

## Retail Banking Market Investigation – Submission to the CMA in response to its Provisional Decision on Remedies

### Implementation of the proposed API framework

7 June 2016

#### Executive summary

The CMA is proposing to introduce an Open Application Programming Interface ('API') which will allow data, including customer data, to be shared across an interoperable network. This remedy is primarily designed to allow consumers to make better comparisons of market offerings, but we assume will also be available to be used by lenders to conduct creditworthiness checks for the provision of consumer credit products. As a provider of consumer credit products (term loans) 118 118 Money is concerned to ensure that the proposed open API banking standard remedy fully considers the impacts on the closely related markets for the provision of consumer credit products. Indeed, the CMA has a duty to avoid any detrimental effects on markets likely to be affected by any proposed remedy.

118 118 Money is concerned with the lack of clarity as to the extent to which alternative consumer credit lenders will be included in the API framework proposed by the CMA and concerned also that, under the CMA's current remedies package, all lenders and financial institutions catering to individual consumers would not be given equal access to the information shared across that API framework. This concern relates both to the mechanics of the API and also to the structure of its governance through the proposed Implementation Entity – both these issues are addressed below.

Ensuring equal access would allow alternative lenders to compete with banks in the market for consumer credit more effectively, and would significantly enhance their ability to make informed lending decisions and provide affordability checks for borrowers, thereby greatly benefiting consumers on both fronts.

We understand from the current remedies package that many of our concerns have already been addressed or considered in relation to small and medium enterprises ('SME') lenders. Although there are some clear differences between the SME and consumer lending markets, there are also some striking similarities. In particular, the arguments which support the need for improved access to SME credit data are identical to those that support the need for improved access to consumer credit data, and we therefore believe that the implementation of the API should be similar in both cases.

#### Interest in the CMA's proposed remedies

118 118 Money (the trading name for Madison CF UK Ltd) is affiliated to the well-known directory enquiries business 118 118, which launched in the UK in 2002 and soon became the largest and best-known provider of directory services in the UK. 118 118 and 118 118 Money both form part of a larger international group operating in Europe and the United States providing information, e-commerce and contact centre services.

In 2013, 118 118 Money entered the consumer credit market in the UK with the objective of providing an affordable, simple and straightforward alternative to people who may have less than perfect credit profiles by providing mid-term unsecured personal loans. Currently, we offer loans of between £1,000 and £5,000, with fixed repayments over 12 to 24 months with no arrangement or set-up fees.

As we stated in our response to the Updated Issues Statement (submission dated 3 September 2015), our principal concern is the need for banks (and all financial institutions) to provide data to Credit Reference Agencies (CRAs) in real-time (and for the CRAs to make it available in real-time for others to access). It is vital to 118 118 Money because it would significantly enhance our ability to make informed lending decisions and provide affordability checks for borrowers.

When it comes to designing industry-wide remedies to address the features of the retail banking market for the provision of PCAs that give rise to adverse effects on competition, it is incumbent on the CMA to consider the impact any proposed remedy may have on the very closely associated markets for the provision of personal loans.

118 118 Money's specific concern is to ensure that when proposing a remedy around the development and implementation of open API banking standards it is clear that: (a) customers can consent to their transaction data being disclosed to lenders such as 118 118 Money; and that (b) the development of comparison websites and other 'FinTech' advisory services does not operate in a way as to advantage the retail banks and make non-bank consumer credit providers less visible in the marketplace.

Whilst we are encouraged that open APIs are expected to increase the choice of credit products readily available to customers as a substitute for their current overdraft facility (effectively 'unbundling' credit from the PCA offering), we are concerned that the impact on the wider provision of consumer credit products is not sufficiently emphasised by the CMA in the same way as issues regarding SME lending.

