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Which? response to the CMA's supplemental notice of possible remedies

Summary

In our response to the CMA's provisional findings and notice of possible remedies in November 2015, we outlined our view that the remedy proposals published at that time did not sufficiently address the issues faced by overdraft users. In particular, with the CMA's analysis showing that heavy overdraft users were less likely to switch than other users, despite having faced much higher financial incentives to switch than other users over a prolonged period, remedies that focus solely on the switching process cannot reasonably be expected to address the detriment these consumers face in our view.

We are disappointed that the CMA is minded not to control unauthorised overdraft charges. The CMA says it is worried about unintended consequences but does not appear to have done sufficient analysis to seriously consider the risks of unintended consequences against the harm currently suffered by consumers.

We welcome some of the CMA's supplementary possible remedies, such as those regarding prompts, alerts and grace periods, which align with the views we expressed in previous submissions to the inquiry. However, we consider the current unarranged overdraft charging arrangements to be a significant impediment to the effective development of customer tools for account management, and without addressing the level of unauthorised overdraft charges, the impact of these remedies is likely to be weakened.

In addition, many of the CMA's questions concentrate heavily on the practical elements of implementing these remedies when the focus should be on the outcomes they expect to achieve. We urge the CMA to involve meaningful consumer engagement in the development and implementation of remedies.

We comment on each of the CMA's overdraft remedies below.

Overdraft Remedy 1: Prompts and alerts to inform customers of imminent and actual overdraft usage and charges

In our response to the CMA's provisional findings and possible remedies, we urged the CMA to consider how prompt-based control measures may be further used to benefit consumers, including those who are less likely to benefit from the existing use of text alerts and mobile banking options, given the proven success that such measures have had in improving control for some customers. We therefore welcome the inclusion of this remedy, and the CMA's consideration of a range of possible types of prompts and alerts.

We also welcome the CMA taking action to ensure account balances are clearly communicated to consumers, acknowledging the potentially confusing practice of including arranged overdrafts within the definition of 'available funds'.

As in our previous submissions, we would emphasise the importance of customer testing in the identification of which specific approaches are likely to be most effective. Rather than ask which alerts should be considered, what they should contain and how they should be implemented, the CMA should be defining the desired outcomes and ensuring that evidence is gathered to ensure that this is achieved.

We would also highlight that the benefits to consumers of the use of such prompts is likely to be heavily dependent on the options and flexibility that consumers have to respond to a prompt in ways that might enable them to avoid incurring charges that might otherwise apply. Given this, overdraft remedies 1 and 3 are closely linked.

Overdraft Remedy 2: Measures to encourage PCA customers to make an informed choice on their overdraft options

Requiring PCA providers to offer customers a clear opportunity to opt out of having an unarranged overdraft facility has the potential to improve customer control over their usage of overdraft facilities, but its likely effect would be heavily depend on a number of factors concerning how it was implemented.

As we noted in our response to the CMA's invitation to comment on additional remedy suggestions in January 2016, if a consumer that opted out from using an unarranged overdraft would nevertheless be exposed to unpaid item fees, the opting out may simply make a consumer worse off. In this scenario, they would still be subject to a high charge, but would receive no benefit associated with the potential to access additional funds. We proposed that unpaid item charges be removed as they are no longer justified. We have highlighted that no separate charges are typically applied when consumers use payment systems (except for CHAPS) other than when unpaid item charges are applied, and that this differential approach targets higher prices on those who are less likely to switch.

Also, as the CMA recognises, the appeal (and ultimate effect) of this remedy option could be undermined if the decision to opt out from the use of an unauthorised overdraft may result in a higher fee for using the account and/or more limited account features/rewards. We recognise that some payments are not 'online authorised', and that this generates risk management issues as such payments may cause a consumer to exceed an arrange limit (inadvertently or not). However, in a more competitive environment and in the context of modern payment systems, we would expect more proportionate approaches to these risk management issues to have been developed (than the application of very high unauthorised overdraft charges).

