

**Santander UK plc**  
**CMA Retail Banking Market Investigation**

**Response to the working paper on  
the role of comparison sites for small and medium-sized  
enterprises in addressing the adverse effect on  
competition**

**29 March 2016**

# Santander UK plc

## CMA Retail Banking Market Investigation

### Response to the SME PCW Working Paper

#### 1 Executive Summary

- 1.1 We welcome the opportunity to comment on the CMA's working paper on the role of comparison sites for small and medium-sized enterprises in addressing the adverse effect on competition dated 7 March 2016 (**SME PCW Working Paper**).
- 1.2 In our response to the Invitation to Comment on additional remedy suggestions (**ITC**), we reiterated our support for the implementation of a core remedy package (focused on Remedies 1-5) and additional remedies in the SME market. As a scale challenger, we potentially have a significant amount to gain from improvements to competition in the market; and this is particularly the case in the SME market, where the incumbent big four banks have a market share of around 80-85%,<sup>1</sup> and our market share has grown slowly despite very substantial investment in our SME business.<sup>2</sup> In implementing a remedies package, we believe the CMA should not be distracted by remedies (or aspects of remedies) that would have a marginal or uncertain impact on the market, and would create a burden that would be disproportionately borne by smaller challenger banks.
- 1.3 As we set out in our response to the Provisional Findings and Notice of Possible Remedies, we support the aim of developing a price comparison website (**PCW**) for SMEs.<sup>3</sup> We consider that the most effective comparison tool for SMEs would be based on transaction history, as considered by the CMA in relation to Remedy 3.<sup>4</sup> With the Open Banking Working Group (**OBWG**), comparisons based on transaction history should be facilitated by permission-based APIs.<sup>5</sup>
- 1.4 While the SME PCW Working Paper shows that the CMA is keen to understand the options that are potentially available to develop the most effective comparison site, we are sceptical that a challenge prize is the most appropriate way forward. In our view, the challenge prize is inherently uncertain and there are alternative, existing and more effective and proportionate options that the CMA has either failed to take into account or dismissed prematurely. We would caution the CMA against pursuing a challenge prize that is superficially attractive, but is not certain to achieve the

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<sup>1</sup> See the discussion at Section 6 of the Provisional Findings Report.

<sup>2</sup> See further our Response to the Updated Issues Statement, from paragraph 2.5.

<sup>3</sup> This was because we recognised the CMA's provisional findings in this area: that information is not readily available; there is no Midata equivalent for SMEs; BCA pricing structures can be complex; and SMEs are unable to compare offerings easily. See our Response to the Provisional Findings, at Annex 2, paragraph 4.1.

<sup>4</sup> "Facilitate price comparisons between providers by making customer specific transaction data more easily available and usable, including by PCWs"

<sup>5</sup> On the progress of the OBWG, please see paragraph 8.2 below.

solution the whole market requires. In particular, the CMA could instead support existing, commercial propositions that could take advantage of developments in permission-based APIs in such a way as to resolve the challenges currently facing SMEs when comparing SME services in a more timely and effective way. In this paper, we explain why such existing alternatives would be more effective (in terms of proven outputs and timescale) and proportionate (in terms of cost) relative to requiring the industry to fund a challenge prize.

- 1.5 In the first part of this paper, we set out our understanding of how the challenge prize proposal came to be the CMA's preferred option (Section 2); and then describe our major concerns with the proposal (Section 3): namely that it is uncertain in outcome (Section 3(a)); will not be implemented in a timely manner (Section 3(b)); and will be disproportionately expensive (Section 3(c)). If the CMA remains minded to pursue the challenge prize notwithstanding these serious concerns, we set out our views on the parameters within which the prize should operate. We do not consider it appropriate to impose on us, and other challenger banks seeking to innovate and win market share from the incumbent big four banks, an obligation to fund a challenge prize championed by these larger players (Section 4). We also list some of the critical questions that need to be addressed to proceed with the challenge prize (in Annex 1).
- 1.6 Separately, we wish to ensure that the CMA is properly apprised of the various industry initiatives that are proceeding in parallel to the market investigation, and which are aimed at improving the operation of the retail banking market for SMEs (summarised in Annex 2). These initiatives are being developed by various stakeholders and are designed to increase transparency and access to information.
- 1.7 Therefore in the second part of this paper (Section 5 onwards) we offer our further views on the interaction between these various industry initiatives. We expect that the CMA will wish to have close regard to the status, timing and progress of these existing initiatives when assessing how best to implement an effective remedies package that promotes engagement and eases customer switching, while not diverting the focus away from, or detracting from, a core remedy package.