118 118 Money notes that, as regards personal banking, the CMA's terms of reference are limited to personal current accounts ('PCAs') and do not explicitly refer to the standalone consumer credit products offered by 118 118 Money<sup>1</sup>. However, we note the CMA's statement in its Provisional Findings Report that alternative lending products will be relevant to its competition assessment<sup>2</sup> and also refer to the CMA's duty to consider the wider impact of its proposed remedies on other affected parties, including parties active on upstream or downstream markets<sup>3</sup>.

We would emphasise that, for some consumers, a term loan is a preferable alternative to a revolving credit facility, since they may wish to use a term loan instead of (or to pay off) a revolving credit loan on the basis that a term loan allows certainty in terms of both the monthly payments and the date by which the debt will be paid off, rather than the "moving feast" represented by revolving credit, where the amount of the debt (and consequently the interest on the debt) changes each month depending upon how much is paid off<sup>4</sup>. Furthermore, the certainty afforded by term loans arguably facilitates PCA switching since term loans may allow an overdraft to be paid off so that the PCA could be switched without the need to port the overdraft.

## Equal access to the API framework

The CMA is proposing to implement a new API, which it describes as one of its "foundation measures" to address the adverse effects on competition it has identified in the retail banking sector. The CMA states that the timely implementation of this API is crucial to the effectiveness of the other remedies it is proposing to put in place under the current package. 118 118 Money's view is that, in the case of an overarching foundation measure which is likely to underpin other potential remedies, it is critical that there be no collateral adverse impact on adjacent or overlapping markets, since this could damage the fair application of remedies on other markets.

118 118 Money welcomes and fully supports an API measure, which we have strongly advocated for in the past<sup>5</sup>. We believe that the introduction of an API will stimulate competition both within the market that forms the CMA's terms of reference as well as in the wider market for retail banking, subject to the potential knock-on effects on adjacent markets highlighted in this note.

Therefore, to harness this competitive gain fully, we submit that the CMA ought to consider carefully how this measure will affect market participants and consumers in the wider retail banking space. We are concerned that the API proposal in its current form lacks clarity as regards the way it would be implemented and how it would involve alternative consumer credit providers. In this context, we would particularly want to highlight paragraph 35 of the Provisional Decision on Remedies which provides as follows:

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<sup>1</sup> Appendix 1.1 of the CMA's Provisional Findings Report

<sup>2</sup> Paragraph 35 of the summary of the CMA's Provisional Findings Report

<sup>3</sup> Paragraph 348 of the Competition Commission's Guidelines for Market Investigations, as adopted by the CMA

<sup>4</sup> See generally section 5 of the CMA's Provisional Findings Report in the Payday Lending market investigation where it is recognised that short-term loan providers compete to a certain extent with PCAs and overdraft facilities providers (although it should be noted that 118 118 Money's loan products are not payday lending, since payday loans are typically £1,000 or less, whereas loans offered by 118 118 Money are typically higher)

<sup>5</sup> See for example, 118 118 Money's submission in response to the CMA's Provisional Decision on Remedies in the Payday Lending market investigation

“3.35 The use of API technology would remove the need for customers to download and then upload their transaction data as they currently have to when using Midata. Instead, it would enable their bank’s systems to communicate directly with those of the PCWs, **or whichever entity the customer had consented to share their data with**, and permit only information specified by the customer to be shared: API technology allows the information shared with third parties to be very precisely defined in terms of what may be shared, with whom, over what period and for what purposes.” – [Emphasis added]

