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20 November 2015

Dear Sirs,

Response to the Notice of Possible Remedies published on 22 October 2015

First Trust Bank ("FTB") welcomes the opportunity to provide its views on the remedy options set out in the CMA's notice of possible remedies (the "Notice"). In common with its previous engagement with the CMA in relation to this investigation, this response is provided solely on behalf of FTB, the trading name of AIB Group (UK) Plc in Northern Ireland.

FTB notes that the CMA is at a preliminary stage of its thinking on possible remedy approaches and that it will take into account the views of interested parties and will consult further as its thinking evolves. These comments are on the possible remedies as set out in the Notice and FTB may have further, additional comments on any more developed remedy proposals on which the CMA may consult in due course.

There are several general comments and themes FTB would like to highlight and request that the CMA takes into account in its evolving thinking, and these are set out below. FTB also has certain specific comments on the possible remedies contained in the Notice, which are set out at Appendix 1.

As a preliminary point, FTB notes that the possible remedies are proposed to address the Adverse Effects on Competition ("AECs") the CMA has provisionally found. None of FTB's comments should be construed as an indication that FTB accepts that such AECs exist or that any AECs have detrimental effects on customers. In particular, FTB notes the CMA's acknowledgement that many PCA customers and SMEs report satisfaction with their current accounts. This may indicate a lack of consumer detriment; the CMA should consider the appropriateness of intervention in this context.

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Of particular concern are the proposed remedies 3, 4, 6 and 15 which seek to standardise engagement with SMEs across the industry. We consider that any such approach will dilute the opportunity to develop tailored solutions and bespoke pricing to meet identified needs of a SME customer (which includes recognising the various stages of a business' life-cycle).

Market definition

1. FTB notes that the CMA has provisionally found that Northern Ireland ("NI") represents a separate geographic market to Great Britain ("GB") for both PCAs and provision of banking services to SMEs. As FTB has indicated in its submissions to the CMA to date, FTB's view is that these product markets are UK-wide. To the extent that the CMA finds that PCA and SME customer needs are common across the UK, FTB would encourage the CMA to apply any remedies consistently on a UK-wide basis. Regardless of the CMA's eventual conclusion on geographic market definition, FTB would encourage the CMA to take account of existing regional differences (for example, in regulation such as the NI PCA Order 2008) in formulating any possible remedies.

Overlap with other regulatory proposals and ongoing interventions

2. The CMA has noted several regulatory developments that may interact with its possible remedies (see paragraph 17(d) of the Notice). FTB considers that there is a very real risk that the CMA's remedies will overlap with other existing or proposed regulatory frameworks and inadvertently create a regulatory burden comprising inconsistent requirements and/or competing timelines for implementation. Importantly, FTB sees a risk that this could result in confusing messaging for the customer base. To mitigate this risk, in cases where there is existing or proposed regulatory intervention with which a possible remedy would overlap, FTB would favour the CMA making recommendations to the appropriate regulatory authority instead of taking action itself (in line with the applicable guidance for such situations[1]).

3. FTB notes in its comments on the specific possible remedies set out in Appendix 1 particular instances where it foresees this "regulatory overlap" risk most clearly. It would also draw the CMA's attention to the following points.

4. FTB notes that on 22 October 2015 the Department of Business, Innovation & Skills published a consultation document on 'Switching suppliers – making it easy for consumers'.[2] This document consults on the application of a set of switching principles across a range of sectors, including bank current accounts. FTB would invite the CMA to consider the interaction of BIS's proposals with the remedy approaches it is considering.

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[1] See paragraph 340 of *CC3: Guidelines for market investigations: Their role, procedures, assessment and remedies*.

[2] See https://www.gov.uk/government/consultations/switching-suppliers-making-it-easy-for-consumers.