## PART 1: COMMENTS ON THE SME PCW WORKING PAPER

### 2 The status of the alternative options for a PCW for SMEs remedy

2.1 As we noted above, we strongly support a PCW for SMEs. Our support is based on the description of the remedy as set out by the CMA in its Notice of Possible Remedies (“A PCW for SMEs”):

*“We are considering a number of possible approaches to this problem, the most straightforward of which would be to require providers to facilitate the establishment of a PCW on banking services for SMEs covering, but not being limited to, BCAs, including overdrafts, and loans.*

*We envisaged that such a website would eventually have access to SME transaction data in Midata format, as described earlier. We also considered whether additional ways of facilitating comparisons between providers could be made available sooner, for example measures that could apply provisions equivalent to those contained in PAD, for example as regards the presentation of PCA terms, to BCAs.”<sup>6</sup>*

2.2 Indeed, given that PCWs for SMEs already exist, we consider that the aims of this Remedy could be quickly and readily met. However, notwithstanding that the CMA did not mention a challenge prize in its Notice of Possible Remedies (although it did ask for comments on how commercially operated PCWs could be incentivised to extend their coverage to SMEs), we understand that “building on the Nesta challenge prize” to deliver an appropriate solution<sup>7</sup> is now the CMA’s preferred approach. In provisionally preferring this option, the CMA has rejected the more straightforward approach of developing current sites (whether existing PCWs or existing comparison tools for SMEs) and the creation of an industry-funded PCW.

2.3 The challenge prize appears to us to have some potential in stimulating innovation. However, behind its instinctive appeal, it remains vague, uncertain in outcome, and would require a substantial and potentially open-ended financial commitment. ∞ we decided on balance not to support it for these very reasons – notwithstanding that we potentially had much to gain commercially from improving the ability of SMEs to compare providers. Instead, we focused our efforts on other industry wide initiatives, such as the OBWG. We do not consider it appropriate to impose on us and other challenger banks an obligation to fund a challenge prize championed by one of the largest players in the market, and consider this option raises serious questions as to its compatibility with the CMA’s obligations when implementing a remedies regime. Accordingly, we would urge the CMA to re-assess the existing options that are available in this area.

2.4 The discussion in the SME PCW Working Paper on each of the two options not favoured by the CMA is brief and appears to us to omit important considerations. For example, in discussing the existing SME-focused comparison sites, the CMA does not discuss Business Finance Compared

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<sup>6</sup> Notice of Possible Remedies, at paragraphs 75-76.

<sup>7</sup> SME PCW Working Paper, at paragraph 34.

or Funding Xchange - existing commercially funded, multi-product PCWs in the SME space that have been operating for at least a year. Funding Xchange made submissions encouraging the CMA to look to minimum standards to be upheld by PCWs.<sup>8</sup> Business Finance Compared submitted a 37-page response to the provisional findings at the end of 2015, and provides useful comments as to the operation of PCWs in the SME market, noting, for example, that:

*“BFC.com is not the only commercially operated PCW focused on SME banking services, there is a healthy level of competition amongst existing and emerging PCWs. There is sufficient incentive to provide comparison services to SMEs due the market opportunity.”<sup>9</sup>*

- 2.5 Moreover, Business Finance Compared and Funding Xchange have, alongside Funding Options, been announced as designated SME finance platforms by the Government for the purposes of the SME Finance Platforms regulations. This means that, after a long review process conducted by the British Business Bank, these three providers have been endorsed by Government as key to the development of the mandatory referral scheme. We understand that 24 different providers registered expressions of interest with the British Business Bank during this process. We would encourage the CMA to re-consider these (and other) existing providers and to engage with the British Business Bank for its input.
- 2.6 The CMA focuses its discussion on Business Banking Insight (**BBi**) and Better Business Finance (**BBF**). As the CMA recognises, these were not designed to be PCWs, and so they do not themselves provide a strong base for developing a PCW.<sup>10</sup> Neither are operated by commercial third parties – BBI was launched by HMT, and BBF is the product of collaboration between banks. We would encourage the CMA to engage with existing commercial PCW operators, both in the SME market, and in the personal banking market, to understand their commercial drivers and the benefits they could bring.
- 2.7 We note that the CMA cites only two sources for the suggestion of a challenge funded prize: LBG and Barclays, two of the four largest banks with a combined market share in the SME market of around 30-50%. Indeed, Barclays did not suggest that a challenge prize was their preferred option (preferring instead an “*opportunity-driven*” market response)<sup>11</sup> and we are not aware of any other provider suggesting that a challenge prize would be an appropriate response, although it appears that the CMA sees those banks who “*were in favour of allowing commercial solutions to develop*” as tacitly endorsing a challenge prize.<sup>12</sup>
- 2.8 We also note that, according to LBG, it discussed the challenge prize initiative with the CMA in June 2015<sup>13</sup>, and yet no reference was made to it in the Notice of Possible Remedies in October 2015. We consider that:

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<sup>8</sup> Response to CMA Remedy 4: Introduction of a price comparison website for SME banking .

<sup>9</sup> Response by Business Finance Compared to the Notice of Possible Remedies 22 October 2015, at page 17.

We note that LBG, the major proponent of the Nesta challenge prize, has refused to engage with Business Finance Compared in the past 12 months, citing a conflict of interest with the Nesta prize.

<sup>10</sup> SME PCW Working Paper, at paragraphs 36-37.


<sup>11</sup> Barclays' response to the Provisional Findings, 20 November 2015, at paragraph 5.10.

