customer stress. Each evil throve whilst the regulatory cat slept. It is breath taking what took place under the regulator's nose – it must not be allowed to be the elephant on the table in your report. Grand structural solutions are hardly in order until the cat has been woken and had some chance to hunt. One failure was a "boys will be boys culture" but another is a lack of transparency on charges. Given the standard nature of contracts the unfair contracts act and English law disdain for penalties could be brought to bear by regulators using test cases if there was better data.

In the regulation of complaints individual redress can be effective (customer biased even) but this can be part of the problem. Banks are keen to avoid being challenged in court on points of principle. Within regulators there seems to be no effective channels for making or drawing strategic or systemic inferences. Its beyond the remit and probably the competency of the front line staff. Who gathers the strands? As well as improving regulator performance they need additional mechanisms. Amongst

the trolls that write on public websites there are a few enlightened intelligent voices. Nobody listens and there is no mechanism for them to raise an issue except in the context of specific complaints. Businesses are now using external customer opinion and problem solving capabilities much more effectively. Government should follow this lead.

Free Banking Feasibility

There is a false premise that bank behaviour is the trade-off for free banking. The start should be – free banking and ever lower costs to drive growth plus the spin off opportunities there have always been to make the maths work – harder of course for those with toxic brands but still as feasible as in the last 50 years particularly as computing costs fall and electronic banking rises. The egregious part for banks threatening to hand back their licenses is not feasibility, it's a return to those low eps growth high yielding shares of the 50s and 60s. How will management talent be rewarded then? Not a question you would want to put to the public. Politicians, Cnute-like, pressured by unions and special case lobbyists may impede the rate but branch closures will continue and lower cost delivery mechanisms, technological or using innovative infrastructure will win an ever larger share of transactions processed. The network is still key but it is crucial the CMA does not step into the way of progress. It is the demand led dynamics which must be allowed to win. Adequate ROE will follow once capital adequacy measures for domestic assets are realistic. We have gone from bankers setting their own capital ratios on a post 1992 track record – the longest period of low volatility in history – to one imposed by regulators based on two disastrous years of reckoning for crimes unconnected with your average mortgage or credit card. It will be hard to persuade a world recovering from financial meltdown of this but a cool analysis of the numbers may help.

Account switching

The decision to switch banks is clearly complex. There are many deterrents – the idea the banks are equally bad is probably well founded at least when things go wrong; the linkage – perceived or real – with other products particularly mortgages makes the switching task appear more massive and expensive than it probably is. It will require a detailed analysis market segment by market segment of the reasons for low switching if progress is to be achieved. Detailed interviews as well as wider questionnaires will be needed.

In summary I welcome the review hoping that it will shed light on the problems that do exist and providing some of the data and insight needed by regulators and consumers to make the market more effective.

P Sharman

I wish to comment on the proposals to undertake a full depth investigation into the banking market. I strongly belive that an investigation is required despite my own personal satisfaction with the various banks that I use (Santander and Nationwide). My Santander account is actually an old Girobank account which allows me to deposit cheques at the local Post Office. I did consider changing to a new M & S Account but I rarely visit their shops, so paying in cheques would have been a problem.

However, I would urge that the remit of the investigation team should consider radical solutions to the current market. My own suggestion, which I believe would reduce costs for the industry, reduce the problem of bank branch closure, make it easier for new entrants and resolve what do do with failing Post Offices is as follows:

1. Compel the banks to create a single Bank Branch company to own and operate all bank branches. Any branches too close together could be sold off. The Banks would own the company in proportion to the value of the branches handed over. Branches could take over Post offices and provide all post office counter transactions and reside in supermarkets. Most branch transations are a commodity. Branches should operate at least 6 days per week and for extended hours where there was a need. No Bank would need to own their own Branch.

2. Counter transactions would all be handled by the Bank Branch company, charging individual banks for the service provided. One software system would be required to handle all transactions and it would have to link seamlessly to the different back office software systems operated by the individual banks. Banks would pay the Bank Branch Company based on the number of transactions handled.

3. New entrants to the market would not need to set up branches but could pay to use the entire network or just those branches in a specific geographical area.

4. All Branches should have one or more separate and private meeting/interview rooms which could be hired by Banks on a regular basis to enable a travelling account manager to meet individual customers/businesses by appointment. He would be able to connect seamlessly to his own bank's computer system to view customer account details. The Branches would display the names of all the Banks using their services.

