

DIRECTIONS TO HSBC BANK PLC PURSUANT TO CLAUSE 28 OF THE UNDERTAKINGS

Background

- i. Following an investigation into the supply of banking services by clearing banks to small and medium-sized enterprises ('SMEs') by the Competition Commission in 2002, HSBC Bank Plc ('HSBC') gave the Secretary of State for Trade and Industry and the Chancellor of the Exchequer undertakings under section 88 of the Fair Trading Act 1973 and those undertakings came fully into force by 1 January 2003 (the 'Undertakings').¹
- ii. Pursuant to Clause 17 of the Undertakings, each of the Banks subject to the Undertakings shall not directly or indirectly require, agree (other than in respect of integrated products) or threaten to require, as a condition of the granting, maintaining or servicing of any business loan to, or the opening, maintaining or servicing of any business deposit account for any SME, that such SME should open or maintain any business current account with the Bank.
- iii. This is subject to the exemptions provided for under Clause 18 of the Undertakings.
- iv. According to Clause 28 of the Undertakings, if the Director is of the reasonable view that the Bank has failed to comply with any of its obligation under the Undertakings, it may from time to time, in respect of such obligations, give reasonable written directions to the Bank: (i) to take such steps within the Bank's competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings or (ii) to do or refrain from doing anything so specified or described which it might be required by these Undertakings to do or to refrain from doing. On 1 April 2014, the Competition and Markets Authority ('CMA') assumed this power from the Office of Fair Trading ('OFT'), which had previously assumed this power from the Director.
- v. As part of the information acquired during the OFT's work on its then SME banking market study, the OFT received information suggesting that certain Banks may have failed in some instances to comply with Clause 17 of the Undertakings.
- vi. In order to assess compliance with Clause 17 of the Undertakings, the OFT wrote to all Banks requesting information on the systems and procedures for

¹ These undertakings were termed the 'SME Banking – Behavioural Undertakings' and are available at: <https://www.gov.uk/government/publications/small-and-medium-sized-enterprise-sme-banking-undertakings>

ensuring compliance with the Undertakings. In the case of HSBC, this letter was sent on 5 December 2013 with a further clarification letter being sent on 12 February 2014.

- vii. In response, the OFT received three letters from HSBC dated 19 December 2013, 19 February 2014 and 26 February 2014. In the 19 February 2014 letter, HSBC informed the OFT that, as a result of its internal investigation into issues at the bank which may affect compliance with Clause 17 of the Undertakings, it was able to ascertain that some HSBC staff will have informed SME customers that it was a requirement to take out a BCA in order to obtain a loan. Alongside the last of these three letters, HSBC also submitted proposals for addressing the issues it had already identified in its systems and procedures for ensuring compliance. This was in a document entitled 'Bundling undertakings – proposed HSBC action plan' (the 'Action Plan'). Following receipt of this document, the OFT agreed with HSBC that it should start to implement the Action Plan.
- viii. On 11 March 2014, the OFT agreed with all the Banks a package of measures that sought to achieve two main objectives: that each Bank should provide staff dealing with SME customers with an annual written reminder on the obligations within Clause 17 of the Undertakings; and that each Bank should, via its internal audit function, review its compliance with Clause 17 of the Undertakings and submit a report to the CMA by 11 July 2014 (the 'Audit Report').
- ix. Having reviewed the contents of HSBC's letters and the findings of the Audit Report, in accordance with the wording of Clause 28 of the Undertakings, the CMA is of the reasonable view that HSBC had failed to comply with Clause 17 of the Undertakings prior to the OFT's initial investigation into this matter. The CMA recognises that the Audit Report also showed that HSBC had already made progress towards implementing the Action Plan.
- x. On Tuesday 30 September 2014, the CMA notified HSBC that it had reached the reasonable view that HSBC had failed to comply with Clause 17 of the Undertakings. On Friday 3 October 2014, the CMA provided HSBC with draft directions specifying and describing steps to be taken by HSBC for the purposes of securing future compliance with the obligations imposed by Clause 17.
- xi. Taking account of HSBC's response on Friday 10 October 2014, and all other relevant factors, the CMA has decided to issue the following directions.