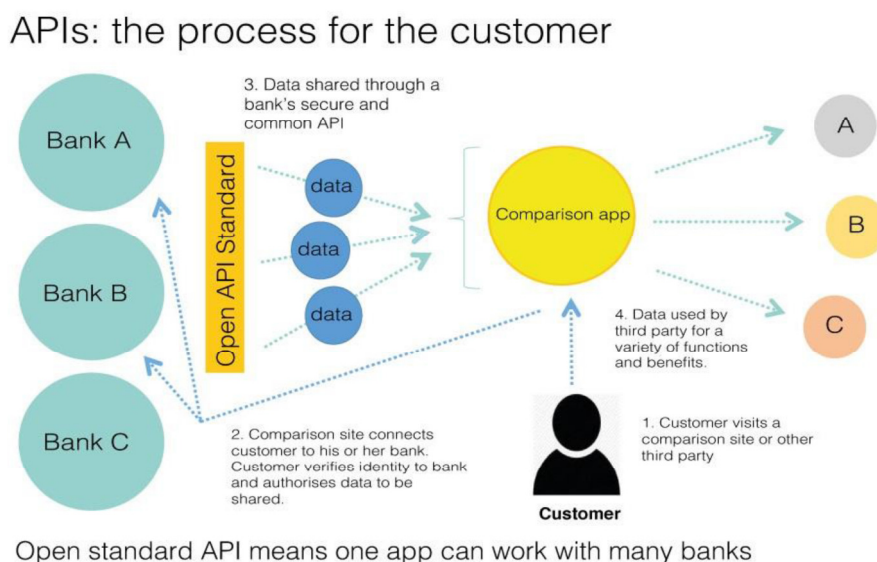
We also refer to the following wording from Figure 3.1 of the Provisional Decision on Remedies, which sets out a summary of the CMA’s proposal:

“Make an Order requiring that RBSG, LBG, Barclays, HSBCG, Nationwide, Santander, Danske, BoI and AIBG adopt and maintain common API standards through which they will share data with other providers **and third parties**” – [Emphasis added]

We submit that the references to “whichever entity” and “third parties” in these paragraphs appear to accept that third parties are relevant to an even-handed application of this API remedy, but that the description of the API at other points of the Provisional Decision on Remedies does not clarify sufficiently which lenders would be included in the API framework. It is not immediately clear from these statements that retail banking customers will be able to consent to lenders such as 118 118 Money having access to their transaction data through the new API. Given the closeness of consumer credit provision to PCA provision some reference to this should be included (as the CMA has done when setting out the remedy for SME banking and BCAs).

For instance, we submit that Figure 3.3 of the CMA’s Provisional Decision on Remedies (as reproduced below) does not provide enough information on the involvement of third parties in the API framework. This diagram paints a picture of the proposed framework which is excessively focused on the role of banks and price comparison websites (“PCWs”). While the illustration does refer at stage 1 to customers visiting a third-party site and does state at stage 4 that the data shared over the API may be “used by third party for a variety of functions and benefits”, it is not clear which third parties would be involved and what their exact role would be – i.e. this relates to the lack of clarity on the providers to which information can be made available. 118 118 Money believes that it should be clarified that “third parties” includes providers of consumer credit products, including those providing term loans. Further, reference to third parties should also be included at point 2 (as explained in the Schedule on both points).

**Figure 3.3 of the CMA’s Provisional Decision on Remedies:**



In terms of third party access and information flows, the mechanics of the proposed API require clarification. While we understand that the CMA’s proposal in its current form is focused on PCA providers and SME lenders, it should be expressly referenced that the API framework needs to be open to all alternative lenders, both in the personal consumer and SME retail banking markets so as to aid lending decisions leading to greater consumer choice. 118 118 Money’s key concern is that access to real-time data on prospective borrowers can be made available through the API framework so as to enable alternative (non-bank) lenders to more accurately assess

the risks of providing loans to consumers and provide credit where it may not otherwise have been available to that consumer or at a price that might not otherwise have been available to the consumer.

We therefore urge the CMA to clarify which parties shall be given access to customer data (with the customer's consent) through the API, thereby ensuring that all alternative providers are given access to that data on equal terms. This should be clarified in the description of the API.