5. Banks would compete on the attractiveness of their overall product range including the provision of the travelling manager.

6. Branches in remote locations would become more viable.

N Jeffares

Competition and Markets Authority: Response to consultation on market investigation reference in banking

This response principally concerns the need to take a broader view of the capital structure of banks and government policies before dealing with the specific issues addressed in the consultation document (personal current accounts and SME services). I make it in a personal capacity.

1. It is unnecessary for me to repeat in detail the arguments surrounding the capital structure of UK banks. They may be found in my submissions to several previous public consultations:

Independent Commission on Banking (Vickers):
Part 1 (July 2010); Part 2 (April 2011)
Parliamentary Commission on Banking Standards (December 2012)
Memorandum to the Financial Services (Banking Reform) Public Bill Committee (April 2013)

2. Retail and business customers of UK banks are exposed to an industry that depends vitally on concealed government support for its very existence. Such a dependency and the uncertainties it creates, and the varying extents to which it is exploited by existing players, make it impossible to achieve the reforms the CMA envisages through a narrow MIR alone. Nor can the CMA's concerns possibly be addressed by UILs from the banks. A successful MIR will require its scope to be broadened to address the fundamental forces of government and regulatory policies that distort competition in this industry as set out below.

3. The main argument can be put very simply. While it may be easier to think of in terms of deposits rather than purely transactional current accounts, the essential point is the same: given the levels of leverage in UK banks, the unavailability (to customers) of real-time information about each bank's financial position, the absence of a negative pledge preventing the bank giving priority to other creditors (indeed the virtual certainty that, in difficulty, all the liquid, tradable assets would have been pledged in the interbank market or to the Bank of England), no prudent person would take standalone credit exposure on such an entity for any more than the trivial limits covered by the FSCS. Any business or retail customer going beyond the relevant limit (and many are forced to take such transactional exposure in their day-to-day activities) does so purely on the basis of the government's assumed support.

4. It is possible that a venture capital fund might find a right price at which to take such a risk without support, but the level for the de facto subordinated risk (behind the secured interbank creditors) is certainly not the 1–2% now offered on bank deposits, or even less on current accounts. Yet if banks had to pay the right price for

those deposits or for the guarantee (or were forced to reduce leverage and stop the interbank pledging of assets that effectively subordinates ordinary deposits) they would collapse as their businesses do not produce sufficient profit to cover the overheads they have built up in the (justified) expectation of continued government failure to confront this point.

5. My submissions mentioned above pointed out the consequences of recent government policies, including the implications of what has become s.13 Banking Reform Act 2013 which exacerbated the problem of depositor preference. Bank resolution regimes remain incoherent, destabilising and subject to executive whim in ways which continue to make the market for bank deposits wholly dependent on state support (and therefore unsuited to being governed solely by the conventional forces of competition).

6. When established, large banks raise cheap deposits in this way, and use them as quasi equity funding for complex trading activities which ought to be independently capitalised, they are able to make considerable profits. New entrants, with tiny balance sheets and single-line business models, are not able to benefit from the redeployment of deposits to fund haircuts in complex repo or derivatives trading. Any attempt to compete with the main banks on rates will therefore be unsuccessful.

7. It will not be sufficient to break up the banks into smaller units alone. This industry will only start to behave in an efficient way that can be controlled by normal market forces when there is total separation of traditional banking (lending, deposit taking and money transmission services) from all market trading and complex activities. It is vital that the traditional arms maintain high-quality asset portfolios, adequately capitalised with straightforward equity (at a leverage level of no more than 10) and that all debt funding is pari passu, so that the interests of retail depositors are identical to those of the remaining creditors (interbank exposure would then provide an informed view of credit condition). These developments are unlikely to happen. The alternative is that the government explicitly guarantee all deposits, while charging an explicit fee for doing so. That too is unlikely to happen.

8. Government policies in keeping interest rates artificially low (whether or not delegated to the Bank of England) both at the short term and at the longer end (through QE) also introduce non-market elements to the profitability of banking. The CMA cannot ignore these powerful forces if it is to probe effectively any part of the anti-competitive behaviour of UK banking.