<sup>12</sup> SME PCW Working Paper, at paragraph 26.

<sup>13</sup> LBG Response to the Provisional Findings and Remedies Notice, at footnote 33.

- (a) if the CMA had been minded to pursue a challenge prize before the publication of the Notice of Possible Remedies, it should have included reference to it in the Notice of Possible Remedies to allow parties to comment on it; and
- (b) if the CMA was not minded to pursue a challenge prize before the publication of the Notice of Possible Remedies, it is unclear what has changed such that the CMA is now considering it to be the best option.

2.9 Our understanding is that the current state of progress with the Nesta prize has not yet had any effect on the market and it is not even a significant foundation to build on at this stage in its development. Indeed, since LBG made the public announcement of a prize fund in February 2015, there has not been any substantial progress in the development of the challenge prize.<sup>14</sup> As far as we are aware, no provider has made any firm commitments to the challenge prize, and smaller banks in particular have been reluctant to commit resources to it.

2.10 By contrast, existing PCWs can demonstrate significant successes. For example . Funding Xchange has recently partnered with KPMG to service its small business customer base, and its service includes a range of forms of finance (such as fast business cash, invoice finance and merchant funding).

### 3 Why a challenge prize should not be preferred to developing existing solutions

3.1 In our view, rather than focusing on seeking to compel banks – and particularly challenger banks – to participate in a challenge prize that they have previously concluded on a commercial basis is unlikely to have a material positive impact on competition, and would divert resources away from investments that would help them grow and challenge the incumbents, the CMA should give current, viable market players greater consideration.

3.2 We set out in the sections below our concerns with the challenge prize, which in summary are as follows:

- (a) The outcome of the challenge prize is uncertain. While the successful competitor for the prize may develop an effective comparison site which resolves the AECs that the CMA has provisionally found in the market, it is also possible that despite a prize fund of £5 million, no material improvements will result to the market. To this extent, the use of a challenge prize is speculative, and that makes it unsuitable as a remedy to resolve existing features of the SME market. By contrast, the CMA would have more certainty in the results associated with developing existing sites.<sup>15</sup> See further section A below.
- (b) Second, any proposed output from the fund would take time to implement. The complexity involved in implementing a challenge prize would distract both the CMA and market players from other important Remedies. When this uncertain and potentially lengthy timescale is

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<sup>15</sup> Where we refer to developing existing sites, we refer to both the development of the sites themselves, and of market conditions and behaviours that would encourage further growth by existing PCWs and potential entrants.

compared with existing options in this area, it is clearly preferable to develop those alternative options. See further section B below.

- (c) Third, the prize would be significantly more expensive to fund than any developments relating to existing sites. If challenger banks, including San UK, are obliged to fund the challenge prize, this would place a substantial burden on those least well placed to support such a prize and divert resources from investments that would help smaller banks grow and challenge the incumbents. ✂ See further section C below.

3.3 Taken together, these issues combine to create a remedy that has many complexities in design and implementation. By contrast, the CMA could achieve a more effective result by focusing on existing PCWs, and by engaging with the progress of the OBWG. This more streamlined approach would reduce the burden on smaller banks, whose participation in a challenge prize would be costly, time-consuming, and of uncertain outcome.

3.4 In order to support the enhancement of existing PCWs, the CMA could compel banks to participate in the development of permission-based APIs to help facilitate the development of existing players. This would include working with the OBWG to develop proper governance, in particular relating to the regulation of fintech companies not currently regulated by the FCA. The CMA should also consider what more can be done to remove barriers to entry and expansion in SME-focused PCWs. For example the CMA could:

- (a) Require banks to provide data to certain accredited PCWs who were regulated by a suitable governance regime;
- (b) Require banks to prominently display links to one or more PCW on their websites;
- (c) Investigate further whether standardising product terminology would aid the development of PCWs; and
- (d) Investigate further the business models of existing PCWs, to understand the drivers of their success.

3.5 Ideally, we, and other banks, would be able to work with a variety of commercial partners to develop a sustainable, market-driven solution.

## **A. A challenge prize is too uncertain in outcome**

3.6 A fundamental concern with the a challenge prize proposal is that there is no certainty that a PCW (or comparable solution) will be developed and implemented to remedy the AECs as provisionally found by the CMA. While the “*obvious risk*” noted by the CMA, which relates to how the CMA can stay involved in the project,<sup>16</sup> can be addressed by some form of monitoring arrangement (at further cost), the outcome of the prize is entirely uncertain. Indeed, in the penultimate paragraph, after concluding that the Nesta challenge prize is the best way forward does, the CMA note: “*We would also need to consider whether a fallback provision is necessary.*”<sup>17</sup> As the CMA’s market

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<sup>16</sup> SME PCW Working Paper, at paragraph 50.