Overdraft remedy 3: Suspension periods for unarranged overdrafts

In our earlier submissions, we urged the CMA to consider how buffer zones and grace periods might be further used to benefit consumers, and we therefore welcome the inclusion of this option. Rather than asking specific questions about the processes and different approaches to implementing this remedy, the CMA should now focus on the outcomes it expects to achieve. For example, if a buffer zone delivers the same outcome as a grace period, then there should be no opposition to this approach. As with prompt-based approaches, we would emphasise the importance of customer testing when seeking to determine which specific approaches are likely to be most effective.

Overdraft remedy 4: A monthly maximum charge for using an unarranged overdraft

The supplemental notice of possible remedies identifies two variants of this remedy - uncapped and capped - and sets out the CMA's current preference for the uncapped approach.

The uncapped variant of this remedy is effectively another form of switching remedy. As such, it raises the same concerns that arise in relation to the existing switching remedies. The CMA found that heavy overdraft users were less likely to switch than other users despite having faced much higher financial incentives to switch than other users over a prolonged period. In our view, remedies that focus solely on the switching process cannot reasonably be expected to address the detriment these consumers face.

The principal reason for the CMA preferring the uncapped variant appears to be concern over the potential for the capped variant to generate undesirable unintended consequences while the uncapped variant has a lower risk of unintended consequences. A similar concern over unintended consequences also looks to have been central to the CMA's decision not to pursue further our proposed approach that unarranged overdraft charges be set at the same level as arranged overdraft charges.

While we consider it extremely important that the potential for unintended consequences is given careful consideration when remedies are being considered, the potential for such consequences should not - in and of itself - be a barrier to the development of remedies. Indeed, where there is material consumer detriment, adequately addressing that detriment may necessitate approaches that have some otherwise unwanted effects. The key issue for remedy development is that the potential for such consequences is subjected to sufficient analysis to allow appropriate judgements to be made. The CMA does not appear to have done sufficient analysis to seriously consider the risks of unintended consequences against the harm currently suffered by consumers.

For proposals that would limit the level of unauthorised overdraft charges, the potential effects on the provision of 'emergency funds' is an important consideration, and in September 2015, we urged the CMA to consider overdrafts within the broader context of the provision of emergency funds in our response to the updated issues statement. The CMA has failed to carry out this analysis.

Not directly addressing the level of unauthorised overdraft charges can be expected to have a number of knock-on consequences. As we have highlighted in previous submissions, we consider the current unarranged overdraft charging arrangements to be a significant impediment to the effective development of customer tools for account management. While overdraft remedies 1 and 3 are seeking to improve matters through the introduction of regulatory requirements, in a context where a significant proportion of banks' PCA revenue comes from high unauthorised overdraft charges, banks' incentives are not well aligned with the interests of heavy overdraft users. These misaligned incentives are likely to undermine the effectiveness of remedies 1 and 3.

Measures to incentivise PCA providers to improve the engagement of and outcomes for overdraft users

In our response to the CMA's provisional findings and notice of possible remedies, we said that the CMA should develop remedy 5 (in the original Remedies Notice) in a way that puts customer views at the centre of measuring service quality.

Which? believes that banks should be required to engage with consumers to develop metrics and publish data on the quality of services that capture what is important to customers.

The regulator could pull out key common metrics and data that it would mandate in order to enable comparisons between banks, which would better inform customers about available options. This regulated common set of data could include service quality

measures related to the treatment of customers in financial difficulty and the extent of unarranged overdraft charges.

Therefore, while we welcome the CMA's proposal to develop remedy 5 so that it includes indicators specifically related to overdrafts, we urge the CMA to take into account our comments on consumer engagement.

The CMA invites comments on what KPIs would be most effective in incentivising PCA providers to improve outcomes for overdraft users, as part of remedy 5. We note with concern that the CMA has not yet brought forward any consumer engagement proposals that might provide an effective basis for developing and monitoring progress against service quality measures and instead continues to ask for suggestions as to what appropriate KPIs should be as part of its remedies process.

In our response to the CMA's provisional findings and notice of possible remedies, we emphasised the importance of customer views being put at the heart of defining and measuring service quality, and we proposed a mechanism - the establishment of independent customer challenge groups - to support such a culture change. This approach would avoid regulatory micro management in relation to specifying service measures, and instead focus on incentivising banks to develop a culture based on effective engagement with its customers. It is disappointing that we are yet to see any indication of how the CMA intends to provide for customer engagement in its development of service quality indicators or the implementation of other remedies.

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