5. FTB notes that the CMA intends to "*consider whether any proposed remedies, if taken forward, would constitute a change of circumstances such that any of (i) the 2002 SME Undertakings need to be varied, superseded or parties can be released from; or (ii) the NI Order needs to be varied or revoked*".[3] FTB would note that any remedies in this investigation should take account of **existing** regulation and would submit that the CMA's proposed linear approach may not be appropriate. FTB would invite the CMA to consider the obligations imposed by the 2002 SME Undertakings and the NI Order as part of the regulatory background to its consideration of possible remedial action, as well as considering its proposed remedial action in this investigation in the context of its review of the obligations imposed by those two pieces of regulation.

6. In particular, FTB would highlight certain obligations under the NI Order, which may address certain of the CMA's provisionally found AECs. For example, the annual reminder on switching rights may provide a proportionate switching information remedy that could be considered for UK-wide application and also extended to SME customers. The NI banks are also required to provide clear, comprehensible information about charges, interest and other relevant information in connection with PCAs. FTB would encourage the CMA not to take action which creates different but overlapping obligations for those banks already subject to the NI Order.

7. Under the 2002 SME Undertakings, the relevant banks are obliged to provide credit history information to other suppliers of banking services at the request of the SME. FTB would invite the CMA to consider the interaction of this requirement with its possible remedies in relation to SME lending.

Unintended consequences

8. FTB has concerns that certain of the possible remedies could individually, and especially when combined, have an unintended negative effect on innovation, quality and choice in the provision of PCAs and BCAs and of SME lending.

9. FTB is concerned that certain of the possible remedies signal an underlying move towards standardisation.[4] FTB's concern is that such standardisation would inadvertently limit providers' incentive to innovate and provide high quality service. Further, where standardisation of non-price elements means that competition focuses purely on price, the large UK banks' size and economies of scale would put them at a competitive advantage to smaller providers. The CMA has provisionally found that incumbency advantages contribute to an AEC in the provision of PCAs, BCAs and SME lending. FTB has a concern that such incumbency advantages may be reinforced if the CMA's remedies package reduced the parameters of competition to price only, ignoring quality and innovation.

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[3] See paragraph 19 of the Notice.

[4] FTB notes this concern, in particular, in relation to possible remedies 3, 4 and 15.

10. This standardisation concern is of particular relevance to the provision of banking services to SMEs. FTB considers that certain of the possible remedies, if implemented as proposed, would restrict the opportunity and benefit SME customers currently derive from their ability to negotiate bespoke arrangements that meet their identified business needs.

Remedies the CMA is minded not to consider further

11. FTB notes that the CMA is minded not to pursue as part of any remedies package: (i) measures to control outcomes; (ii) measures that would address perceived distortions arising from the widespread use of free-if-in-credit accounts; and (iii) structural remedies. FTB agrees with the CMA that it would not be necessary, effective, reasonable or proportionate to take such remedies forward as part of a package intended to address the AECs the CMA has provisionally identified.

FTB looks forward to discussing these matters further on 4 December 2015.

Yours faithfully,

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Des Moore

Head of First Trust Bank

Appendix 1

Specific comments on the possible remedies

Measures to promote engagement and prompt switching between current account providers

Remedy 1 – Prompt customers to review their PCA or BCA provider at times when they may have a higher propensity to consider a change

FTB notes the CMA's provisional finding that a lack of trigger points, because PCAs and BCAs have no contract end date, means that customers are not required to periodically consider if their PCA or BCA is best for them. FTB also notes the CMA's supplementary information request in relation to the trigger points that FTB currently uses for communicating with its customers; the following comments supplement FTB's response to those questions.

FTB considers that certain of the event-based prompts proposed by the CMA are unlikely to provide an effective remedy to the CMA's concerns. These event-based prompts are unlikely to be susceptible to translation into a uniform set of triggers applicable across banks. For example, it would be difficult to objectively define between banks what constituted a "major dispute" which would trigger a switching reminder. For this same reason, these prompts are likely to be difficult to monitor for compliance purposes. Instead, FTB suggests that if an event is sufficiently material to prompt investigation by a regulatory authority, one of their standard requirements could be for the relevant firm to issue its affected customers with a reminder of their rights to switch.