<sup>17</sup> SME PCW Working Paper, at paragraph 55.



investigation guidelines explain, the CMA should “*tend to favour remedies that have a higher likelihood of achieving their intended effect*”.<sup>18</sup>

- 3.7 The CMA does not seem to address the possibility that the prize may not lead to any real improvements to options that are currently available, or that could be developed without a challenge prize. Already, sites like [businessfinancecompared.com](http://businessfinancecompared.com), [businesscomparison.com](http://businesscomparison.com), [fundingxchange.co.uk](http://fundingxchange.co.uk) and [fundingoptions.com](http://fundingoptions.com) provide comparison services for SMEs. Notwithstanding these existing services, the CMA considers an advantage of the “Nesta approach” is that it “*may lead to the emergence of more than one sustainable commercial entity*”.
- 3.8 The CMA has not suggested what sort of innovation needs to take place to justify a prize fund of £5 million. In this respect, the SME PCW Working Paper notes that SMEs may “*value a website which does more than just price comparisons: a one stop shop offering non-price information, including customer eligibility and service quality, together with, potentially, the ability to link seamlessly to providers*”. In this regard, we note the PCWs that currently serve the SME market can show service quality: [businesscomparison.com](http://businesscomparison.com) uses BBI survey ratings, and this feature could be enhanced by the CMA’s proposed Remedy 5 (comparisons of service quality).
- 3.9 The CMA has not set out assessment criteria for the proposed prize. As it stands, not only is it uncertain whether any solution will be developed, it is uncertain what functions the solution is meant to fulfil. In those circumstances, it is impossible to compare the potential solution with other more “straightforward” versions of Remedy 4.<sup>19</sup> It must therefore be a real possibility that the challenge prize could deliver a solution comparable to solutions in, or that would otherwise enter, the market, resulting in duplication. In any event, at this stage, the targeted output of the Nesta prize is sufficiently uncertain that it would be impossible to know if any given solution could be deemed a success against a measurable standard.
- 3.10 We are concerned that in targeting a “one-stop shop”, the CMA is conflating Remedy 4 (the SME PCW) with other remedies. The SME PCW Working Paper refers to loan price indicators, Open APIs and the use of transaction data. Remedies 3, 14 and 15 cover these aspects, and we support them. With the development of permission-based APIs allowing PCWs access to SMEs’ transaction histories, sophisticated price comparison tools are likely to develop organically providing the OBWG recommendations are implemented carefully and sustainably. As such, we are sceptical that these developments need an expensive challenge prize in order to be progressed.
- 3.11 The CMA should also bear in mind the submissions of multiple banks that a PCW would be best suited to BCAs for smaller SMEs, which operate on standard terms and conditions. In that regard, a useful PCW for SMEs would in theory be similar in design and operation to those currently available and so would not necessarily require a large prize fund of £5 million.

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<sup>18</sup> CC3 (Revised) - Guidelines for market investigations: Their role, procedure, assessment and remedies at paragraph 335.

<sup>19</sup> Notice of Possible Remedies, at paragraphs 75.



- 3.12 However, it may be that the CMA intends that the challenge fund be used to attempt to increase comparison of services for larger SMEs, and include more sophisticated tools. This may in principle justify a large fund of £5 million; however, it is not clear what these other tools may be, or why they are better dealt with as part of a prize fund incentivising the development of a PCW rather than under one of the other remedies that the CMA might pursue. We also reiterate that we do not consider a PCW will be helpful to larger SMEs comparing pricing, as these businesses tend to have complex funding requirements and pricing tends to be offered on a bespoke model by dedicated relationship managers.
- 3.13 The CMA notes that Nesta provides the “*best way forward*” because it is “*driven by competition*”. However, the structure and design of the competition will influence its result. As some operators have already taken commercial risk in launching a PCW without the incentive of a prize fund, the design of any challenge prize would have to ensure fair competition between existing operators and potential new entrants.<sup>20</sup>
- 3.14 In addition to the uncertainties as to what outcome is targeted by the prize; whether any positive solution will result from the prize; and on what basis an outcome should be assessed, it is not clear that any solution will necessarily be *sustainable*. In particular, we note that existing PCWs cover multiple products (including, for example, energy and insurance).<sup>21</sup> To the extent that wide multi-market coverage is necessary for a PCW’s sustainability, a banking-focused challenge prize may not be effective in developing a medium to long term solution. Further, a provider participating in a challenge prize fund will not have the same commitment, nor make the same investment, as a true market operator; and to the extent that prize funds recompense their efforts, such a provider may see their income as flowing from prize funding, rather than long-term commercial success.<sup>22</sup> If the CMA envisages multiple winners, it would also need to consider how many of those winners would need to be sustainable, and how support for the winners would be allocated.
- 3.15 Similarly, the CMA notes that existing tools suffer from low awareness.<sup>23</sup> There is nothing to suggest that SMEs are more likely to be aware of a solution simply because it has been developed through the use of a challenge prize.
- 3.16 On the basis of all this uncertainty, the CMA recognises that there may need to be some sort of fallback provision in the event that the challenge prize was not successful. We note that such a fallback option is unlikely to be given the same degree of attention by market participants and is thus unlikely to provide a timely alternative. If the fallback option were to be given the same level of attention as the challenge prize, this would mean the CMA would effectively be imposing a double remedy.

