DANSKE BANK
RETAIL BANKING MARKET INVESTIGATION
RESPONSE TO SUPPLEMENTAL NOTICE OF POSSIBLE REMEDIES

1. Introduction

1.1. Northern Bank Limited (trading as Danske Bank) (**Danske**) welcomes the opportunity to comment on the Competition and Market Authority's (**CMA**) Supplemental Notice of Possible Remedies (**SPRN**) in relation to the market investigation into the supply of retail banking services to personal current account (**PCA**) customers and to small and medium-sized enterprises (**SME**s) in the UK.

1.2. Danske shares the objectives of the CMA in ensuring that competition in the PCA & SME market in the UK continues to work effectively for the benefit of the consumer. Danske is keen to work constructively with the CMA towards an appropriate package of remedies that addresses the key findings contained in the CMA's Provisional Findings Report.

1.3. Danske has limited its comments contained in this response to the main issues identified in the SPRN. Danske may wish to make further representations at a later stage in relation to any of the information contained in the SPRN. Danske would be happy to discuss any of the comments made in this response with the CMA in further detail.

1.4. Danske requests that the CMA consider the following points as part of their ongoing review into the retail banking market in the UK;

1.4.1. Unintended consequences

Danske is concerned that a number of the possible remedies specifically aimed at PCA overdrafts could both individually and collectively have a negative effect on competition and innovation among PCA overdraft providers when combined with the remedies outlined in the Possible Remedies Notice (**PRN**). For example, the provision of a variety of text, e-mail alerts and push notifications by banks has become a feature of the PCA market on which banks can, and do, compete. The imposition of a remedy prescribing the frequency, content and medium of such alerts in relation to overdrafts, together with the range of alerts contained in Remedy 1 of the PRN, could reduce the ways in which banks can compete for PCA customers.

Furthermore, the combined effects of all of the customer alerts proposed in Remedy 1 of the PRN together with the alerts proposed in Overdraft Remedies

1 & 3 of this SPRN could result in customers becoming desensitised to alerts received from the Bank due to the sheer volume of information received in relation to their account(s). This could result in customers failing to react to alerts which require immediate action such as the alerts proposed in relation to suspension periods as set out in Overdraft Remedy 3. In addition to the above, we note that the FCA is considering the introduction of text alerts as part of their Credit Card Review. We would encourage the CMA to take account of proposals which are being considered by FCA and the combined impact of these alerts plus the alerts proposed by the CMA on customers.

1.4.2. Proportionality

Danske notes that the CMA proposed fifteen remedies in the PRN and that a further four remedies are being proposed in the SPRN. A particular concern for Danske is the cumulative effective of the IT development required to implement the various remedies proposed in both the PRN and the SPRN. As a smaller, regionally-focused bank with significantly less resources than the larger GB based banks, Danske is concerned that the overall IT development required, both in terms of cost and time, to implement the remedies proposed in the PRN and SPRN is likely to be prohibitive and disproportionate to the numbers of customers who can/will avail of these proposed remedies. If all of the proposed remedies are introduced by the CMA, Danske believes that the process for implementation would not only be extremely complex but could take years rather than months to complete and could potentially have a detrimental effect on Danske's investment in innovation and other developments which Danske considers necessary to remain competitive. Furthermore, any costs incurred in the implementation of these remedies may ultimately have to be passed on to all customers, not just those impacted by the remedies for which IT development is required. This may have the unintended effect of increasing charges for customers who will not, or will only rarely, benefit from the proposed overdraft remedies in the SPRN (i.e. customers who do not, or only rarely, avail of overdrafts). We would also contend that the implementation of remedies proposed in the PRN & SPRN will be significantly less costly for those banks who, unlike Danske, are not constrained by less agile, legacy IT systems.

2. Update on how the switching package helps overdraft users and how it could be enhanced further

Danske notes that the CMA is considering how Remedy 1 of the PRN could be expanded to include targeted switching prompts for overdraft users. Danske would like to take this opportunity to remind the CMA of the existing mechanisms which act as prompts for switching. Annual PCA summaries create a trigger/prompt for overdraft users to review their current PCA provider. These summaries include interest and fees charged and make reference to the CASS service. In addition,

the NI Order requirement to pre-notify fees on a monthly basis provides a secondary trigger for customers to consider switching PCA provider.

