

RETAIL BANKING MARKET INVESTIGATION

Notice of the CMA's intention to open a second disclosure room

Disclosure room

1. We are proposing to hold a second disclosure room following publication of our provisional findings (PFs) on 22 October 2015 and the Update on PCA Pricing Analysis working paper which will be published in the week of 16 May 2016.
2. As part of the retail banking market investigation (the Investigation), the Competition and Markets Authority (the CMA) has received information and/or data from a number of parties that the CMA has used and taken into account in producing its analysis in the Update on PCA Pricing Analysis working paper (the Analysis).
3. The Analysis contains 'specified information' within the meaning of section 238 of the Enterprise Act 2002 (the Act), to which the general restriction on disclosure by the CMA in section 237 of the Act applies.
4. In order to allow parties, through their external advisers, to review and understand further the CMA's analysis and/or modelling and to prepare submissions and representations concerning the Analysis, the CMA, pursuant to section 241 of the Act, has decided to include the following in a disclosure room (in each case, unless otherwise specified, including the raw data, cleaned data, CMA analysis and coding programs together with the means of reproducing the full set of results from the CMA analysis):
 - (a) The cleaned sample of the anonymised current account usage data and the data provided to us by Runpath on the cost of each PCA for this sample of customers underlying the Analysis.
 - (b) The anonymised current account usage data provided by Allied Irish Bank, Bank of Ireland, Barclays, Clydesdale, Co-operative, Danske, HSBC, Lloyds, Metro, Nationwide, Royal Bank of Scotland, Santander UK plc and TSB underlying the Analysis.

- (c) The cleaned anonymised responses of individual customers to the questionnaire used in the GfK Customer Survey that were used in the CMA Analysis.
- (d) Lloyds Banking Group's (LBG's) output data provided to it by Runpath on disaggregated data on the individual transactions for the same sample of customers that LBG previously provided the CMA with aggregated data on.

Second disclosure room following PFs

5. In order to safeguard the confidentiality of the material listed in paragraph 4 above, and in line with usual disclosure room procedures, those persons to whom disclosure is being made (as well as the advisory firms they work for) will be required to sign undertakings. We propose that access to the second disclosure room will be limited to external legal and/or economic advisers (the external advisers) designated for this purpose by the parties. The CMA retains the right to limit the number of external advisers for each party both in terms of access to the disclosure room at any one time (this will depend on the number of parties requesting access and size of the disclosure room) and the total number of advisers with access to the disclosure room (we would expect this to be the same or fewer than in the first disclosure room given that less analysis is included within the second disclosure room).
6. The disclosure room will be open on each CMA Working Day (any day of the week, Monday to Friday, on which the CMA's offices are open) from 23 May 2016 to 3 June 2016 inclusive. Its hours of operation will be from 9:30am until 5pm on each day. A set of rules will govern the operation of the disclosure room, including the equipment and software that will be provided by the CMA.
7. Please register your interest in participating in the disclosure room as soon as possible, and at the latest **by no later than 5pm on Monday 9 May 2016**. When registering confirmation of your interest, please explain the basis of your interest in gaining access to this information as well as the name and role of those for whom access is required (ie name, job title and firm of each external adviser).
8. Draft individual and firm undertakings (including disclosure room rules) are attached to this Notice. These are identical to those used in the first disclosure room in the Investigation save that:
- Recital 5 of the Individual and Firm Undertakings have been amended to take account of the different material disclosed and timing of the disclosure room;

- paragraph 7 of the Individual Undertakings has been amended to remove references to multiple reports given the CMA only contemplates one set of analysis being included in this disclosure room;
 - paragraph 7a of the Individual Undertakings has been amended to further clarify the CMA's interpretation of the undertakings;
 - paragraph 7j of the Individual Undertakings has been amended to further clarify the CMA's interpretation of the undertakings;
 - a clarificatory footnote has been included in the last page of the Individual and Firm Undertakings;
 - paragraph 6 of the Disclosure Room Rules has been amended to reflect the timing of this disclosure room;
 - paragraph 8 of the Disclosure Room Rules has been amended to reflect the different material included in this disclosure room; and
 - references to the Disclosure Room have been amended to refer to the Second Disclosure Room in the Individual Undertakings, the Firm Undertakings and the Disclosure Room Rules.
9. If you wish to comment on the CMA's approach to disclosing the Analysis, including the attached draft undertakings and Disclosure Room Rules, please do so as soon as possible and no later than **5pm on 9 May 2016** to retailbanking@cma.gsi.gov.uk. Please ensure that comments are supported by appropriate explanation and reasons so that we are able to properly consider the merits of such representations.

RETAIL BANKING MARKET INVESTIGATION

UNDERTAKINGS GIVEN BY [Name of Adviser] TO THE COMPETITION AND MARKETS AUTHORITY REGARDING ACCESS TO THE BANKING SECOND DISCLOSURE ROOM FOLLOWING PROVISIONAL FINDINGS

WHEREAS

- (1) On 6 November 2014, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the 'EA02'), the Competition and Markets Authority ('CMA') made a reference for a market investigation in relation to the supply of retail banking services to personal current account ('PCA') customers and small and medium-sized enterprises (the 'Investigation').
- (2) On 12 November 2014, the CMA published an issues statement setting out the framework for the Investigation including three candidate potential theories of harm. On 21 May 2015 the CMA published an updated issues statement in the Investigation, which provided an updated summary of the progress of the Investigation and those issues which were likely to represent the focus of the Investigation in the period up to publication of the provisional findings.
- (3) The CMA has also published a number of working papers together with the customer research undertaken.
- (4) On 22 October 2015, the CMA published its provisional findings. The provisional findings are based on economic and financial analyses of the data received by the CMA during the Investigation from a number of parties and take into account the parties' representations received either in writing and/or at oral hearings. This analysis included

the analysis of average PCA switching savings and average prices conducted on the Runpath data, which is included in Appendix 5.4 entitled 'Personal current account pricing analysis' (the 'Runpath Analysis')
- (5) The CMA commissioned a second iteration of the Runpath data. The CMA then updated and undertook further analysis of average PCA switching savings and average prices on the Runpath data. This was published on [week of 16] May 2016, in a working paper entitled "Update on PCA Pricing Analysis" (the 'Updated Runpath Analysis').