## **B. A challenge prize would take too long to implement**

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<sup>20</sup> As noted above, BFC considers that there is “sufficient incentive” to encourage market entry in SME PCWs.

<sup>21</sup> See e.g. <https://www.businessfinancecompared.com/>.

<sup>22</sup> The CMA should be aware that the prize fund gives certain entities a chance to win money without having to take great commercial risk. We therefore advocate caution in respect of the views of potential entrants.

<sup>23</sup> SME PCW Working Paper, at paragraph 39.

- 3.17 The CMA should “*favour remedies that can be expected to show results within a relatively short time frame*”.<sup>24</sup> In addition to the uncertainty as to whether a challenge prize will show results at all, it is not clear from the SME PCW Working Paper when a challenge prize is expected to produce a solution, except that it is envisaged that the process will occur predominantly after this market investigation is concluded. Indeed, the timeframe will, to some extent, be controlled by the banks providing data and the development of Open APIs.
- 3.18 In our view, Nesta cannot realistically result in a winning solution within 18 months. Thereafter, it will take some years for the solution to embed itself in the SME market, if it can indeed become sustainable. In particular, any effective comparison tool would need to have extensive market coverage to be credible and useful; and building market coverage will take time in addition to the challenge prize process.
- 3.19 By contrast, there are already commercially operated PCWs serving the SME market, who, as noted above, aim to serve a variety of product markets. Developing and enhancing those PCWs, as Open APIs become workable, would therefore appear to us to be a substantially quicker way of implementing an effective solution to allow SMEs to compare providers than using whatever solution is selected as the winner of the challenge prize scheme.
- 3.20 The CMA appears to accept that, given the delay in implementation, “*it may be necessary to consider requiring providers to continue supporting the survey underlying BBI*”. We note that the BBI survey is not a PCW, and the continuation of BBI should not be dependent on the development of a PCW for SMEs. Instead, the CMA should look to BBI to share data with PCWs.

### **C. A challenge prize is disproportionately expensive to fund**

- 3.21 In designing a package of remedies, the CMA must have regard to the reasonableness of possible remedies,<sup>25</sup> which is assessed by reference to proportionality.<sup>26</sup> In light of the above concerns around certainty, and the availability of alternative options which are just as or more effective, we are concerned that a prize fund of £5 million, with associated implementation costs, is inappropriate and disproportionate. As we have previously submitted, the burden of regulatory intervention falls more heavily on challenger banks. We have a lot to gain from improvements in the markets for BCAs and SME lending, but with the outcome uncertain, the case for investing a large amount of money in a challenge prize is not made out, particularly where we operate on lower net interest margins than the incumbent big four banks. Our Net Interest Margin is  $\times\%$ , while RBS’s, for example, is more than 3.5%.
- 3.22  $\times$  We are always looking for ways to invest in our SME business to help us grow.  $\times$  we  $\times$  remain unconvinced that this represented an investment likely to deliver strong, pro-competitive outcomes. The position as described in the SME PCW Working Paper is equally vague.

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<sup>24</sup> CC3 (Revised) - Guidelines for market investigations: Their role, procedure, assessment and remedies at paragraph 337.

<sup>25</sup> Enterprise Act 2002, Section 138(4).

<sup>26</sup> CC3 (Revised) - Guidelines for market investigations: Their role, procedure, assessment and remedies at paragraph 342.

3.23 ✕. Instead, the whole market should be encouraged to participate in a core remedy package, and the industry initiatives at Annex 2.

#### **4 Parameters within which any challenge prize should be taken forward**

4.1 Although we have noted our significant reservations about this option, since the PCW SME Working Paper provides relatively few details about the Nesta challenge prize,<sup>27</sup> we set out in Annex 1 some further questions which in our view would need to be answered before a reasonable assessment of the merits of the competition design could be made.

4.2 Of course, any one or more providers (possibly working in conjunction with other third parties), could choose to fund a challenge prize should they decide that such an approach is appropriate. Indeed, this has been the approach pursued by LBG to date.

4.3 We would consider that, should the incumbent banks decide that a challenge prize was appropriate and helpful, they should commit to making it work. As discussed above, a challenge prize has inherent uncertainties, including as to the fundamental issue of whether it would result in a credible solution to remedy the AECs as provisionally found by the CMA.

4.4 To make a challenge prize work, we consider that the four largest banks – as the incumbent banks in the SME BCA and loan markets with an 80-85% share of the market – would need to:

- (a) make an upfront funding commitment, relating to the prize fund and ancillary help;
- (b) commit to launching the competition, and sharing data with entrants, within a defined timescale;
- (c) set out detailed proposals for how a winning solution (or solutions) will be supported in its early stages, including commitments relating to funding, the provision of relevant information, and any relevant awareness campaigns. These commitments would have to be for a sufficiently long duration to ensure that any winning solution was given an adequate chance to become commercially viable;
- (d) commit to continuing to work with existing PCWs and third parties outside the challenge prize framework, such that the challenge prize framework could not be used to insulate entrants from normal market forces;
- (e) commit to presenting information on PCWs and challenge prize winners prominently on their SME banking websites and through prompts mandated through the CMA's proposed Remedy 1; and
- (f) set out detailed targets that are to be met, so that the solution or solutions can be measured, and present fall-back positions in case those targets are not met.