In its consideration of the number of appropriate prompt triggers, FTB would also encourage the CMA to bear in mind the risk of overwhelming customers with such a high level of contact that the switching message is diluted.

FTB would also be concerned to avoid any switching prompts remedy conveying to the customer that the service provider under-values their business or is not sufficiently concerned to resolve any dissatisfaction with the level of service provided. Quality of service is a key parameter on which FTB seeks to differentiate itself. FTB would be particularly concerned that automatic prompts to switch at points of tension would disadvantage providers which seek to provide excellent service.

To the extent that the CMA finds that additional communication on switching is required, FTB considers that a more effective response could be to issue PCA and BCA customers with an **annual** reminder of their ability to switch provider, using an industry standard wording. This standard wording could also explain how to switch and promote CASS.

FTB also notes that, in accordance with the NI Order, NI banks currently provide with their customers' annual statement detailed, standardised switching information, produced by the BBA. FTB could envisage this measure being readily extended to BCA customers, and to banks across the UK.

Remedy 2 – Increase public awareness of the potential savings or rewards that could be obtained by changing one's current account provider and of the benefits of using CASS to do so in terms of security and convenience

The CMA notes the FCA's review of the effectiveness of CASS[5] and BACS' (as the operator of CASS) positive response to this. FTB considers that this is an area in which another regulator, the FCA, has detailed and considered insight into precisely the area in which the CMA proposes to intervene.

BACS has informed the CMA in the context of this investigation that:

> "*BACS is working with the FCA following their report "Making Current Account Switching Easier" to develop an industry response to the key recommendations on awareness and confidence. Proposals are being discussed with the CASS Management Committee (CASS MC), the participant body with responsibility for the Service, for presentation to the FCA later [in June 2015].*"[6]

FTB favours such engagement being undertaken via the FCA, forming part of a structured response to the FCA's findings in its recent review. The FCA has already developed metrics to inform its assessment of the effectiveness of CASS, and FTB considers this provides a proportionate mechanism for subsequent periodic reviews to benchmark changes in the public awareness of CASS. FTB would caution against the CMA undertaking parallel, duplicative (and potentially contradictory) action in this area.

Further, and in addition, FTB notes its obligations under the NI Order to provide switching information to PCA customers (see FTB's response to possible remedy 1, above). In addition to the visible display of information about CASS on FTB's existing media (e.g. on its website, in-branch), PCA customers in NI are also alerted at least annually to the switching service and associated guarantee through the BBA industry standard wording distributed with the annual statement.

Remedies 3 and 4 –

Facilitate price comparisons between providers by making customer-specific transaction data more easily available and usable, including by PCWs; and

A PCW for SMEs

FTB notes that the CMA has provisionally found that there are barriers to accessing and assessing information on current account charges and quality.

FTB is concerned that the effect of these possible remedies, focusing on PCWs, could be to reduce banks' incentives to differentiate on the basis of aspects other than price. As FTB has noted throughout the course of the CMA's investigation so far, and as the CMA has noted in its provisional findings, there are many important aspects of competition in addition to price. FTB's view is that any comparison tool, including PCWs, should be balanced with information on service standards.

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[5] A report on which was published in March 2015.

[6] BACS response to the Updated Issues Statement, 11 June 2015.

Midata

FTB notes that the CMA has not identified in its provisional findings a customer demand for a Midata-linked PCW service, or indeed for greater availability of transaction data. FTB would be concerned by a remedy which mandated the use of Midata, or expanded the scope of Midata, in relation to PCAs and/or BCAs.

If the expansion of, or mandatory participation in, Midata was to form the basis of a remedy, there would be a significant investment cost and lead time involved in implementation in relation to FTB's PCA customers and more so if a Midata initiative was extended to BCAs. In circumstances in which no clear demand for such a service has been identified in the provisional findings to warrant such investment, FTB would not deem such a possible remedy to be a proportionate step.

FTB would also invite the CMA to consider the complexities which multi-banking would create for any Midata-related remedy. In a multi-banking scenario, Midata input from a particular provider will naturally provide only a partial view of a customer's overall transaction behaviour. In FTB's experience, SME customers (in particular) will often choose to multi-bank their BCA requirements.