In addition, 118 118 Money believes it is critical that the governance of the API (through the Implementation Entity – see paragraph 3.13 of the Provisional Decision on Remedies) should involve representatives from third party providers and that all providers of credit products participating in or using the API are represented on the Implementation Entity. Para 3.13 refers only to the participation of the major banks in the Implementation Entity, whereas paragraph 3.90 refers to participation by smaller banks (but does not refer to non-bank third parties). There is a strong likelihood that a governance structure comprising only banks will disfavour other parties and impede the even-handed implementation of this remedy, which (as explained above) should refer more explicitly and clearly to alternative credit providers and require that governance mechanisms be instituted which take due account of the views of providers of consumer credit products who compete with the banks for customers. In addition, technical mechanisms may have to be instituted to allow information on third party products to be provided to the API and this can only be guaranteed by a governance body representing all proposed participants in the API.

## Ensuring a level playing field for lenders

While we note that the CMA is primarily concerned with consumer choice, and that its overarching objective is to allow customers to “*get a better deal*”, the CMA ought to consider how its proposed remedies would affect providers and the way they compete, which may in turn have a direct effect on consumers.

We submit that the introduction of the API framework presents a unique opportunity to create a level playing field for providers of consumer credit facilities by remedying the information asymmetry that currently puts alternative lenders at a severe disadvantage. This issue was highlighted several times in the Open Banking Working Group's (**OBWG**) final report on open banking standards, led by HM Treasury, which played a central role in developing the CMA's API proposal<sup>6</sup> and is referred to throughout the CMA's Provisional Decision on Remedies.

By way of example, OBWG's final report states at paragraph 6.1.3 that “*historic transactional data is an important determinant of credit quality and real time transactional data is a valuable indicator in the ongoing serviceability of loans. Currently this information is only available to the current account provider, which means third party providers may not be able to offer the best terms to users when they shop around*”. OBWG's final report noted that the introduction of open banking standards would allow information to be accessible equally by all credit providers, thereby enhancing competition for the benefit of consumers.

The CMA has already highlighted this opportunity in relation to SME lenders, as per paragraphs 6.218 and 6.230 of its Provisional Decision on Remedies:

*“6.218 The information will be available to and accessible by **all eligible providers**, thus reducing the information asymmetry between the SME's BCA provider and other prospective providers, and allowing the others to price more accurately and quickly.” – [Emphasis added]*

*“6.230 Specifically, this would enable read and write access to BCA customer transactional data by early 2018, which should reduce the information asymmetry between a customer's BCA provider and **other prospective finance providers**.” – [Emphasis added]*

The CMA is proposing to take a similar approach to this issue in relation to overdraft users, as provided at paragraph 5.231 of its Provisional Decision on Remedies:

*“5.231 Open APIs are expected to increase the choice of credit products readily available to customers as a substitute for their current overdraft facility (effectively ‘unbundling’ credit from the PCA offering) and increase the scope for innovative money management services. For example, open APIs will facilitate the sweeping of funds between accounts to avoid overdraft charges or deliver new mechanisms by which customers can be made better aware of and engage with their overdraft use. Furthermore, **by providing secure access to customers' transaction data they will reduce the information asymmetry providers face in offering competitive***

<sup>6</sup> As evidenced in the CMA's Provisional Decision on Remedies, see for example paragraphs 3.15 and 3.27

*arranged overdraft limits, within a reasonable degree of certainty, to new customers, and hence reduce overdraft customers' searching costs."* – [Emphasis added]

Similar issues exist outside of the markets for SME lending and overdrafts, and that consumer credit customers would greatly benefit from the exclusion of such information asymmetry between competitors by ensuring access to borrowers' information to all credit providers on equal terms. We believe that the competition and policy considerations for the SME and personal banking markets are identical, at least as regards the potential application of an API remedy, and that a similarly broad view of a remedy to resolve information asymmetries should apply to personal banking/loan products.

The CMA will understand that the banks' competitors in the consumer market are of course not only those who provide PCAs, but also those who operate in the broader lending market, such as 118 118 Money. If the CMA is to consider competition in the banking market comprehensively, it must take account of the competition afforded by adjacent markets such as credit offerings which sit outside PCAs.

Moreover, consumer credit providers such as 118 118 Money are subject to Financial Conduct Authority rules to assess the creditworthiness of prospective borrowers before providing funds to them<sup>7</sup>. The lack of access to real-time customer data makes it more challenging for firms to comply with these rules.