The CMA has decided to disclose the following, in each case, unless otherwise specified, including the raw data, cleaned data, CMA analysis of and coding programs together with the means of reproducing the full set of results from the CMA analysis:

- a. The cleaned sample of the anonymised current account usage data and the data provided to us by Runpath on the cost of each PCA for this sample of customers underlying the Updated Runpath Analysis.
- b. The anonymised current account usage data provided by Allied Irish Bank, Bank of Ireland, Barclays, Clydesdale, Co-operative, Danske, HSBC, Lloyds, Metro, Nationwide, Royal Bank of Scotland, Santander UK plc and TSB underlying the Updated Runpath Analysis.
- c. The cleaned anonymised responses of individual customers to the questionnaire used in the GfK Customer Survey that were used in the CMA Updated Runpath Analysis.
- d. Lloyds Banking Group's (LBG) output data provided to them by Runpath on disaggregated data on the individual transactions for the same sample of customers that LBG previously provided the CMA with aggregated data on.

(‘the Disclosed Material’) by means of a disclosure room commencing on 23 May 2016 (‘the Second Disclosure Room’).

- (6) The CMA considers that the Disclosed Material includes specified information within the meaning of section 238 of the EA02 to which the general restriction on disclosure in section 237 of the EA02 applies. The CMA may disclose specified information to any other person in circumstances permitted by the EA02.
- (7) The CMA has decided to disclose the Disclosed Material to certain parties involved in the Investigation (each a Relevant Party) by means of the Second Disclosure Room pursuant to section 241 of the EA02. Access to the Second Disclosure Room is restricted to the external legal and/or economic advisers of the Relevant Party and is provided for the sole purpose of allowing the advisers of a Relevant Party, on behalf of the Relevant Party, to review and understand further the CMA's analysis and/or modelling, to prepare submissions and representations to the CMA on the Disclosed Material during the Investigation and (if relevant) to prepare any appeal against any decision of the CMA in connection with the Investigation (the ‘Permitted Purpose’).

- (8) Access to the Second Disclosure Room will be granted to, and only to, an adviser:
- a. who has been approved in writing by the CMA;
 - b. who has given written undertakings acceptable to the CMA ('the Individual Undertakings'); and
 - c. if relevant, in respect of whom the adviser's firm/employer has given written undertakings acceptable to the CMA ('the Firm Undertakings');
- in accordance with the arrangements in recital (9) (each such adviser being an 'Authorised Adviser');
- (9) The arrangements for obtaining CMA approval of an adviser and for giving undertakings in respect of an adviser are:
- a. notice of not less than 2 CMA working days¹ must be given to the CMA of the date on which the adviser first wishes to be granted access the Second Disclosure Room ('the Access Date');
 - b. by 4pm on the CMA Working Day before the Access Date (unless otherwise accepted by the CMA) the Individual Undertakings signed by the adviser and, if relevant, the Firm Undertakings signed on behalf of the adviser's firm/employer, must be provided to (and received by) the CMA;
 - c. before the adviser attempts to access the Second Disclosure Room confirmation in writing must be obtained from the CMA that it has approved the adviser and has accepted the signed Individual Undertakings and, if relevant, the signed Firm Undertakings and the CMA must receive the original signed copy of the Individual and Firm Undertakings.
- (10) The Second Disclosure Room shall operate in accordance with the Second Disclosure Room Rules which are annexed to these undertakings and subject to the Individual Undertakings and the Firm Undertakings.
- (11) Disclosure, or removal from the Second Disclosure Room, of the Disclosed Material or any part thereof, other than in accordance with the Individual Undertakings is not permitted without the express and prior written consent of

¹ A 'CMA working day' is any day of the week, Monday to Friday, on which the CMA's offices are open (and excludes public or bank holidays).

the CMA. Breach of the Individual Undertakings by an Authorised Adviser may result in:

- a. the CMA terminating the Authorised Adviser's access to the Second Disclosure Room and refusing the Authorised Adviser access to any subsequent disclosure room or confidentiality ring run by the CMA, whether relating to the Investigation or any other investigation;
 - b. where relevant, referring the breach to the Authorised Adviser's regulatory body which may decide to take disciplinary action in relation to the breach;
 - c. a breach by the Authorised Adviser of his or her obligations under Part 9 of the EA02 (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the EA02.
- (12) [Name of Firm] has been instructed by [Name of Party], which is a Relevant Party, for the purpose of providing [legal/economic] advice to [Name of Party] in relation to the Investigation. [Name of Adviser] is [employed by [Name of Firm] as a [legal/economic adviser]] [a partner in [Name of Firm]].

NOW THEREFORE

I, [Name of Adviser], [Job title] at [Name of Firm], who has been engaged by [Name of Party] in connection with the Investigation undertake to the CMA in my own name:

General

1. To abide by the Second Disclosure Room Rules which are annexed to these Undertakings;
2. To use the Disclosed Material for and only for the Permitted Purpose;
3. Save as provided in paragraph 7, to hold the Disclosed Material in strict confidence and not to discuss, disclose, transmit, communicate or make available in any other manner the Disclosed Material to any other person without the CMA's consent (including any other legal adviser, economic adviser, officer or employee of [Name of Firm] and [Name of Party]) except:
 - a. another Authorised Adviser of [Name of Party];
 - b. a member of CMA staff or a CMA panel member working on the Investigation; or
 - c. the Competition Appeal Tribunal in the context of any appeal arising from this Investigation provided the document makes clear it contains confidential information.