FTB also considers that it would be very important that any Midata initiative for current accounts to be accompanied by a requirement for independent validation of the algorithms underlying the PCW. This will be important both in relation to ensuring the transparency and impartiality of the basis on which banks are rated, but also the proper technical functioning of the underlying algorithms.

BCA comparisons

Further, in relation to the provision of BCAs, the CMA is aware that SME customers are largely able to negotiate bespoke pricing arrangements. FTB does not consider that this dynamic could be meaningfully reflected on a PCW.

The CMA has noted that BCA PCWs and other comparison tools do currently exist. However, it has also noted a lack of SME usage of and demand for these existing BCA PCWs, and the view of certain providers of BCA comparison services that it would not be commercially viable to extend into a full PCW.[7] FTB is not surprised by this finding and submits that the key negotiation dynamic in agreeing BCA terms and pricing indicates that PCWs are not suitable for BCAs. FTB does not consider that a PCW for SME customers would be an effective remedy to its provisional finding that there are barriers to accessing and assessing information on current account charges and quality.

Importantly, FTB is also concerned that there is a risk that any measure proposing the development of an industry-wide PCW could have the unintended consequence of restricting competition for SMEs. FTB could envisage that such a PCW may have the effect of driving service providers to focal price points. This price-only competition would also favour larger banks with economies of scale, and reinforce the incumbency advantage that the CMA has provisionally found contributes to an AEC.

FTB does not consider that effective comparison of BCAs is contingent on the extension of Midata to SMEs. Comparative services are already available (e.g. the Moneyfacts Market Intelligence Report[8]) that would appear to provide a meaningful base on which SMEs could make product comparisons.

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[7] As found in paragraphs 8.98-8.113 of the provisional findings and paragraphs 39-44 of Appendix 8.1 to the provisional findings.

[8] http://www.moneyfactsgroup.co.uk/online/marketintelligence, a subscription based service for banks but free access to SME (see http://moneyfacts.co.uk/business/)

FTB would invite the CMA to consider whether its intervention in this area, in circumstances in which there is no clear demand for a Midata service or a PCW, would be appropriate in the light of the potential effect that a CMA-sponsored comparison tool could have on the viability of existing services operating in this sphere.

Remedy 5 – Enable consumers and SMEs to make comparisons between current account providers on the basis of their service quality

FTB considers service quality to be an important factor in customers' decision making on their choice of current account provider, and also a key parameter of competition for current accounts and SME lending.

The key issues which FTB has identified in relation to this proposed remedy are around comparability and sourcing of quality information.

To enable meaningful comparison would require a consistent industry standard across a range of measures that would allow a customer to assess those features which are important to their needs. For example, the 'Net Promoter Score' (NPS) measure provides a useful benchmark and which allows reporting at selected stages of customer engagement with their service provider. FTB also notes that the FCA will soon begin to publish complaints data, and this would be an authoritative source worth considering. In order to produce a consistent, reliable and useful set of quality indicators, detailed further engagement with the industry would be required.

Remedy 6 – Standardise and simplify BCA opening procedures

FTB notes the CMA's provisional finding that the account-opening process can be lengthy and onerous for SMEs, particularly because of banks' processes for undertaking AML compliance and KYC checks.

However, FTB submits that this remedy is not necessary. It notes that banks are increasingly relying on electronic identification of UK customers. FTB would expect that this will naturally lead to further streamlining of the account switching process in relation to CDD issues.

FTB further submits that this remedy would not be appropriate. FTB refers the CMA to its email of 5 August 2015 setting out its concerns from an AML perspective in relation to any proposal to introduce 'passport' type CDD arrangements. FTB considers that any intervention in this area to be inappropriate as it would undermine an institution's capacity to adopt its own risk assessment for customer checks (as required by legislation). FTB's view remains that this would not be a necessary, effective or appropriate measure in relation to the switching process.