We therefore submit that the CMA ought to consider the implementation of the API in the market for consumer credit and in all affected markets in the same light and to the same extent it did for SMEs and overdraft users, by ensuring that the information asymmetry is addressed and remedied through the sharing of borrowers' credit data. As per our first point above, we also submit that the CMA ought to clarify that all providers of credit facilities are to be included in the scope of this measure and granted access to the API.

## **Avoiding unintended distortions in the wider market for consumer credit**

If the CMA fails to ensure access to the API to alternative consumer credit providers, the commercial risk to them of providing loans to customers will continue to be greater than the equivalent risk to the incumbent provider and other PCA providers.

This distortion is likely to be manifested in one of three ways. Firstly, the alternative lender may decide the risk is too great and not offer to provide credit to the customer, which will result in a direct reduction in competition/choice to the consumer. Secondly, the provider may offer credit at a higher price or with a lower credit limit which will result in a worse outcome for the consumer and also place the competitor at a commercial disadvantage compared with the incumbent. Thirdly, and owing to a lack of knowledge about recent liabilities or missed payments (which form a key part of any responsible lending decision), the competitor may provide credit to the consumer at a credit rate which is not sustainable, leading to default, which will result in a worse outcome for the consumer and unrecoverable costs for the provider.

Furthermore, the risk is amplified for lenders offering loans to customers with imperfect credit history, or who may otherwise consider their access to credit restricted or impaired, because their decisions as to whether to provide loans will be far more dependent on the recent credit history of a potential customer than the decisions of providers granting credit to more creditworthy customers. The absence of access to the API would therefore not only disadvantage competitors/new entrants generally, but it would disproportionately disadvantage providers offering credit to customers with a "thin" credit file or less than perfect credit history, precisely because their potential customers are greater credit risks. Competition would therefore not only be restricted, but also distorted in favour of one sub-market over another.

In the absence of being able to obtain a bank loan or overdraft, consumers would generally "make do" without a loan. This is clearly an under-served market whose needs 118 118 Money would like to be able to address. We are very willing to advance credit to consumers in this sector, which we believe will be of significant benefit to consumers and to the market generally. But in order to be able to offer loans at reasonable interest rates, it is essential that we are able to minimise the risk of default, which means conducting rigorous affordability assessments, requiring equal access to the information shared over the proposed API. To allow the consumer to have access to such products, real time data sharing of current account transactional data is all the more essential for such under-served customers whose credit history may be complex or questionable.

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<sup>7</sup> See rule 5.2.1 of the FCA's Consumer Credit sourcebook

The CMA's remedies package relies to a great extent on the role played by price comparison websites ('PCWs'), which the CMA sees as vectors of competition. Should alternative lenders be excluded from the proposed API framework, there is a great risk of PCWs relying heavily on the API data, thereby reducing the visibility of alternative (i.e. non-bank) offerings and reinforcing the incumbency advantage enjoyed by the banks, thereby distorting competition further in the consumer credit market.

## Proposed solutions

For the reasons set out above, 118 118 Money believes that all alternative lenders (be it in the markets for SME lending, overdraft facilities or other consumer credit products) should be given access to the CMA's proposed API framework on equal terms, and that this should clearly be set out in the CMA's final decision on remedies.

To that effect, we suggest that the CMA amend its remedies package to better reflect the fact that the API framework needs to facilitate competition from alternative (i.e. non-bank) providers of consumer credit products. SME and private customers would then be able to give their consent to share their transactional data with any PCW, bank or alternative lender.

In addition, the CMA ought to make it clearer that the API framework serves a double purpose, and is also intended as a platform for lenders to obtain more information on prospective borrowers in order to better assess their creditworthiness.

We have included a suggested mark-up of the relevant parts of the CMA's Provisional Decision on Remedies at **Schedule 1**, and would of course be happy to discuss it in further detail.