4. Not to make any electronic or non-electronic copy in any format of any of the Disclosed Material, or remove any of the Disclosed Material from the Second Disclosure Room, save as provided in paragraph 7;
5. To ensure that any analysis I undertake or any document I prepare for [Name of Party] cannot be used and any knowledge that I obtain in the Second Disclosure Room is not used, in any way to disclose the Disclosed Material or any part of it save as provided in paragraph 7;
6. To notify the CMA immediately if I become aware of or suspect that there has been a breach of:
 - a. these undertakings;
 - b. the Individual Undertakings given by another Authorised Adviser of [Name of Party];
 - c. the Second Disclosure Room Rules; or
 - d. the Firm Undertakings given in respect of any of the Authorised Advisers of [Name of Party]’.

Second Disclosure Room Report

7. In order to facilitate the Permitted Purpose I may, subject to the following conditions, prepare in the Second Disclosure Room, by myself or with one or more other Authorised Advisers of [Name of Party], one report which may contain the Disclosed Material (the ‘Report’) and be removed from the Second Disclosure Room:
 - a. Unless otherwise agreed in writing with the CMA, I will not include or refer to in the Report any Disclosed Material that is:
 - i. Non-aggregated data including, for the avoidance of doubt, any data that would allow the number of accounts of each bank or type of customer accounts to be identified or an individual bank’s financial performance
 - ii. Output of analysis or aggregated data specific to an individual bank. For the avoidance of doubt, this includes the profile of customers of the individual bank whom the advisors represent to the extent these undertakings apply to the Disclosed Material

- iii. Personal Data² including any data that will allow an individual's personal current account usage to be identified
 - iv. relating to the GfK Customer Survey other than in an aggregated form that will not allow any of the PCA customers that were interviewed by GfK to be identified
 - v. Identifying the profile of an individual bank's customers. For the avoidance of doubt, this includes the profile of customers of the individual bank whom the advisors represent to the extent these undertakings apply to the Disclosed Material.
- b. One Report may be prepared on behalf of [Name of Party];
 - c. The Report must be no longer than is reasonably necessary for the Permitted Purpose;
 - d. Any programming files (including "stata-do-files") used to perform analysis referred to in the Report must be saved on the desktop;
 - e. Drafts of the Report may be taken into a breakout room used for internal discussion (as described in the Second Disclosure Room Rules).
 - f. Unless otherwise agreed, one copy of the Report may be removed from the Second Disclosure Room, subject to the procedure in sub-paragraph (g);
 - g. Prior to removal of the Report from the Second Disclosure Room and no later than 5pm on the last day of the Second Disclosure Room, the Report must be provided to a member of CMA staff for inspection and may be removed from the Second Disclosure Room only after the member of CMA staff has confirmed to an Authorised Adviser of [Name of Party] that the Report has been prepared in accordance with sub-paragraphs (a) to (e).
 - h. Once the Report has been removed from the Second Disclosure Room I may:
 - i. use the Report for the Permitted Purpose, including the preparation of one or more submissions to the CMA;
 - ii. make copies of the Report or the Disclosed Material contained in the Report, save that only one hard copy per Authorised Adviser of each

² Personal Data means any data relating to an individual who is or can be identified either from the data or from the data in conjunction with other information outside of the Banking Second Disclosure Room.

of the Report and any submission to the CMA containing the Disclosed Material will be in existence at any one time, solely for my use or the use of any other Authorised Adviser of [Name of Party] for the Permitted Purpose and in accordance with these Undertakings;

- i. I must keep secure at all times:
 - i. the Report
 - ii. all copies of the Report prepared by or provided to me; and
 - iii. any report, submission or other document prepared by or provided to me which contains or refers to the Disclosed Material

(together 'the Relevant Material and Documents') including in a manner which means the Relevant Material and Documents are not accessible to any other person (including any officer or employee of [Name of Firm]) except another Authorised Adviser of [Name of Party];
- j. I must ensure that any submission I prepare containing or referring to the Disclosed Material is submitted to the CMA separately from any other submission on behalf of [Name of Party] (e.g. response to the provisional decision on remedies) and highlights any Disclosed Material.
- k. In order to facilitate the Permitted Purpose, I may disclose a general summary of the Report, including an explanation of the methodology used in the CMA's analysis to [Name of Party] but in doing so I will not disclose, transmit, communicate or otherwise make available or known to [Name of Party] any information listed in 7a above.
- l. For the avoidance of doubt, I must ensure that such a general summary does not enable or assist [Name of Party] to gain any understanding of its position or potential future position in any market relative to any other market operator (other than relative to a market wide benchmark).
- m. In order to facilitate the Permitted Purpose, I may disclose a non-confidential version of the Report ('Non-Confidential Report') to [Name of Party] or [Name of Party]'s advisors, subject to the following conditions:
 - i. It does not include any information of the type listed in paragraph 7(a)(i) to (v) and 7(l).
 - ii. Prior to sharing a Non-Confidential Report, the Non-Confidential Report must be provided to a member of CMA staff for inspection and may be shared only after the member of CMA staff has confirmed to

an Authorised Adviser of [Name of Party] that it does not contain any confidential information and complies with paragraph 7(m)(i).

- n. Save as provided in sub-paragraph o, at the conclusion of the period for appealing against the CMA's final report in the Investigation or, in the event of an appeal in which [Name of Party] is a party or is intervening, at the conclusion of the appeal or within a week of no longer acting for [Name of Party] if sooner, I must:
 - i. return to the CMA or destroy the Relevant Material and Documents or, where the Relevant Material and Documents are in electronic form and their destruction is not possible, return them to the CMA or render them permanently inaccessible to any person from any computer system, disk or device unless [Name of Firm] continues to Act for [Name of Party] and the computer, disk or device remains under [Name of Firm]'s control; and
 - ii. where the Relevant Material and Documents are destroyed or rendered inaccessible, inform the CMA of the manner, and date of the destruction or rendering inaccessible.
- o. If it is required to comply with [Name of Firm]'s professional indemnity insurance policy, the Authorised Advisers of [Name of Firm] may retain one copy (between them) of the Report and any submission or other document containing the Disclosed Material, provided:
 - i. the copy is stored securely in accordance with the undertaking in paragraph 7i;
 - ii. the CMA is notified of the retention at the expiry of the period for appealing against the CMA's final report in the Investigation or, in the event of an appeal in which [Name of Party] is a party or is intervening, at the conclusion of the appeal or within a week of no longer acting for [Name of Party] if sooner; and
 - iii. the CMA is consulted prior to any disclosure of the copy under the terms of [Name of Firm]'s professional indemnity insurance policy.