Further, FTB does not consider that standardising account opening forms or seeking common data would necessarily introduce any efficiency into the process. Each institution will require particular information to be collected, some of which will be common across the industry, but some unique to the applicant's bank. Therefore FTB considers the prospects of securing agreement to a common form, let alone maintaining it should change be needed, to be unrealistic and disproportionate to the provisionally found AEC.

Remedy 7 – Make it easier for prospective PCA Customers to find out, before initiating the switching process, whether the overdraft facilities they were seeking would be available to them from another provider

FTB does not consider this possible remedy to be necessary.

FTB submits that the existing CASS process already allows customers to find out, before initiating the switching process, whether the desired overdraft facilities would be available from their prospective new provider. A switching customer is able to simply select a date for when they would like the switching application to end (before which the 7-day guaranteed switching process timeline would trigger). This forward end date could allow time, subject to the prospective customer's consent to credit reference checks, for a decision in principle on overdraft facilities at the new provider. This would therefore permit the customer time to cancel their switching application if the request for such a facility were to be declined.

An alternative possible option would be for a customer to commence a partial switch using CASS, prior to commencing a full switch[9] once a decision on the overdraft application is confirmed (or reversing the partial switch if it were to be declined).

FTB will consider any submission that Bacs may make on this possible remedy and will consider making further submissions on these issues in due course.

Remedy 8 – Require payments into the old account to be redirected to the new one for a longer period than at present

FTB notes that the CMA's possible remedy on redirection periods overlaps with current work by the payments industry body, Payments UK[10].

FTB also considers that the existing 36-month redirection period, which was only introduced earlier this year, needs sufficient time to complete at least one cycle before any assessment is made of its effectiveness to remedy the provisionally found AEC. It is simply not possible for the CMA to assess the impact of this extension at this early stage and it would therefore be inappropriate for the CMA to seek to take any remedial action in this area. This is a key area in which FTB considers a CMA intervention would risk creating inconsistent, overlapping regulation.

In any case, in FTB's experience, the 36-month period is sufficient to accommodate the processing of a switch on those matters within the control of the applicant's old and new providers. One common delay is typically caused by Direct Debit originators not processing updated details of the collecting

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[9] A customer can request a full switch once a partial switch has been completed i.e. the customer has agreed the payments to be switched and the new bank has electronically advised the originators. This can be between 3 days and a maximum of 90 days, depending on the time a customer takes to confirm which payments to switch.

[10] see Para 9.11 – 9.14 http://www.fca.org.uk/static/documents/research/making-current-account-switching-easier.pdf

provider in their records; extending the existing redirection period will not affect this source of delay.

FTB agrees with the CMA that account number portability would be a costly and intrusive measure, requiring very significant infrastructural change at an industry level, and would therefore not be a proportionate response to the CMA's concern.

FTB will consider any submission that Bacs may make on this possible remedy and will consider making further submissions on these issues in due course.

Remedy 9 – Require banks to retain and provide ex-customers, on demand, with details of their BCA and PCA transactions over the five years prior to their account closure

FTB notes that the CMA has provisionally found that confidence in the reliability of the switching process could be increased if providers, for a specified period after a customer had closed an account, made their transaction history available to them.

FTB does not consider the CMA's possible remedy in this respect has been specified with sufficient clarity and detail to enable it to meaningfully comment on its effectiveness and proportionality. There appear to be two elements: the period the retained data should cover and the period for which it must be retained (and during which it may be provided to the customer). FTB makes the following observations, pending further clarification of the scope of this proposal.

FTB's understanding is that the CMA's possible remedy relates to the retention and provision of bank statements, rather than some other form of historic transaction data (and this interpretation is supported by the CMA's supplementary question to FTB relating to this remedy).

On one interpretation of this possible remedy, the CMA appears to be proposing that five years' worth of transaction data should be retained, for provision to an ex-customer any time up to five years from closure of its account. FTB would observe that it would be rare for applications for financial products to require data covering even close to a five year period. For example, an application for a residential mortgage would typically require only three months' bank statements. (In any event, under existing business practice, FTB will provide a closing statement to PCA and BCA customers at the time a current account is closed. The standard retention time by FTB for copy statements is in excess of five years, which facilitates provision of information (post closure), on demand).