It is Danske's view that any perception by customers of being "locked in" to a particular PCA provider is best addressed through the CASS central advertising campaigns as BACS is an independent body and any such messages communicated through CASS are likely to instil more confidence in customers than marketing by the individual banks. Danske would suggest that this perception could be addressed as part of the 2016 marketing delivery planned by BACS.

With regard to the CMA's comments at paragraphs 37 & 38 in the SPRN in relation to Remedy 7 of the PRN, Danske would like to remind the CMA that a customer request for an overdraft facility is handled by Danske at the account opening session. Danske's guidance for staff is that a switch should not be initiated until two days after the account opening interview takes place. Before an overdraft is granted to a new to bank customer, the Customer Advisor will view statements to confirm income and expenditure levels and assess the customer's ability to service the debt. In most cases, and where within the advisor's delegated authority, the overdraft is approved at the interview meeting. Only where the amount of the overdraft is outside the advisor's delegated authority would it need to be approved by Danske's Credit Department. (Approval from Danske's Credit Department would normally take a maximum of 24-48 hours). Once approved, the overdraft funding limit would be included in MSG01 of the switch, informing the old bank that Danske, as New Bank, are willing to fund any overdraft debt up to the stated amount. Danske would need to see the outworkings of the Open Banking Working Group (OBWG) before being able to comment on whether it would be feasible or practical for PCA providers such as Danske to give comparison websites an indication of a customer's overdraft eligibility.

3. Possible Remedies

3.1. *Overdraft remedy 1 – Prompts and alerts to inform customers of imminent and actual overdraft usage and charges*

Danske notes that the CMA is proposing a series of alerts to inform customers of imminent and actual overdraft usage and charges. Danske already offers customers the ability to set an alert on their account when their balance is less than a certain amount. Customers can set any balance amount. It can, for example, be a credit balance or a debit balance so the alert can be used to notify a customer when they are close to using their arranged or an unarranged overdraft facility. There is no default setting so the customer can tailor the alert to their own individual requirements and preferences.

Auto-enrolment

Danske notes that the CMA is considering whether to require PCA providers to automatically enrol customers to overdraft alert services. Danske does not auto-enrol customers for its alert services as these alert services are a feature/function of Danske's eBanking service, which is a payment instrument. Under the Payment Services Directive (PSD), Danske (and any other Payment Services Provider (PSP)) is prohibited from issuing an unsolicited payment instrument to its customers and therefore the customer's explicit consent is required to sign up for Danske's alert services. Furthermore, Danske's alerts are unencrypted messages and for reasons relating to data protection and customer confidentiality, explicit consent is required to send unencrypted messages to customers. It is also worthy of note that such alerts are an "Information Society Service" and as such, the specification and content of such alerts must comply with the E-Commerce Directive.

Auto enrolling customers to overdraft alert services would require Danske to make fundamental changes to its eBanking platform and it is Danske's view that the costs associated with these changes would be disproportionate to the customer benefit.

Marketing

Danske actively promotes its alert services to encourage customers to take greater control of their finances. However, a key element of such alerts is customer engagement; customers need to have the flexibility to choose the limits at which particular alerts are triggered, so that the alerts are tailored to their own individual circumstances and preferences for managing their account(s). Furthermore, while Danske encourages customers to update their e-mail/phone number details when required, the success of any remedy which involves text or e-mail alerts to customers is dependent upon the customer actively providing their PCA provider with accurate email or phone number details. Therefore, Danske would contend that measures to increase customer awareness of the availability and effectiveness of these alerts would be more effective than auto-enrolling customers for a service which they may not want.

Available Funds

In relation to the CMA's comments on the inclusion of arranged overdrafts in available funds, Danske currently includes an arranged overdraft facility in a customer's available balance and does not consider that this is confusing for customers. However, if the CMA is minded to change the way in which available funds are presented, Danske's preferred option would be for the CMA to stipulate the way in which the availability of funds is communicated rather than prohibiting

PCA providers including arranged overdrafts within the definition of available funds. Any variation to the way in which available funds is communicated to customers would require significant IT development and costs.