PROVIDED THAT

These undertakings shall not apply to any part of the Disclosed Material that:

- i. belongs or relates solely to [Name of Party] or to [Name of Party]'s business and which does not include any confidential information belonging to, relating to or deriving solely or partially from any other party to the Investigation or a

customer of any party to the Investigation or, for the avoidance of doubt, any information, statement or ranking that has not been derived solely from [Name of Party]'s data;³

- ii. at the time of disclosure is either already owned or controlled by [Name of Party] or in the public domain or subsequently comes into the public domain, except through breach of these undertakings, the Individual Undertakings given by other Authorised Advisers or the Firm Undertakings;
- iii. is required to be disclosed by law or regulation, as long as and unless prohibited by law or regulation, I consult with the CMA prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure.

AND IN AGREEMENT THAT

These undertakings and the Second Disclosure Room Rules shall be governed by and construed in accordance with English law and I submit to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with these undertakings and the Second Disclosure Room Rules.

[Name of Party] has given full and informed consent to the restrictions placed upon [Name of Adviser] on the further disclosure of information by these undertakings.

[Name of Adviser] of [Name of Firm]

[signature]

[Date]

³ For the avoidance of doubt, while transactional data in its raw form provided by one of the parties' would therefore fall outside the scope of these undertakings with respect to that same party, the CMA considers that any output from Runpath based on the transactional data provided by that party is covered by these undertakings (as it is not derived solely from that party to the Investigation).

ANNEX: RULES TO THE SECOND BANKING DISCLOSURE ROOM FOLLOWING PROVISIONAL FINDINGS

(‘the Second Disclosure Room Rules’)

1. The Second Disclosure Room Rules apply to the Second Disclosure Room referred to in the undertakings to which the Second Disclosure Room Rules are attached (‘the Undertakings’) and any breakout room provided by the CMA under paragraph 15 of the Second Disclosure Room Rules.
2. Terms used in the Second Disclosure Room Rules have the meaning they are given in the Undertakings.
3. The CMA will make the Second Disclosure Room available at its offices at Victoria House, Southampton Row, London, WC1B 4AD to the Authorised Advisers (as described in recital (8) of the Undertakings).
4. Entry to the Second Disclosure Room, conduct within it and use of the Disclosed Material by an Authorised Adviser is conditional on:
 - a. the Adviser complying with the Second Disclosure Room Rules;
 - b. the Adviser complying with the Individual Undertakings which he or she has given; and
 - c. where relevant, the Adviser’s firm/employer complying with the Firm Undertakings which it has given in respect of the Adviser.
5. The number of Authorised Advisers is limited to 12 per Relevant Party (see recital (8) of the Undertakings). A maximum of [3 – to be confirmed based on final number of parties who are granted access to the disclosure room] Authorised Advisers per Relevant Party will be permitted to be present in the Second Disclosure Room at any one time.
6. The Second Disclosure Room will be open on each CMA Working Day⁴ **from 23 May 2016 to 3 June 2016 inclusive**. Its hours of operation will be from 9.30am until 5pm on each day. Should the CMA decide to open the Second Disclosure Room beyond that time or period, access will continue to be governed by the Individual Undertakings, Firm Undertakings, and the Second Disclosure Room Rules.
7. At all times that the Second Disclosure Room is open, a member of CMA staff will be present to oversee compliance with the Second Disclosure Room

⁴ CMA ‘Working Day’ means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.

Rules and shall be the person any Authorised Adviser should contact in the event of a query or difficulty concerning the operation of the Second Disclosure Room (including IT matters).

8. In addition to the Disclosed Material, the following material will be made available in the Second Disclosure Room:
 - a. The published and confidential version of the working paper entitled “Update on PCA Pricing Analysis“
 - b. The published provisional findings, confidential version of Appendix 5.4
 - c. the CMA’s published GfK survey technical report relating to retail banking
 - d. The published version of LBG’s paper entitled ‘Verification of CMA’s pricing analysis and results from an alternative approach’ dated 18 January 2016
 - e. standard Stata manuals in pdf version to be accessible through the laptops in the data room
 - f. and stationery.
9. The Second Disclosure Room will contain one laptop per Authorised Adviser with the following specification:
 - a. Word, Excel and PowerPoint software;
 - b. Stata software;
 - c. access to a specific subfolder containing the Disclosed Material;
 - d. access to 3 printers;
 - e. no storage medium other than the hard disk will be available (ie the USB ports and the CD writer – if any – will be disabled);
 - f. no internet or email capacity; and
 - g. the computers available for use by the Authorised Advisers of each Relevant Party will be networked to each other.
10. Within reason, other software may be installed on one or more computer(s) in the Second Disclosure Room, provided that the following procedures are followed:

- a. an Authorised Adviser must notify the CMA at least two CMA working days before the opening of the Second Disclosure Room, or three CMA working days once the Second Disclosure Room is open, if the Authorised Adviser wishes to have alternative software installed;
 - b. such software must be provided on CD Rom or USB Drive, which must contain nothing other than the software to be installed;
 - c. CMA staff will check such CD Rom or USB Drive prior to installation;
 - d. compliance with the licence arrangements for such software remains at all times the responsibility of the Authorised Adviser(s) wishing to install it.
11. All printing activity will be logged automatically.
12. Authorised Advisers will be provided with A4 sized envelope(s) in which they may store any printed materials and any handwritten notes. The envelope(s) will be sealed and placed in a secure location at the CMA's offices, which will be locked overnight. After the closure of the Second Disclosure Room any such materials will be destroyed by the CMA.
13. In accordance with paragraph 7 of the Individual Undertakings, one copy of the Report, per Relevant Party, produced by the Authorised Advisers on the computers provided in the Second Disclosure Room, may be removed from the Second Disclosure Room. Where necessary, CMA staff will redact from the Report any information which may, in their opinion, lead to a breach of the Individual Undertakings. For the avoidance of doubt, Authorised Advisers will not be considered to have been in breach of the Second Disclosure Room Individual Undertakings where the CMA has deemed it necessary to redact information from the Report (hereby ensuring that such information is not removed from the Second Disclosure Room).
14. Authorised Advisers may talk to each other in the Second Disclosure Room but any conversations must be kept as brief and as quiet as possible to avoid disturbing other users of the Second Disclosure Room.
15. The CMA will, upon request and subject to availability, provide a breakout room which seats 6 during the opening hours of the Second Disclosure Room for reasonable use by the Authorised Advisers for:
 - a. Discussions between Authorised Advisers who are present in the breakout room ('internal communications'); or
 - b. External telephone conversations ('external communications');