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<sup>27</sup> Indeed, there are only four paragraphs outlining the proposal: SME PCW Working Paper, at paragraphs 43-46.

- 4.5 If a challenge prize executed on this basis, with support of the four largest banks, results in a successful solution, it would be in the interests of smaller challengers to engage with the resultant solutions. This is because, to win market share from the four largest banks, other providers will want to ensure that their products are included in relevant comparison tools.

## PART 2: FURTHER COMMENTS ON REMEDY DESIGN

### 5 The wider context

- 5.1 As the CMA will be aware, there are a number of industry initiatives in progress aimed at improving the operation of the retail banking market that are being developed by various stakeholders – including San UK, other banks (including both the big four and challenger banks) and fintech and data companies. These initiatives (including Project Bulldog and Project Factern) have been proceeding in parallel with the CMA’s market investigation and have the potential to influence the scope, content and implementation of the remedies package that the CMA ultimately imposes. Given the CMA’s provisional preference to develop a challenge prize- funded PCW as an effective way of implementing Remedy 4 of the original provisional remedies package, we wish to ensure that the CMA is properly apprised of the status, timing and potential limitations of these various market initiatives, which we consider to be fundamental to any role they might have in the design of any remedy package. We set out in Annex 2 a table showing, for each industry initiative: stakeholders; ultimate objective; current status and proposed next steps.
- 5.2 It may be tempting to see these industry initiatives – either individually or in combination – as a panacea to remedy the features that the CMA has provisionally identified as adversely affecting competition in the retail banking market. However, in our view, it would be misguided for the CMA to now intervene in these industry initiatives to stipulate the outcomes that must be delivered; impose a timetable on delivery that is unrealistic and risks comprising the project; and compel funding by challenger banks with limited resources.
- 5.3 Rather, we believe the CMA should have regard to the status, progress and timescale for delivery of these industry initiatives and reflect on what this means for the design and implementation of the remedy package, which we maintain should remain focused around a core of Remedies 1-6 and 13-15 of the Notice of Possible Remedies. The CMA should resist attempts by any market participant – particularly one of the largest incumbent banks – to force the rest of the industry to participate in and to fund such projects.
- 5.4 We set out below ∞ the impact on challengers of being required to fund such a range of initiatives; and the importance of ensuring that these initiatives adopt a sensible and reasonable timescale.

### 6 The role of various market participants in the industry initiatives to date

- 6.1 We note that in the Summary of challenger banks roundtable on 3 July 2015, the first point of the summary was that “*The larger banks, therefore, had the incentive and resources to engage with the CMA, certainly more than the smaller and challenger banks. There was a danger that the bigger banks would drown out the voices of the smaller banks and it was vital for them to be heard*”.<sup>28</sup>

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<sup>28</sup> Summary of challenger banks roundtable on 3 July 2015, at paragraph 1.

6.2 This is a valid concern, particularly at this crucial stage of the investigation. We note that a paper submitted by LBG published *after* the publication of the SME PCW Working Paper encouraged the CMA to look to the Nesta challenge prize.<sup>29</sup> As we noted above, only one other (incumbent) bank mentioned the challenge prize as a potentially workable solution. To the extent that those with the most to gain commercially from changes to the market are expressing reservations about interventions supported by the big four incumbent banks, we would invite the CMA to take these reservations seriously.

6.3 ✂.

## 7 Effect on challengers

7.1 We believe that any measures that seek to convert these industry initiatives into binding remedies, whether individually or in combination with other existing remedies, risk placing a disproportionate costs burden on challengers. As a scale challenger, we do not have the resources to pursue every measure that will only have a marginal (or doubtful) impact on the market (as we explain in the discussion on the challenge prize proposal at paragraph 3.21).

7.2 We are not alone in making this point. For example:

- (a) Clydesdale stated: "*CB would urge the CMA to give due regard to the fact that a number of the remedies [...] are more easily absorbed and implemented by the larger financial institutions without adversely impacting on their competitiveness.*"<sup>30</sup>
- (b) Tesco, in its hearing, noted that "*there are quite a number of proposals of iterative changes which will have quite a cost associated with them, they will be felt disproportionately by smaller players because they obviously have a smaller base to soak that cost up from.*"<sup>31</sup>

7.3 It would be perverse for the CMA to implement a package of remedies that would have the short term impact of imposing costs on challengers such that they could compete *less well*, particularly where some of those remedies would lead to only marginal changes in the market in the medium term.

## 8 Timing

8.1 A related point is the timescale over which the CMA should look to implement remedies. We consider that the CMA should look to introduce remedies efficiently, having regard for the need to comprehensively remedy the AECs it has found within a reasonable period of time.<sup>32</sup> We note that there have been arguments that certain remedies can be introduced within a timeframe of just a few months. However, we consider it is critical that the CMA give serious thought to how

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<sup>29</sup> Nesta was mentioned only briefly, in LBG's response to the Provisional Findings.