NI PCA Order

Danske is encouraged to note that, as set out in paragraph 73 of the SPRN, the CMA is considering the extension to the rest of the UK of the current NI Order that requires PCA providers to notify a customer before overdraft charges are deducted. Danske supports this and contends that the requirement in the NI Order for monthly pre-notification of fees provides sufficient information to customers about their overdraft usage, especially where this is supplemented by the elective use of text alerts. Danske would also suggest that, to further enhance the effectiveness of pre-notifications, the CMA may wish to consider adding a suitable switching message to pre-notifications in order to highlight the CASS service. However, care would need to be taken in the wording of the switching message to avoid giving customers the impression that their current PCA provider does not wish to retain their business.

3.2. *Overdraft remedy 2 – Measures to encourage PCA customers to make an informed choice on their overdraft options*

We note that the CMA favours giving new customers an active choice of having an unarranged overdraft facility and providing existing customers with the ability to opt-out of an unarranged overdraft facility. Danske would not be in favour of providing an opt-out for all customers for the following reasons;

- An unauthorised overdraft is a facility to assist customers who may accidentally miscalculate income/expenditure or are faced with an unplanned expense. It is designed to act as a safety net for customers. Removal of the unarranged overdraft facility would mean that all items received which would place the customer in an unauthorised position would be returned unpaid. There would be no discretion to pay particular items. This could have unintended consequences if, for example, an insurance premium was not paid.
- Where the customer opts out, the bank would have to ensure that the account does not go overdrawn, by returning items or declining authorisation requests on cards, etc. Where the customer has an "off-line" card, transactions such as contactless, UPT[1] and stand-in would still be

[1] UPT – unattended pump transactions at filling stations, where the merchant checks for a £1 authorisation but allows customers to fill up to £80 in value, which the Bank then receives as a debit. CPAs (Continuous Payment Authorities) which act like DD's are similar, but they do not seek a pre-authorisation. Off-line transactions are where the merchant, e.g. M&S, operates a floor limit and

approved without a pre-authorisation request. Therefore, these cards would have to be replaced with "on-line cards" which may have limited functionality and acceptance levels. There is a concern that customers, particularly existing customers, who choose to opt-out of unarranged overdrafts, for example as a result of a trigger prompt, may not fully understand the consequences that flow from this decision. This is particularly the case where the decision is made remotely without any interaction with bank staff as banks do not have an opportunity to explain these consequences in detail to the customer.

- The co-ordination and costs of writing to all existing customers and then acting on responses (where received) would be disproportionate.

Should the CMA decide to proceed with this proposed remedy, it is Danske's view that its success is dependent on customers being made fully aware of the risks and limitations associated with opting out of an unarranged overdraft facility. Danske notes that this concern is shared by the CMA at paragraph 77 of the SPRN, in particular in relation to the potential consequences of payments being declined. At paragraph 82 of the SPRN, the CMA states that, under an opt-in approach for existing customers, withdrawal from unarranged overdraft may result in declined payments. The CMA acknowledges that this may have adverse consequences including inconvenience, incurring additional third party costs or credit score damage. Danske contends that all of the adverse consequences listed by the CMA apply to the opt-out or opt-in approach and to new and existing customers.

Danske suggests that a simpler solution would be to incorporate appropriate messages into the monthly pre-notification of fees to encourage customers who have availed of an unarranged overdraft to contact their bank to discuss setting up a suitable authorised overdraft facility.

As stated above, Danske is particularly concerned about the limitations to the account that may come with the opt-out of unarranged overdrafts. The CMA itself uses the example of the impact on debit cards and this is one area which causes Danske particular concern. By way of example, Danske has three card types;

- On-line (no contactless, or off-line, but allows UPT and Stand-in)
- Off-Line Contactless (includes off-line, UPT and higher Stand-in)
- Off-Line Non-Contactless (includes off-line, UPT and higher Stand-in)

Where a customer opts-out, and Danske is not allowed to let the account go overdrawn, the customer's Off-Line contactless card would have to be replaced with an on-line product. Whilst the issuing of an on-line card goes some way to addressing this issue it does not always prevent an account from going into an

transactions below the limit set (say £50), and where an off-line card is used, do not get presented for pre-authorisation.

unarranged overdraft. For example, UPTs in particular cause a problem for Basic Bank Account customers as they allow an account to go into an unarranged overdraft, thus incurring charges. It is important to note that this would also be a problem for a customer who has opted out of an unarranged overdraft & who has been issued with an on-line card.