but a breakout room may not be used for internal communications and external communications at the same time.

16. Requests to use a breakout room must be made to the member of CMA staff present in the Second Disclosure Room on the day the Authorised Advisers wish to use the breakout room and when making the request an Authorised Adviser must indicate whether the breakout room is to be used for internal communications or external communications. In the event that the Authorised Advisers of more than one Relevant Party wish to use the breakout room, each party concerned shall be able to use the breakout room for a maximum of 2 hours at any one time and the priority given to parties will be determined by the order in which the Authorised Advisers made the request to the member of CMA staff. In the event of a dispute, the matter shall be resolved by the member of CMA staff in the Second Disclosure Room.
17. An Authorised Adviser must not bring into the Second Disclosure Room or breakout room any device allowing external communication (for example, mobile phones, PDAs, laptop computers) or storage devices (eg memory sticks or dictaphones) except as permitted in Rule 20.
18. An Authorised Adviser must not bring into the Second Disclosure Room or breakout room his/her own material (for example, notes, copies of working papers or other documents or textbooks) except an Adviser may bring into the Second Disclosure Room his/her own material if:
 - a. the material is in non-electronic format;
 - b. the material is reasonably required to facilitate the Permitted Purpose;
 - c. the material has not been supplied by the CMA;
 - d. the Authorised Adviser has informed the CMA, by 4pm of the CMA Working Day before, of the specific material that he/she intends to bring into the Second Disclosure Room;
 - e. the Authorised Adviser presents, in advance of bringing into the Second Disclosure Room, the material for inspection by a member of CMA staff;
 - f. the CMA has approved the material presented for inspection;
 - g. the material is not removed from the Second Disclosure Room (except to be taken to a breakout room used for internal communications as permitted by Rule 19); and
 - h. the material is given to the CMA for destruction by the end of the Second Disclosure Room.

19. Where a breakout room is to be used for internal communications:
 - a. an Authorised Adviser may take into the breakout room copies of a draft Report and handwritten and printed notes prepared in the Second Disclosure Room, as well as his/her own material brought into the Second Disclosure Room under Rule 18 but in doing so the Authorised Adviser must not breach the Individual Undertakings he/she has given; and
 - b. an Authorised Adviser must not bring into the breakout room any device allowing communication with a person outside the breakout room (for example, mobile phones, PDAs, laptop computers, memory sticks).
20. Where the breakout room is to be used for external communications:
 - a. an Authorised Advisers may, with the approval of a member of CMA staff, bring a mobile phone into the breakout room and use it for external communications; and
 - b. an Authorised Adviser must not take into the breakout room copies of a draft Report, any other material prepared in the Second Disclosure Room or his/her own material whether brought into the Second Disclosure Room under Rule 18 or otherwise.
21. The usual rules for access to the CMA's offices will apply. In particular, visitor badges must be worn visibly at all times. The Authorised Advisers must not leave the Second Disclosure Room at any time without informing a member of the CMA staff and outside the Second Disclosure Room will be accompanied by a member of CMA staff where appropriate.
22. A failure to abide by the Second Disclosure Room Rules by an Authorised Adviser:
 - a. will amount to a breach of the Individual Undertakings given by the Authorised Adviser and may result in the following action by the CMA:
 - i. termination of the Authorised Adviser's access to the Second Disclosure Room and refusal of a request to access any subsequent disclosure room or confidentiality ring whether relating to the Investigation or any other investigation run by the CMA;
 - ii. referral of the breach to the Authorised Adviser's regulatory body, where relevant, which may subsequently decide to undertake disciplinary action in relation to the breach;
 - b. where Firm Undertakings have been given by the Authorised Adviser's firm/employer in respect of the Authorised Adviser, may amount to a

breach of those Firm Undertakings and may result in the following action by the CMA:

- i. termination of the firm/employer's participation in the Second Disclosure Room and refusal of a request to participate in any subsequent disclosure room or confidentiality ring whether in relating to the Investigation or any other investigation run by the CMA;
 - ii. referral of the breach to the firm/employer's regulatory body, if relevant, which may subsequently decide to undertake disciplinary action in relation to the breach;
- c. may result in a breach of the obligations under Part 9 of the EA02 (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the EA02.
23. The CMA may without consultation vary the Second Disclosure Room Rules where it considers there is a good reason, which may include a reasonable suspicion that there has been a breach of the Second Disclosure Room Rules, the Individual Undertakings or the Firm Undertakings. The variations will have effect as regards an Authorised Adviser (and, if relevant, an Authorised Adviser's firm/employer) as soon as the variations are notified in writing to the Authorised Adviser (and, if relevant, the Adviser's firm/employer).