9. A further implication of the trivial FSCS limit is the effect it has on competition for retail deposit rates. Because the intelligent money has to be divided into small pots, larger depositors are unable to move their money to the bank paying the highest rate. An individual with say £1m to deposit is already obliged to accept down to the 12th best rate in the market (which is usually far below the top two or three). This is

deeply inimical to normal competition. The losses suffered (and equivalent profits earned by the banks) are far more significant than the administrative costs of current accounts etc., and should make this a major focus for a full competition enquiry.

10. While my view is that the encouragement of new entrants alone will be insufficient, it must be obvious that the removal of existing independent banking licences will have a negative effect on customers. When ING sold its UK business to Barclays, with I believe just such a consequence, I opposed the transfer and appeared before the High Court in a hearing on 20 February 2013 under Part VII FSMA 2000. The OFT announced shortly before the hearing that they would not refer the merger to the Competition Commission, and on the basis of that decision Counsel for Barclays was able to persuade the Court that there would be *no* detrimental effect on competition from the transfer; the Court took the view that it was not within its remit to question the OFT's decision. In view of the subsequent collapse of Project Verde and the other factors that have led to the CMA's provisional decision, I hope there will be no further examples of such transactions pending the full enquiry.

11. The CMA should think hard before encouraging the industry to move to a fee-based current account system (as parts of the press have suggested). Many banks link deposit accounts to current accounts and such a move will impose costs on savers with multiple accounts, reducing rather than increasing the competition for deposits.

3. Responses from businesses

A Costain

Many will have seen Yvonne Robert's 'Public Interest and the State' article in today's Observer.

I would like to share this article directly with the various 'Public Interest' bank regulators, as it identifies an important 'collaboration' benefit thread which previous Competition Inquiries have struggled to embrace. In some respects Yvonne Robert's paper objectively challenges our regulators tendency to default to neo liberal dogma and of course in the 'dance of ideas' this fashion may be subject to legitimate political and public challenge.

Thus, one might argue that given the quasi judicial mandate of our competition regulators - when addressing a sector of critical national economic importance, such as banking (retail and wholesale) it is entirely appropriate for them to consider the potential 'Public Interest' scope of realistic collaborative initiatives & benefits in their 'Issues thinking' (that might require far reaching structural and behavioural remedies including the identification of potential primary and secondary law enhancements).

Robert's makes specific reference to the benefits of the German Kfw Local banking system and tangentially to the various underpinning mutual initiatives. For clarity, it is even conceivable that in certain situations 'local collaborative banking' could have social loss re mediating effects of significant benefit to society in general.

Indeed one potentially viable conjecture, is that the BoE have been promoting collaborative banking wholesale developments for some years now with their various extraordinary monetary policy interventions; such as Quantitative Easing (driving down the fractional reserve banks weighted average cost of capital/& drastically re-mediating market failure liquidity issues). However, it is increasingly clear that these intervention benefits have been biased toward the 1%, rather than the 99% and are thus unsustainable and in need of remediation in a natural justice sense.

Hence, good and comprehensive banking regulation and remediation will require these equitability/Public Interest 'issues' to be addressed and where so ever possible mitigated.

Finally, a short quiz on the primacy of Peloton related collaboration benefits and rules - as stated or directly implied by Einstein; Adam Smith (Moral sentiments) and the author of this note:

'Life is like riding a bicycle - To keep your balance, you must keep moving'.

‘We can all cycle further and faster, if we collaborate......our elected Captains have a mandate to set our final route’

‘The public require that their Champions never cheat’

Market regulators have a quasi judicial role in respect of each of the above values, and to be legitimate their machinations ought to be sufficiently intellectually flexible to embrace the potential benefits of collaboration, so far as they lie in the public interest (not merely the direct Consumer interest ‘literally’ identified, in the increasingly outdated, or is it just poorly interpreted, Enterprise Act).

D Brouard (Bridge Candy Shop)

I noted with interest today’s news that a consultation is to take place on Banks and Small Businesses.

I would urge you to investigate the way banks charge small businesses for banking cash. We own a small sweet shop/convenience store and as such the majority of our takings are in cash. Obviously our mark up is minimal. It has annoyed me for many years the bank charges we have received for banking cash. If a business banked a cheque for £10,000 it would cost them 65p. If they banked £10,000 of cash if would cost them £57.

In our case the bank insists that we present our money all neatly counted in bundles of correct amounts so that they have very little work to do except put it through a counting machine. Also we just leave the paying in envelope with them to process at their leisure.

We have never gone over-drawn and to receive bank charges in excess of £300 per month, purely for banking cash is outrageous.