## Schedule 1

### Proposed changes to section 3

Our proposed amendments are shown in bold text below.

Wording from 3.35: “The use of API technology would remove the need for customers to download and then upload their transaction data as they currently have to when using Midata. Instead, it would enable their bank’s systems to communicate directly with those of the PCWs, or whichever entity the customer had consented to share their data with (**including third-party providers of consumer credit products**), and permit only information specified by the customer to be shared: API technology allows the information shared with third parties to be very precisely defined in terms of what may be shared, with whom, over what period and for what purpose.”

Wording from Figure 3.1: “Make an Order requiring that RBSG, LBG, Barclays, HSBCG, Nationwide, Santander, Danske, Bol and AIBG adopt and maintain common API standards through which they will share data with other providers and third parties, **including all providers of consumer credit products**. To this end, the CMA will require these banks to:

- (a) propose to the CMA for its approval the composition, governance arrangements, funding and budget of an entity (the Implementation Entity) for the purposes of implementing and maintaining open banking standards to a project plan and timetable approved by the CMA;
- (b) **ensure that all providers of consumer credit products participating in or using the API are represented on the Implementation Entity;**
- (c) propose to the CMA for its approval a suitably qualified, independent person (the Implementation Trustee), whose services will be paid for by providers and with a mandate, approved by the CMA, to act as chair of the Implementation Entity;

Figure 3.3 should be revised at step 2 to read “Comparison site **or third party** connects customer to his or her bank. Customer verifies identity to bank and authorises data to be shared”. At some point in or near the diagram a definition of “**third party**” to refer to “**providers of consumer credit products such as term loans**”.

Extend 3.90 to read as follows: “On the entity’s composition, at this stage we think it appropriate that the largest banks in GB and NI, as specified in paragraph 3.70 and to whom the requirement to adopt and maintain open API technology would apply, should be represented on it. Smaller banks and **third-party providers of consumer credit products** would be free to participate if they wished, and would then do so on the same terms as the banks which are being required to participate.”

### Amendments to defining text of proposed remedy at 9.1 (through Annex 1)

Our proposed amendments are shown in redline below.

“(a) Cross-cutting foundation measures to address important underlying causes of the AECs we have provisionally found in both PCA and SME banking markets:

- (i) Requiring the largest PCA and BCA providers to adopt and maintain common API standards through which they will share data with other providers and third parties, **including providers of consumer credit products**;
- (ii) Requiring the largest PCA and BCA providers to release and make available through open APIs, and to maintain as open data: product information on prices, charges terms and conditions, and customer eligibility criteria in the case of loans, for all PCA products, all relevant SME banking products **and all third party consumer credit products**; service quality indicators specified by the CMA; and appropriate reference data such as branch and ATM location, and branch opening hours.
- (iii) Requiring the largest PCA and BCA providers to release and make available through an open API Midata data sets, and subsequently to adopt and maintain open standards for APIs with full read and write functionality on PCA and BCA transaction data sets **and where relevant third-party consumer credit products**.

*(iv) Requiring PCA and BCA providers to display prominently core indicators of service quality, with the data collected and published biannually and made available as open data to third parties.*

*(v) A recommendation to the FCA to require PCA and BCA providers to publish and make available to others, including as open data, additional objective measures of service performance, encompassing their PCA, BCA and SME lending products and principal sales/delivery channels.*

*(vi) A recommendation to the FCA: to undertake a research programme, in conjunction with a selection of PCA and BCA providers to identify those prompts that are most likely to increase customer awareness of the potential benefits of switching and prompt customers to consider their banking arrangements; subject to the results of the research programme, to implement a series of prompts to be communicated to customers; consider the extent to which the content of prompts should be standardised; and to monitor the effectiveness of the prompts and redesign them as and when necessary.”*

*(vii) Requiring PCA and BCA providers to cooperate with the FCA in the research programme at (vii) above, including RCTs, to identify those prompts that are likely to be most effective in changing customer behaviour.*