RETAIL BANKING MARKET INVESTIGATION**UNDERTAKINGS GIVEN BY [Name of Firm] TO THE COMPETITION AND MARKETS AUTHORITY REGARDING ACCESS TO THE SECOND BANKING DISCLOSURE ROOM FOLLOWING PROVISIONAL FINDINGS****WHEREAS**

- (1) On 6 November 2014, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the 'EA02'), the Competition and Markets Authority ('CMA') made a reference for a market investigation in relation to the supply of retail banking services to personal current account ('PCA') customers and small and medium-sized enterprises (the 'Investigation').
- (2) On 12 November 2014, the CMA published an issues statement setting out the framework for the Investigation including three candidate potential theories of harm. On 21 May 2015 the CMA published an updated issues statement in the Investigation, which provided an updated summary of the progress of the Investigation and those issues which were likely to represent the focus of the Investigation in the period up to publication of the provisional findings.
- (3) The CMA has also published a number of working papers together with the customer research undertaken.
- (4) On 22 October 2015, the CMA published its provisional findings. The provisional findings are based on economic and financial analyses of the data received by the CMA during the Investigation from a number of parties and take into account the parties' representations received either in writing and/or at oral hearings. This analysis included

the analysis of average PCA switching savings and average prices conducted on the Runpath data, which is included in Appendix 5.4 entitled 'Personal current account pricing analysis' (the 'Runpath Analysis')
- (5) The CMA commissioned a second iteration of the Runpath data. The CMA then updated and undertook further analysis of average PCA switching savings and average prices on the Runpath data. This was published on [week of 16] May 2016, in a working paper entitled "Update on PCA Pricing Analysis" (the 'Updated Runpath Analysis').

The CMA has decided to disclose the following, in each case, unless otherwise specified, including the raw data, cleaned data, CMA analysis of and coding programs together with the means of reproducing the full set of results from the CMA analysis:

- a. cleaned sample of the anonymised current account usage data and the data provided to us by Runpath on the cost of each PCA for this sample of customers underlying the Updated Runpath Analysis.
- b. The anonymised current account usage data provided by Allied Irish Bank, Bank of Ireland, Barclays, Clydesdale, Co-operative, Danske, HSBC, Lloyds, Metro, Nationwide, Royal Bank of Scotland, Santander UK plc and TSB underlying the Updated Runpath Analysis.
- c. The cleaned anonymised responses of individual customers to the questionnaire used in the GfK Customer Survey that were used in the CMA Updated Runpath Analysis.
- d. Lloyds Banking Group's (LBG) output data provided to them by Runpath on disaggregated data on the individual transactions for the same sample of customers that LBG previously provided the CMA with aggregated data on.

('the Disclosed Material') by means of a disclosure room commencing on 23 May 2016 ('the Second Disclosure Room').

- (6) The CMA considers that the Disclosed Material includes specified information within the meaning of section 238 of the EA02 to which the general restriction on disclosure in section 237 of the EA02 applies. The CMA may disclose specified information to any other person in circumstances permitted by the EA02.
- (7) The CMA has decided to disclose the Disclosed Material to certain parties involved in the Investigation (each a Relevant Party) by means of the Second Disclosure Room pursuant to section 241 of the EA02. Access to the Second Disclosure Room is restricted to the external legal and/or economic advisers of the Relevant Party and is provided for the sole purpose of allowing the advisers of a Relevant Party, on behalf of the Relevant Party, to review and understand further the CMA's analysis and/or modelling, to prepare submissions and representations to the CMA on the Disclosed Material during the Investigation and (if relevant) to prepare any appeal against any decision of the CMA in connection with the Investigation (the 'Permitted Purpose').
- (8) Access to the Second Disclosure Room will be granted to, and only to, an adviser:
 - a. who has been approved in writing by the CMA;
 - b. who has given written undertakings acceptable to the CMA ('the Individual Undertakings'); and

- c. if relevant, in respect of whom the adviser's firm/employer has given written undertakings acceptable to the CMA ('the Firm Undertakings');
- in accordance with the arrangements in recital (9) (each such adviser being an 'Authorised Adviser');
- (9) The arrangements for obtaining CMA approval of an adviser and for giving undertakings in respect of an adviser are:
- a. notice of not less than 2 CMA working days⁵ must be given to the CMA of the date on which the adviser first wishes to be granted access the Second Disclosure Room ('the Access Date');
 - b. by 4pm on the CMA Working Day before the Access Date (unless otherwise accepted by the CMA) the Individual Undertakings signed by the adviser and, if relevant, the Firm Undertakings signed on behalf of the adviser's firm/employer, must be provided to (and received by) the CMA;
 - c. before the adviser attempts to access the Second Disclosure Room confirmation in writing must be obtained from the CMA that it has approved the adviser and has accepted the signed Individual Undertakings and, if relevant, the signed Firm Undertakings and the CMA must receive the original signed copy of the Individual and Firm Undertakings.
- (10) The Second Disclosure Room shall operate in accordance with the Second Disclosure Room Rules which are annexed to these undertakings and subject to the Individual Undertakings and the Firm Undertakings.
- (11) Disclosure of the Disclosed Material or any part thereof, other than in accordance with the Individual Undertakings, is not permitted without the express and prior written consent of the CMA. Breach of the Individual Undertakings by an Authorised Adviser or of the Firm Undertakings by an Authorised Adviser's firm/employer may result in:
- a. the CMA:
 - in the case of a breach by an Authorised Adviser, terminating the Authorised Adviser's access to the Second Disclosure Room and refusing the Authorised Advisor access to any subsequent disclosure room or confidentiality ring run by the CMA, whether relating to the Investigation or any other investigation;

⁵ A 'CMA working day' is any day of the week, Monday to Friday, on which the CMA's offices are open (and excludes public or bank holidays).

- in the case of a breach by a firm/employer, terminating the firm/employer's participation in the Second Disclosure Room and refusing a request to participate in any subsequent disclosure room or confidentiality ring run by the CMA, whether relating to the Investigation or any other investigation;
 - where relevant, referring the breach to the regulatory body of the Authorised Adviser or firm/employer which may decide to take disciplinary action in relation to the breach;
- b. a breach of the obligations under Part 9 of the EA02 (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the EA02.
- (12) [Name of Firm] has been instructed by [Name of Party], which is a Relevant Party, for the purpose of providing [legal/economic] advice to [Name of Party] in relation to the Investigation.