FTB would also encourage the CMA to ensure that any remedy proposed on the retention of data would not conflict with banks' data protection obligations in their role as data controllers. Further, FTB could anticipate that there may be challenging security issues around the identification of ex-customers with whom a bank no longer has dealings, particularly when a number of years may have passed since the closure of their account.

For these reasons, the CMA should specify in more detail the remedy it is proposing. FTB's initial view is that, to the extent that a remedy is required at all, it is likely to be more appropriate to provide transaction history data relating to a period significantly shorter than five years to a customer at the point at which they closed their account. FTB notes, however, that the provisional findings do not clearly support a requirement for a remedy in this area at all.

Remedy 10 – Require Bacs to transfer continuous payment authorities on debit cards when switching through CASS

FTB will consider any submission that Bacs may make on this possible remedy and will consider making further submissions on these issues in due course.

FTB notes that any proposed measure touching on continuous payment authorities would require broad industry consultation and, in particular, would require engagement by the MasterCard and VISA Card Scheme providers.

Remedies 11 and 12 –

Require all banks to support the partial switching service and to provide an equivalent guarantee to that offered as part of CASS; and

Changes to CASS governance

FTB will consider any submission that Bacs may make on this possible remedy and will consider making further submissions on these issues in due course.

Measures relating to SME lending

Remedies 13 and 14 –

Data sharing with credit reference agencies; and

Commercial open data and data sharing proposals

FTB is liaising with HM Treasury on the use of its powers under the SBEE Act. FTB considers that HM Treasury is best placed to consider whether and what action would be appropriate in this area, considering the circumstances and its other responsibilities in the round. FTB also notes that, where Parliament has been charged with considering regulations, it would not be constitutionally appropriate for the CMA to seek to take any parallel action which would cut across its discretion as to the use of its powers.

This is another key area in which FTB considers that any CMA intervention would risk creating inconsistent, overlapping regulation.

Remedy 15 – Require banks to provide a loans price and eligibility calculator

FTB notes the CMA's provisional finding that there are low levels of customer engagement and that there are barriers to comparing SME lending products.

FTB considers, however, that a standardised loan eligibility calculator would be an inappropriate remedy to this concern, which may have unintended negative consequences for SMEs.

This is a key area in which FTB is concerned that a move to standardisation would restrict the opportunity and benefit SME customers currently derive from their ability to negotiate bespoke arrangements that meet their identified business needs.

FTB notes that credit facilities will be subject to individual banks' risk appetite, which may vary over time. In FTB's experience as a lender, it is necessary to understand a SME's requirements before offering suitable credit facilities, often with negotiated pricing arrangements to suit the life-stage of the applicant's business model.

A tool purporting to enable providers to provide an indication as to whether, and on what terms, it would be willing to make a loan would be liable to result in false positives and false negatives. It would necessarily be based on such a simplified matrix that it may:

- indicate a conditional approval (or more generous loan terms) where on proper detailed consideration the provider would be unable or unwilling to offer a loan (or offer it on the terms the SME had been led to believe it could gain); and
- deprive SMEs of access to finance (or the level of finance) that a provider would in fact have been willing to offer – see further below.

It would not be possible for a standardised tool to take into account all of the detailed customer- and situation-specific information that an advisor to an SME would consider. Relationships with its SME customers are very important to FTB, and it would not be possible to replicate the detailed knowledge of its customers' circumstances in an online tool. In a many instances, FTB would be willing to offer greater access to finance and/or more flexible terms to customers with whom it is familiar.

FTB also foresees that certain providers may wish to offer greater access to finance or more generous terms to SMEs operating in particular industries. For instance, FTB has previously described to the CMA its focus on the agricultural industry. This nuance would also not be accounted for in a standard eligibility calculator.

As a consequence, FTB's position is that a standardised online eligibility tool would not be an effective or appropriate response to the provisionally found AEC.