<sup>30</sup> Clydesdale Bank PLC Retail Banking Market Investigation Response to Notice of Possible Remedies, dated 4 December 2015, at paragraph 7.1.

<sup>31</sup> Notes of a hearing of a Banking Roundtable 6 held at Competition and Markets Authority, Southampton Row, London 7 on Tuesday, 24 November 2015, page 100 lines 1-3.

<sup>32</sup> CC3 (Revised) - Guidelines for market investigations: Their role, procedure, assessment and remedies at paragraph 330.

the remedy package will operate, and ensure that the remedies are not implemented in a haphazard manner.

8.2 This is especially critical in those remedies where there are data security concerns. We note, for example, that LBG expects that the CMA should “*add momentum*” to the proposals of the OBWG. We agree with that sentiment – the CMA should recognise the work of the OBWG and consider how best to work with the OBWG. In fact, this is all the more pressing because the OBWG project did not receive the support from HMT in the Budget that participants had been expecting, such that now would be an opportune time for the CMA to step in and take a leading role in the implementation of the OBWG proposals. The proposals as they stand provide a workable framework through which the industry can develop tools that will have a real impact on the ease with which SMEs can consider and manage their finances.

8.3 However, we do not agree with any suggestion that the CMA should *order* banks to deliver operative systems by a given date. Rather, the remedy package delivered by the CMA should utilise the existing technology and ensure that service providers are behaving within that existing environment in the way that addresses the AECs identified. We consider that it would be beyond the scope of the CMA to impose arbitrary deadlines on the delivery of industry initiatives that are in development, with corresponding funding commitments being required.

8.4 In relation to APIs, LBG states:

*“[The OBWG] does not envisage APIs being delivered fully before Q1 2019. LBG believes APIs and linked unredacted midata services, for price and quality comparisons, could be implemented market-wide for BCAs used by smaller SMEs within 12 months of the launch of the prize fund (with appropriate support from the CMA as set out in paragraph 3.18 below).<sup>33</sup> This should be possible if, with the support of the CMA, their development and implementation is prioritised by the OBWG alongside implementation for PCAs.”*

8.5 By contrast, the OBWG, a body comprised of banking, open data and fintech professionals<sup>34</sup>, spent six months looking at these issues at the request of the UK Government, and concluded on a “*purposefully ambitious*” timetable, which would require “*rigorous investment*” in the next 6-12 months, to “*enable the accelerated building of an Open banking Standard*”. The timetable envisaged an iterative process over the next three years, including the development of use cases for API within 12 months. While this will not be the end of the development of open APIs, it ensures progress is aligned with the development of an appropriate governance framework. If any party was aware of ways to shortcut the timetable suggested by a cross-industry body, we believe that the OBWG would have welcomed that contribution during its sessions.

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<sup>33</sup> Paragraph 3.18 reads: “As explained in Section 1 above, the CMA also has the opportunity to influence the direction and priorities of OBWG before these are finalised in the coming months, and can usefully engage with HMT regarding the prioritisation of PCA and BCA APIs. The CMA should also provide a clear indication that it expects APIs and linked midata and open data services to be implemented for PCAs and BCAs used by smaller SMEs as soon as possible, and that it is minded to involve the FCA in the governance of OBWG if significant progress is not made by the time of the CMA’s Final Report. The CMA should engage with the FCA and OBWG in the meantime, to understand how it can further support the development of APIs.”

<sup>34</sup> Santander UK is represented on the OBWG, as is LBG.



- 8.6 Part of the reason that the OBWG's purposefully ambitious timetable is not even faster is due to key concerns around data security and proper governance structures. LBG, in a paper submitted to the CMA entitled "APIs and midata – an explanatory summary", suggests that customers ex ante perceptions of security are not an appropriate measure of customers' security concerns. However, the CMA's own research shows that there are particular features of SMEs that create concerns around data security.<sup>35</sup> The OBWG recognises the fundamental importance of data literacy, and the role education will have in overcoming these data security concerns. In addition, the importance of ensuring third parties who are able to access customer data through APIs are properly regulated should not be understated, and developing a proper governance system should not be done hastily.
- 8.7 In these circumstance, we would encourage the CMA to take a pragmatic approach to timing, avoiding the temptation to impose an aggressive timescale that could be counterproductive. Instead, the CMA should allow those remedies which can be implemented quickly to provide a foundation on which further remedies can build. It is also worth noting that LBG's submissions on the speed at which the CMA's remedies and current initiatives can be linked and implemented was published four months after the CMA's Notice of Possible Remedies. With so many initiatives underway, it takes time even to consider how they can be linked.
- 8.8 We hope you find the content of this paper helpful and we look forward to discussing the issues raised with you in due course.