NOW THEREFORE

[Name of Firm] which has been engaged by [Name of Party] in connection with the Investigation undertakes to the CMA that:

1. It will give only Authorised Advisers of [Name of Party] access to the Disclosed Materials;
2. It will notify the CMA immediately if it becomes aware of or suspects that there has been any breach of:
 - a. these undertakings;
 - b. the Individual Undertakings given by an Authorised Adviser of [Name of Party]; and
 - c. the Second Disclosure Room rules by an Authorised Adviser of [Name of Party]
3. It will notify the CMA immediately if any Authorised Adviser ceases to be at [Name of Firm] during the operation of the Second Disclosure Room or during the Investigation or any appeal process in which [Name of Party] is appealing or intervening.

Further, [Name of Firm] undertakes to the CMA to use all reasonable endeavours to ensure that the Authorised Advisers at [Name of Firm] comply with the Individual Undertakings which they have given including the Second Disclosure Room Rules.

PROVIDED THAT

These undertakings shall not apply to any part of the Disclosed Material that:

- i. belongs or relates solely to [Name of Party] or to [Name of Party]'s business and which does not include any confidential information belonging to, relating to or deriving solely or partially from any other party in the Investigation or a customer of any party to the Investigation or, for the avoidance of doubt, any information, statement or ranking that has not been derived solely from [Name of Party]'s data;⁶
- ii. at the time of disclosure is either already owned or controlled by [Name of Party] or in the public domain or subsequently comes into the public domain, except through breach of these undertakings, the Individual Undertakings or the other Firm Undertakings;
- iii. is required to be disclosed by law or regulation, as long as and unless prohibited by law or regulation, I consult with the CMA prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure.

AND IN AGREEMENT THAT

These undertakings and the Second Disclosure Room Rules shall be governed by and construed in accordance with English law and [Name of Firm] submits to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with these Undertakings and the Second Disclosure Room Rules.

[Name of Party] has given full and informed consent to the restrictions placed upon [Name of Firm] on the further disclosure of information, subject to the Undertakings above.

[Name of Firm]

[signature]

[Date]

⁶ For the avoidance of doubt, while transactional data in its raw form provided by one of the parties' would therefore fall outside the scope of these undertakings with respect to that same party, the CMA considers that any output from Runpath based on the transactional data provided by that party is covered by these undertakings (as it is not derived solely from that party to the Investigation).

ANNEX: RULES TO THE SECOND BANKING DISCLOSURE ROOM FOLLOWING PROVISIONAL FINDINGS

(‘the Second Disclosure Room Rules’)

1. The Second Disclosure Room Rules apply to the Second Disclosure Room referred to in the undertakings to which the Second Disclosure Room Rules are attached (‘the Undertakings’) and any breakout room provided by the CMA under paragraph 15 of the Second Disclosure Room Rules.
2. Terms used in the Second Disclosure Room Rules have the meaning they are given in the Undertakings.
3. The CMA will make the Second Disclosure Room available at its offices at Victoria House, Southampton Row, London, WC1B 4AD to the Authorised Advisers (as described in recital (8) of the Undertakings).
4. Entry to the Second Disclosure Room, conduct within it and use of the Disclosed Material by an Authorised Adviser is conditional on:
 - a. the Adviser complying with the Second Disclosure Room Rules;
 - b. the Adviser complying with the Individual Undertakings which he or she has given; and
 - c. where relevant, the Adviser’s firm/employer complying with the Firm Undertakings which it has given in respect of the Adviser.
5. The number of Authorised Advisers is limited to 12 per Relevant Party (see recital (8) of the Undertakings). A maximum of [3 – to be confirmed based on final numbers of parties who are granted access to the disclosure room] Authorised Advisers per Relevant Party will be permitted to be present in the Second Disclosure Room at any one time.
6. The Second Disclosure Room will be open on each CMA Working Day⁷ **from 23 May 2016 to 3 June 2016 inclusive**. Its hours of operation will be from 9.30am until 5pm on each day. Should the CMA decide to open the Second Disclosure Room beyond that time or period, access will continue to be governed by the Individual Undertakings, Firm Undertakings, and the Second Disclosure Room Rules.

⁷ CMA ‘Working Day’ means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.

7. At all times that the Second Disclosure Room is open, a member of CMA staff will be present to oversee compliance with the Second Disclosure Room Rules and shall be the person any Authorised Adviser should contact in the event of a query or difficulty concerning the operation of the Second Disclosure Room (including IT matters).
8. In addition to the Disclosed Material, the following material will be made available in the Second Disclosure Room:
 - a. The published and confidential version of the working paper entitled “Update on PCA Pricing Analysis”
 - b. The published provisional findings, confidential version of Appendix 5.4
 - c. the CMA’s published GfK survey technical report relating to retail banking
 - d. The published version of LBG’s paper entitled ‘Verification of CMA’s pricing analysis and results from an alternative approach’ dated 18 January 2016
 - e. standard Stata manuals in pdf version to be accessible through the laptops in the data room to read
 - f. and stationery.
9. The Second Disclosure Room will contain one laptop per Authorised Adviser with the following specification:
 - a. Word, Excel and PowerPoint software;
 - b. Stata software;
 - c. access to a specific subfolder containing the Disclosed Material;
 - d. access to 3 printers;
 - e. no storage medium other than the hard disk will be available (ie the USB ports and the CD writer – if any – will be disabled);
 - f. no internet or email capacity; and
 - g. the computers available for use by the Authorised Advisers of each Relevant Party will be networked to each other.