Directions

The CMA in accordance with Clause 28 of the Undertakings hereby gives the following reasonable written directions to HSBC:

1. To take all steps within HSBC's competence reasonably necessary or desirable to achieve and maintain compliance with Clause 17 of the Undertakings, including (but not limited to) the full implementation of the Action Plan **by 31 December 2014** and to confirm such implementation in writing to the CMA. The Action Plan includes ensuring that the following Directions 3 to 8 are put in place (or, in the case of items already in place at the date of these Directions, ensuring that they remain in place).
2. To refrain, at all levels, either directly or indirectly, internally or publicly, in practice or by means of any internal guideline, manual, procedure, terms and conditions or any other similar information, from failing to comply with Clause 17 of the Undertakings.
3. To produce (and properly maintain) a clear statement of policy on HSBC's stated preference for [X] for communication to all staff who are responsible for the marketing and sale of business loans and business deposit accounts ('Relevant Staff'), explaining:
 - a) that HSBC's preference for [X] does not mean that staff should refuse lending to a customer on the grounds that they do not have a business current account with HSBC; or refuse offering a business deposit account to a customer on the grounds that they do not have a business current account with HSBC (except as provided for in Clause 18 of the Undertakings); and
 - b) more generally, how this stated preference is to be interpreted in a way that complies with Clause 17 of the Undertakings.
4. To provide (and properly maintain) appropriate guidance for communication to all Relevant Staff on the use of the "Miscellaneous Account" as a means of enabling the drawdown of small business loans to a non-HSBC account in circumstances where the customer does not hold a business current account with HSBC.
5. To amend (and maintain amendments for) all internal manuals, guidance, product/loan documentation and associated training materials for communication to all staff to:
 - a) explain and/or ensure consistency with HSBC's obligation not to require a customer to open or maintain a business current account with specified business loans and/or business deposit account pursuant to the Undertakings (including exceptions to those requirements such as in

- cases where debentures apply) with particular clarification on the statement of policy on HSBC's stated preference for [X];
- b) set out the applicable procedures that staff are to follow when dealing with new-to-bank SME customers seeking a loan or business deposit account; and
 - c) clarify that Know Your Customer and anti-money laundering checks are applied to a customer and not the product, such that these requirements can be met for monoline deals.
6. To establish and maintain effective governance, testing and monitoring to ensure ongoing compliance with Clause 17 of the Undertakings.
 7. To conduct a scoping exercise on changes that need to be made to the IT systems in order to replace the current "Miscellaneous Account" draw-down solution for small business loans and provide the results of this scoping exercise to the CMA within 14 working days of its completion.
 8. To create, roll-out and maintain mandatory training for all Relevant Staff in Business Banking, Credit & Risk and Business Management on the background of Clause 17 of the Undertakings and measures designed to achieve compliance as listed above, which will be required to be completed annually.
 9. To conduct annually a review of HSBC's compliance with Clause 17 of the Undertakings, specifically including the following elements:
 - a) the policies, practices and procedures (including those related to training) which HSBC has in place to secure compliance with Clause 17 of the Undertakings;
 - b) the awareness of Relevant Staff with the obligations created by Clause 17 of the Undertakings²; and
 - c) other evidence suggesting the presence or absence of actual or suspected non-compliance with Clause 17 of the Undertakings (including a file review of new-to-bank SME loans and business deposit accounts, a review of customer complaint data or data available from internal escalation processes for internal concerns).

Such a review must be conducted, outside the area of the Bank which is directly responsible for the provision of banking services to SMEs, by the internal audit function of HSBC, in accordance with the Code of Professional Conduct of the Chartered Institute of Internal Auditors.

² In undertaking such a review, an appropriate sample of staff should be assessed. Such a sample should be representative of staff at the various geographical locations and the range of sales/marketing channels available (e.g. in branch, online, by telephone).

10. To contact any SME customer who becomes known to HSBC via its compliance review outlined in Direction 9 and has been affected by a failure to comply with Clause 17 of the Undertakings in order to advise that the SME customer is under no requirement to maintain its BCA with HSBC in order to retain a loan or business deposit account.
11. To provide a copy of the review referred to in Direction 9 to the CMA with a statement of HSBC's compliance with Clause 17 of the Undertakings.
12. To provide annually to each of HSBC's Relevant Staff, a specific and direct written reminder (which covers no issues other than the subject matter of the Undertakings) of HSBC's obligations under Clause 17 of the Undertakings, stating that HSBC considers that any breach of those obligations is a serious matter, and that appropriate action will be taken in the event that a member of its staff fails to comply with them. The text of this written reminder to be provided to the CMA within a week of its provision to HSBC's Relevant Staff.

Effective Date

13. These Directions shall have effect from Wednesday 22 October 2014.

Interpretation

14. Words or expressions used in these Directions shall have the same meaning as they have been ascribed in the Undertakings.

Michael Grenfell

Senior Director

Person duly authorised by the CMA Board.

Tuesday 21 October 2014