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<sup>35</sup> Compare this to, for example, the Optimisa research which noted that there was seemingly stronger resistance to sharing transactional data from SMEs than consumers. In particular, there were more concerns about personal responsibility among those working for medium-larger SMEs, as employees were "*more hesitant about sharing their data due to unease about carrying the burden of the potential impact on them and on their colleagues if anything went wrong*" (Optimisa Research Report: Informing the development of communication tools designed to increase consideration of switching among PCA and SME customers at 4.5.2),

## Annex 1:

### Critical questions that would need to be answered before the challenge prize could be progressed

- 1 *“Nesta is an independent charity”*<sup>36</sup>
  - (a) Why is Nesta the correct organisation to run this project?
  - (b) Who would Nesta’s “data partner” be?
  - (c) On what terms would Nesta’s data partner be remunerated?
- 2 The proposed prize fund is *“up to £5 million”*<sup>37</sup>
  - (a) What would the correct fund size be?
  - (b) On what basis would it be calculated?
  - (c) How would the fund be divided into prizes and in-kind support?
  - (d) What in-kind support is envisaged?
  - (e) Who would provide the in-kind support, on what basis and subject to what terms?
- 3 *“The assessment criteria ... would be specified in advance”*<sup>38</sup>
  - (a) Who would set the assessment criteria?
  - (b) What would the assessment criteria measure?
- 4 *“There would be multiple prizes awarded so that more than one solution would receive support”*<sup>39</sup>
  - (a) How many prizes would the CMA envisage awarding?
  - (b) What consequential support would winners receive?
  - (c) Why does the CMA envisage multiple solutions to a single, simple problem?
- 5 *“Larger banks would need to supply the data required for the sandbox”*<sup>40</sup>
  - (a) Which banks would be included?
  - (b) What is the rationale for excluding smaller banks?
  - (c) What data would be “required”?
  - (d) Who assesses what data is “required”?
- 6 *“Larger banks... would play no direct role in the judging and assessment of the winning services”*

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<sup>36</sup> SME PCW Working Paper, at paragraph 43.

<sup>37</sup> SME PCW Working Paper, at paragraph 44.

<sup>38</sup> SME PCW Working Paper, at paragraph 44.

<sup>39</sup> SME PCW Working Paper, at paragraph 45.

<sup>40</sup> SME PCW Working Paper, at paragraph 46.

- (a) Who would judge the winners?
- (b) Would smaller banks have a direct role?
- (c) Would larger banks have an indirect role?

Annex 2:

Table of industry initiatives

Initiative	Objective	Stakeholders	Current Status	✂
<b>Open Banking Working Group (OBWG)</b>	The OBWG has recommended the creation of an Open Banking Standard that will make it possible for banking data to be shared and used securely.	HM Treasury (Sponsor) Fintech community Data providers (participants) Open Data Institute (co-chair)	Report submitted to HMT at end of 2015 Report published end of January 2016.	✂
<b>BDI Factern</b>	The BDI Factern initiative is an online portal empowering SMEs to own their own business data. It provides a single conduit for the provision of data i.e. credit and AML/KYC data between UK businesses and prospective financial service providers. This initiative is market-led, with a common set of data standards for permissioned data.	Oliver Wyman KPMG San UK Experian Agfe	Working prototype/demo being shown to key stakeholders.	✂
<b>Project Bulldog</b>	A number of banks are working with Oliver Wyman and the British Bankers' Association ("BBA") to standardise and simplify BCA opening procedures by developing a common application form.	BBA BDI Factern/ Oliver Wyman	Agreed areas of commonality of questions for simple entities (such as sole traders) agreed.	✂

Initiative	Objective	Stakeholders	Current Status	✂
<b>Small Business Enterprise &amp; Employment Act (mandatory referrals)</b>	The Small Business, Enterprise and Employment Act 2015 ("SBEE Act") contains provisions that require designated banks to refer SME customers that they reject for finance to finance platforms that can match the SME with alternative finance providers.	HMT (sponsor) FCA (oversight) British Business Bank (platform selection) BBA (industry implementation)	Three finance platforms selected and announced on 16 March 2016 budget – Funding Xchange, Funding Options, Bizfitech (Business Finance Compared).	✂
<b>Small Business Enterprise &amp; Employment Act (wider credit data sharing with challengers)</b>	The SBEE Act requires designated banks to share credit data on their SME customers with designated CRAs, who must then provide equal access to that data to finance providers.	HMT (sponsor) FCA (oversight) British Business Bank (CRA selection) BBA (industry implementation) Experian (designated CRA) Equifax (designated CRA) Creditsafe (designated CRA)	To be implemented by 1 April 2016.	✂
<b>Business Banking Insight Survey (BBI)</b>	BBI is an independent website which looks at how well the UK's small and medium-sized businesses are being served by banks and other finance providers. It was commissioned by the Chancellor and driven by the Federation of Small Businesses (FSB) and the British Chambers of Commerce (BCC).	HMT (sponsor) BBA (BBI Board) LBG RBS Barclays HSBC (Board members & funders) FSB BCC (BBI Management Oversight)	Survey run on ad-hoc basis since May 2014. The latest results were published in February 2016.	✂