10. Within reason, other software may be installed on one or more computer(s) in the Second Disclosure Room, provided that the following procedures are followed:
 - a. an Authorised Adviser must notify the CMA at least two CMA working days before the opening of the Second Disclosure Room, or three CMA working days once the Second Disclosure Room is open, if the Authorised Adviser wishes to have alternative software installed;
 - b. such software must be provided on CD Rom or USB Drive, which must contain nothing other than the software to be installed;
 - c. CMA staff will check such CD Rom or USB Drive prior to installation;
 - d. compliance with the licence arrangements for such software remains at all times the responsibility of the Authorised Adviser(s) wishing to install it.
11. All printing activity will be logged automatically.
12. Authorised Advisers will be provided with A4 sized envelope(s) in which they may store any printed materials and any handwritten notes. The envelope(s) will be sealed and placed in a secure location at the CMA's offices, which will be locked overnight. After the closure of the Second Disclosure Room any such materials will be destroyed by the CMA.
13. In accordance with paragraph 7 of the Individual Undertakings, one copy of the Report, per Relevant Party, produced by the Authorised Advisers on the computers provided in the Second Disclosure Room, may be removed from the Second Disclosure Room. Where necessary, CMA staff will redact from the Report any information which may, in their opinion, lead to a breach of the Individual Undertakings. For the avoidance of doubt, Authorised Advisers will not be considered to have been in breach of the Second Disclosure Room Individual Undertakings where the CMA has deemed it necessary to redact information from the Report (hereby ensuring that such information is not removed from the Second Disclosure Room).
14. Authorised Advisers may talk to each other in the Second Disclosure Room but any conversations must be kept as brief and as quiet as possible to avoid disturbing other users of the Second Disclosure Room.
15. The CMA will, upon request and subject to availability, provide a breakout room which seats 6 during the opening hours of the Second Disclosure Room for reasonable use by the Authorised Advisers for:

- a. Discussions between Authorised Advisers who are present in the breakout room ('internal communications'); or
- b. External telephone conversations ('external communications');

but a breakout room may not be used for internal communications and external communications at the same time.

16. Requests to use a breakout room must be made to the member of CMA staff present in the Second Disclosure Room on the day the Authorised Advisers wish to use the breakout room and when making the request an Authorised Adviser must indicate whether the breakout room is to be used for internal communications or external communications. In the event that the Authorised Advisers of more than one Relevant Party wish to use the breakout room, each party concerned shall be able to use the breakout room for a maximum of 2 hours at any one time and the priority given to parties will be determined by the order in which the Authorised Advisers made the request to the member of CMA staff. In the event of a dispute, the matter shall be resolved by the member of CMA staff in the Second Disclosure Room.
17. An Authorised Adviser must not bring into the Second Disclosure Room or breakout room any device allowing external communication (for example, mobile phones, PDAs, laptop computers) or storage devices (eg memory sticks or dictaphones) except as permitted in Rule 20.
18. An Authorised Adviser must not bring into the Second Disclosure Room or breakout room his/her own material (for example, notes, copies of working papers or other documents or textbooks) except an Adviser may bring into the Second Disclosure Room his/her own material if:
 - a. the material is in non-electronic format;
 - b. the material is reasonably required to facilitate the Permitted Purpose;
 - c. the material has not been supplied by the CMA;
 - d. the Authorised Adviser has informed the CMA, by 4pm of the CMA Working Day before, of the specific material that he/she intends to bring into the Second Disclosure Room;
 - e. the Authorised Adviser presents, in advance of bringing into the Second Disclosure Room, the material for inspection by a member of CMA staff;
 - f. the CMA has approved the material presented for inspection;

- g. the material is not removed from the Second Disclosure Room (except to be taken to a breakout room used for internal communications as permitted by Rule 19); and
 - h. the material is given to the CMA for destruction by the end of the Second Disclosure Room.
- 19. Where a breakout room is to be used for internal communications:
 - a. an Authorised Adviser may take into the breakout room copies of a draft Report and handwritten and printed notes prepared in the Second Disclosure Room, as well as his/her own material brought into the Second Disclosure Room under Rule 18 but in doing so the Authorised Adviser must not breach the Individual Undertakings he/she has given; and
 - b. an Authorised Adviser must not bring into the breakout room any device allowing communication with a person outside the breakout room (for example, mobile phones, PDAs, laptop computers, memory sticks).
- 20. Where the breakout room is to be used for external communications:
 - a. an Authorised Advisers may, with the approval of a member of CMA staff, bring a mobile phone into the breakout room and use it for external communications; and
 - b. an Authorised Adviser must not take into the breakout room copies of a draft Report, any other material prepared in the Second Disclosure Room or his/her own material whether brought into the Second Disclosure Room under Rule 18 or otherwise.
- 21. The usual rules for access to the CMA's offices will apply. In particular, visitor badges must be worn visibly at all times. The Authorised Advisers must not leave the Second Disclosure Room at any time without informing a member of the CMA staff and outside the Second Disclosure Room will be accompanied by a member of CMA staff where appropriate.
- 22. A failure to abide by the Second Disclosure Room Rules by an Authorised Adviser:
 - a. will amount to a breach of the Individual Undertakings given by the Authorised Adviser and may result in the following action by the CMA:
 - i. termination of the Authorised Adviser's access to the Second Disclosure Room and refusal of a request to access any subsequent disclosure room or confidentiality ring whether relating to the Investigation or any other investigation run by the CMA;

- ii. referral of the breach to the Authorised Adviser's regulatory body, where relevant, which may subsequently decide to undertake disciplinary action in relation to the breach;
 - b. where Firm Undertakings have been given by the Authorised Adviser's firm/employer in respect of the Authorised Adviser, may amount to a breach of those Firm Undertakings and may result in the following action by the CMA:
 - i. termination of the firm/employer's participation in the Second Disclosure Room and refusal of a request to participate in any subsequent disclosure room or confidentiality ring whether in relating to the Investigation or any other investigation run by the CMA;
 - ii. referral of the breach to the firm/employer's regulatory body, if relevant, which may subsequently decide to undertake disciplinary action in relation to the breach;
 - c. may result in a breach of the obligations under Part 9 of the EA02 (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the EA02.
- 23. The CMA may without consultation vary the Second Disclosure Room Rules where it considers there is a good reason, which may include a reasonable suspicion that there has been a breach of the Second Disclosure Room Rules, the Individual Undertakings or the Firm Undertakings. The variations will have effect as regards an Authorised Adviser (and, if relevant, an Authorised Adviser's firm/employer) as soon as the variations are notified in writing to the Authorised Adviser (and, if relevant, the Adviser's firm/employer).