Your comments would be appreciated.

G Evans (Voyager Healthcare Ltd)

As a bank account holder and owner of an SME I wanted to write to put my views on the proposal to conduct research into the PCA and SME markets and why, according to the CMA, these markets are not functioning properly.

In regard to SME’s I am neither happy nor unhappy with the service provided by Lloyds. It is true that I, along with many SME owners do not trust the banks but I think the CMA would find that true no matter which country they examined. For the CMA to compare levels of trust between banks and other industries such as telecoms or energy is strange and not a reasonable comparison. When it comes to money, trust is always harder to earn and easier to loose.

Yes, there are difficulties in obtaining SME loans made worse since the financial crisis of 2008 but the banking industry is caught between a rock and a hard place. They need to be far more careful about lending these days to avoid the very same crisis that had regulators jumping down their throats. The banking industry does need to reform the way it works and that is being achieved through tough new regulations. For the CMA to suggest that SME lending would be more competitive if there were more players in the market misses the point entirely and is suggestive of a desire on the part of the CMA to pick a fight with the big four lenders where none exists. Trying to get lending for my business has been difficult no matter which bank I approach, big OR small. New regulations and rules have put paid to that and banks, no matter what size, are wary of lending.

The CMA claims there are difficulties preventing new banks from starting up but that is not true. We have Tesco, Metro, Virgin and now TSB as new players, so there is no evidence to suggest competition isn't good enough.

New players in the banking market would not necessarily lead to better deals and better levels of service for consumers. Are there better deals and better levels of service for energy consumers now? Sure, there are lots of companies to choose from and tariffs are finally easier to compare but the savings - well they are marginal and hence, despite exhaustive research, I won't be changing from British Gas despite their appalling customer service. It is something I have to live with.

It is true that whether with PCA or SME accounts, there is a high degree of customer apathy to switch for better deals. Again the CMA completely misses the point. People want security and stability with their banking needs and switching, despite CASS, does involve a degree of worry and anxiety that bills or payments might not be transferred correctly given there is always a human element involved and therefore a risk of mistakes. CMA attempts, again, to compare low levels of bank account switching to that of other industries. You cannot compare like with like because they are not alike. If EE screws up the switching of my mobile phone number to Virgin, I might not be able to use my phone for awhile but if Lloyds screws up switching my account to Virgin Money I could be in real trouble if bills aren't paid on time or deposits go missing.

I must conclude the CMA's behaviour is suggestive of an attempt to focus an attack, not on the banking industry as a whole but the big four banks either because it is under pressure by smaller banks to fight on their behalf or that CMA believes the big four need to be punished and split up. There maybe political pressure to split up the big four and CMA needs to be very careful that it isn't seen to be taking a political role in this matter.

K Massow

Hi i read the web page with great intrest, but i am not sure if it will impact on my problem, so i thought i would expand a little. My card processor originally supplied the equipment and processed all the electronic payments. it then years later without me realising split their operation in two, and started two by default contracts for different lengths of time, i tried to purchase my own termal to reduce charges, and found out i had to keep paying for my rental termal for another two years as it was now a different company, although still owned by the same provider. I do not see just competition as the answer, i believe that all customers of a company should be charged the same for the same service, and regulation would be needed to stop providers, taking only small or large companies, so the low rates could not be obtained by everyone. It must be remembered forty years ago when mainly only cash was used it cost nothing for a mall business to except. It now costs me around £1500-00 / £2000-00 per year just to get my money paid into a bank account with normal bank charges on top. The drive to a cashless society is in fact a charter to allow banks to impose a tax on all small business, with most people not carrying any cash. As a jeweller we have to take cards for as low as £5.00, if for any reason we have to refund the customers money we have to pay again to return it and on small amounts we can lose between 15% / 20% with all the different charges imposed, If refunds are made its removed from our bank account immediately even though it takes four to six days to get to my account in the first place, so if money is refunded the day following purchase we are without double the sale amount for a trading week. If processors had to treat everyone the same none of this would happen and in todays world i cannot trade without a card processor and a bank, with cash i needed no one else.