The CMA has acknowledged this difficulty at paragraphs 95 & 96 of the SPRN in relation to the proposal that customers would have the ability to opt out for certain types of transactions. As set out above, Danske contends that the points raised by the CMA at paragraphs 95 & 96 are also applicable where the customer wishes to opt out of having any unarranged overdraft facility (as per paragraph 75) and would encourage the CMA to take account of this issue in formulating any possible remedy.

It is Danske's view that the proposal outlined in paragraph 92-97 of the SPRN in relation to the ability to opt out for each PCA and transaction type is unworkable. The IT development required to implement an opt-out by transaction type would be costly, time consuming and disproportionate to the perceived harm it seeks to address. Danske also considers the suggestion of customer authorisation solutions at paragraph 58 of the SPRN to be unworkable for the reasons set out above.

3.3. *Overdraft remedy 3 – suspension periods for unarranged overdrafts*

Danske is supportive of the CMA's proposal to standardise the terminology used to describe suspension periods.

The CMA acknowledges at paragraph 115 of the SPRN that the retry system has a good level of participation and covers nearly all payments that PCA providers have the discretion to retry. Danske would encourage the CMA to use any learnings from the voluntary agreement with the FCA when further considering this remedy. Whilst Danske has grace periods in excess of 24 hours for internal standing order payments, Danske would caution against setting a grace period of over 24 hrs generally as payment systems do not support this and it would reduce certainty for customers around payment times for both debits and credits into and out of customers' accounts.

Danske notes that the CMA is considering requiring PCA providers to issue alerts alongside the grace periods to make customers aware that they are at risk of unarranged overdraft charges and to give them an opportunity to take action. Danske would reiterate its general comments in relation to the proliferation of alerts proposed by the CMA and the potential for customers to become desensitised to messages which may require urgent action (such as these) due

to the volume of alerts the CMA is proposing should be issued to customers. The CMA may wish to consider reducing the number of mandatory alerts banks have to issue to customers so that the impact of these alerts requiring urgent action is not lost.

However, Danske proposes that the extension of buffer zones on PCAs would be a more effective and proportionate remedy than establishing mandatory grace periods. <REDACTED>. However, any proposal to extend buffer zones would have to address a number of issues such as;

- the size of buffer,
- length of grace period,
- the alerts issued, if the account is not regularised within the grace period,
- whether interest and charges would apply retrospectively.

3.4. *Overdraft remedy 4 – a monthly maximum charge for using an unarranged overdraft*

Danske is concerned that the risk with capping unauthorised overdraft charges is that this may encourage customers to simply build up and maintain debt positions, when regularising through an approved facility, or restructuring under a personal loan with regular payments (perhaps at a lower interest rate) would be a much more sensible approach.

Danske already sets a monthly cap for paid transaction fees for an unarranged overdraft, <REDACTED>[2]. In addition Danske charges a monthly unarranged overdraft usage fee. It is Danske's view that the existing charge-based caps, combined with the overdraft charging scenarios on Danske's website, provide sufficient clarity for customers in relation to unarranged overdraft charges.

Danske is not in favour of the CMA imposing a regulated Maximum Monthly Charge (**MMC**). As noted above, this may lead to customers building up overdraft debt. In addition, Danske believes that a regulated MMC would have to be reviewed regularly to ensure that it is set at a fair and reasonable level and would thus be costly to monitor. If the regulated MMC is set at a level which is too low to enable banks to cover the costs associated with providing unarranged overdrafts, it may lead to an increase in account charges for all customers which could ultimately penalise those customers who do not avail of unarranged overdrafts.

[2] A similar monthly cap applies on returned items for Danske Basic Bank Account