P Guegan

The basic nature of my enquiry with the CMA just now is to seek assistance as to just why the high street market appears unable to meet what seems to be a reasonably standard type of credit requirement. To the extent that the difficulties that I have encountered may be an instance of a more general trend, as indicated in the conclusions that you have reported, I’m wondering at what point it may be appropriate for the relevant authorities to consider proceedings around potential violations of anti-trust/competition law. The requirements that I have at the moment are needed to support the execution of a very good contract, and I would consider their fulfilment to be far more creditable than the execution of a collective noun of very bad bankers, and to the extent that such processes may not have proceeded to their natural, satisfactory conclusion at this time, there appears to be a duty requirement to distinguish very good bankers from their opposite counterparts.

May I draw your attention to one of the conclusions made that may be particularly significant?

‘The pricing of BCAs and loans appear complex. For both BCAs and loans, it can be difficult for SMEs to get a detailed understanding of the cost of using these products.’

This is clearly unsatisfactory for SMEs using BCAs, and for those obtaining loans. I wonder to what extent the CMA may have considered views to enable these features to be somewhat simplified. Separately, would it be apt to consider to what extent banks use blunt measures of cashflow over narrow time intervals to assess credit-worthiness, and how appropriate might that be under a representative sample of disparate circumstances? Are there better ways to gauge the recoverability of loans extended by banks?

4. Responses from other bodies

A Thompson (Friends Provident Foundation)

I thought you might be interested in the results of some existing work on the issue of how much 'free banking' really costs consumers.

'How Much Does "Free Banking" Cost? An assessment of the costs of using UK personal current accounts' by Dr. John K. Ashton of Bangor University and Prof. Robert Hudson of the University of Hull, and funded by us here at the Friends Provident Foundation, used 17 years of data to explore the total costs to customers of current account use, and whether any cross-subsidy existed between customers with different levels of income.

The report from the work shows that the customer costs of current accounts vary substantially depending on the provider and the type of account. But the system tends to work to the disadvantage of the 'inattentive', with no evidence that low income customers disproportionately bear the burden as had previously been suggested by some.

However, the study did go on to recommend measures to make the personal current account market more affordable and transparent, including simplifying and standardising the costs of current accounts, making customers more aware that overdrafts are a high cost form of borrowing, and providing more information on the supposed benefits of additional services provided within packaged accounts.

The report also calls for a reduction in the number of accounts offered, to improve customer decision making, 'sweeping' facilities to automatically transfer excess funds to deposit accounts, and more joined-up regulation of the current account market.

The reports can be found via the following links: -

- summary report
- full report

I hope that this material will be helpful to you.

A Mullineux (Professor of Financial Economics)

In my various publications I have argued that there was much unfinished business after the Cruickshank Report in 2000 and the Bank of England stopped monitoring bank lending to Small Firms (under Adrian Piper and his successor) too soon (a year or so before the onset of the Credit Crunch) in order to focus on inflation targeting.

‘Free banking’ is clearly distortionary and leads to cross subsidisation-particularly at the expense of the infirm elderly who find internet, and telephone banking difficult and cannot physically visit branches. They accumulate large low interest bearing deposits that the banks could simply offer to sweep into higher interest bearing accounts following a home visit! They tend to have low transaction volumes as well (and like cheques).

Cruickshank essentially argues that there the payments systems were infrastructural and a gateway to banking and the logic was that they should be run as a utility. Indeed the whole of retail banking (SME and household current account banking etc) should be regulated as a utility, as I have argued some time ago. Note it is BANKING that should be regulated as a utility, like electricity supply etc-the number of providers will depend on arguments relating to economies of scale and efficiency, though academic studies in the US suggest that medium a sized banks can achieve the necessary minimum efficient scale (MES). The size of the MES banks depends increasingly on C& IT technology, though a central provision of the ‘plumbing’, like the rail network or grid, is possible (note the role of the Fed Reserve System in the US). Similarly, pooling of branches would be possible, in high streets as well as in rural areas, and a Universal Service Obligation could be imposed with the costs of providing services to remote areas shared, perhaps with a public sibsidy.

The Vickers Report suggested a competition review should be undertaken once new bank regulation was in place, which it is, though the finding of the CMA’s MIR might have a useful bearing on where the ring fence should be placed. The PCBS also suggested a competition review once the dust had settled, which I believe it has, though the banks might try to persuade the CMA otherwise as they deal with problems of their own making which are increasingly subsequent and separate from the crisis (though PPI and other retail miss-selling and high charges for overdrafts and late payments on credit cards etc might be seen as attempts to recoup the costs of providing free banking mainly to the ‘middle classes’).

Asset Based Finance Association

Thank you for your email with information about the provisional decision to make a market investigation reference for SME banking.

As you may be aware, the ABFA is a trade association that represents the asset based finance industry in the UK (and Ireland) – Members are engaged in the provision of invoice finance (factoring and invoice discounting in the main) and wider asset based lending. Our Membership is comprised of both ‘bank’ and ‘non-bank’ businesses. The ‘bank’ membership is itself relatively varied; it includes the specialist asset based finance businesses of the UK and Irish high street banks, the challenger banks and also a number of internationally owned banks – some of these businesses will be divisions of the bank, others will be wholly owned subsidiaries.

The non-bank membership includes ‘stand-alone’ specialist finance businesses and also the specialist finance subsidiaries of large commercial organisations. In a practical sense the industry and the Association is defined by a focus on the products that are being provided rather than the institutions that provide them.

Generally speaking the products are ‘stand-alone’; there is no requirement to have a business bank account with a provider in order to receive asset based finance services – indeed only a minority of providers can provide accounts anyway. Nonetheless, some providers will offer the services ancillary to ‘conventional’ business banking.

Given the breadth of our membership it is likely that individual Members will have the more significant perspectives on the issues raised in the provisional decisions than the Association itself – I know that some of our Members contributed to previous stages and we hope that they will continue to do so. The Association has notified Members of the progress of this work and has encouraged them to make any contribution they believe appropriate from their perspective.

The products have evolved and are now seen as increasingly ‘mainstream’ financing options. Nonetheless, as far as the Association and industry is concerned, the biggest barrier to accessing asset based finance products and services is awareness and understanding, and this is as much a challenge for the high street banks as for our other Members. One of the keys to facilitating greater competition between both institutions and products is better information and we hope that the CMA will consider this aspect of the issue should a formal market investigation reference be made.

We would be grateful if the ABFA could be kept informed on the provision decision as matters proceed and we would be pleased to contribute more substantive views where it is relevant for us to do so – if a meeting would be of interest, please do not hesitate to let us know. We would also be pleased to continue to raise awareness of this process across our Membership and encourage them to contribute as they feel appropriate.

Institute of Directors

The first point to make is that we are not torch-bearers for the incumbent Banks. They have rightly attracted opprobrium for some of their practices, and our members appear to have experienced at least some difficulties obtaining bank lending or other funding in the past few years. However, it appears to us that the issues with the Banks are now pretty much all now “on the table”. There is work to do to resolve these problems, which will require major cultural change within the Banks. We believe the appropriate Regulators are onto this but we will be watching carefully to

see the evidence of real change emerging. This will be seen in a bigger flow of credit to businesses and a cessation of unethical practices.

This having been said, when the UK does banking well, it is world-beating and global in reach. This country desperately needs a healthy, profitable, banking sector and financial services sector more generally. As a nation, we rely on these industries for much of our foreign exchange and tax revenues. The banking sector since 2007 has been the subject of numerous reviews and regulatory interventions.

Furthermore, we observe the emergence of new, “challenger”, Banks and new solutions to lending and funding such as peer-to Business platforms and Crowdfunding. We welcome these alternatives as competition for the incumbents, which will lead to effective competition in the business lending and funding markets. Government should encourage these new entrants. Over the coming years, we expect these competitive forces to force better markets for business lending to emerge.

Given all this, and the general economic recovery, we do not think that a Market Investigation Reference would be helpful at the present time. Borrowers, and the Banks themselves, have been through torrid times over the last few years. Rebuilding work is well under way. We need to give it time to complete.

Labour Finance & Industry Group

We write to support the provisional decision of the CMA to make a market investigation reference (MIR) in relation to SME banking, and urge the CMA to resolve to move to a Phase 2 MIR.

As the CMA Consultation Paper of 18 July makes clear, on the due criteria (“the reference test” in the Paper) the lack of competition in the sector, and the 80% grip of the 4 clearing banks on lending to SME s may well be a significant factor. The importance of SMEs to the UK economy and its growth prospects are critical, and previous initiatives to stimulate SME lending have only met with limited success.

We respectfully agree that it would not be appropriate to merely to accept undertakings in lieu from the main retail UK banks (UIL). In relation to the key questions to which you invite responses in paragraph 1.8 of the Consultation Paper

1 Yes
2 Yes
3 Yes
4 Yes
5 No – UILs are entirely inadequate
6 Yes

I look forward to hearing from you.