

**LLOYDS
BANKING
GROUP**



LLOYDS BANKING GROUP PLC
CMA RETAIL BANKING MARKET INVESTIGATION
Response to Provisional Decision on Remedies

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LLOYDS BANKING GROUP PLC

Response to Provisional Decision on Remedies

1. INTRODUCTION AND SUMMARY

- 1.1 In its Provisional Decision on Remedies (“**PDR**”), the CMA has focused on remedies that will give PCA and SME customers the tools to compare providers' products and the confidence to switch provider if they want to do so. The cumulative effect of these remedies will transform how customers can engage with the market and shop around for current accounts and SME lending.
- 1.2 The remedies package will make it simpler, easier and quicker for customers to compare providers. Customers that decide to switch products will have more confidence that they are eligible beforehand and more confidence that the switch process will be hassle-free. This will make it easier for providers, including newer entrants with innovative business models, to attract customers, which will increase the existing pressure on providers to innovate and to improve the price and quality of the products and services they offer. These remedies will support the rapid technological innovation already taking place and the development of new business models.
- 1.3 The CMA’s proposed remedies package is likely to be challenging and costly for the industry to implement, and will result in a material cost to providers in both time and money. Many of the remedies will require major changes to existing systems. However, given the magnitude of the dynamic benefits the remedies could deliver across the market, the cost to industry is proportionate.
- 1.4 The challenge for the CMA and the industry is now to ensure that in the final design and implementation of the remedies, these opportunities and customer benefits are realised.
- 1.5 Many of the CMA’s remedies aim to change customer behaviour through new or improved communications, prompts and alerts. LBG has consistently emphasised the need for such remedies to be designed using behavioural testing in order to maximise their effectiveness. LBG therefore welcomes the CMA’s provisional decision to recommend to the FCA that it conduct such research. LBG will support this research and will provide further comments to the FCA to assist it in ensuring that its research successfully delivers on its potential.
- 1.6 There are five areas where the CMA’s remedies should be modified to increase their effectiveness and the benefits to customers.

Obliging providers to offer PCA overdraft eligibility checkers and certainty

- 1.7 The CMA has set out remedies that have the potential to increase confidence in the switching process for overdraft customers (remedies C6, C7 and C8). However, as currently proposed, there is a risk that progress with these remedies will be too slow. If this happens, the difficulties faced by some overdraft customers in switching will continue to damage perceptions and confidence in switching for all of these customers. This risk can be minimised by adapting the CMA’s remedies in two ways:
- (a) All providers should be required to offer an overdraft eligibility checker (remedy C7) as soon as possible (this should not be for the FCA to review; nor should it wait until after the introduction of open APIs). Providers will have the incentive to build in data from open APIs as it becomes available (as this will improve the accuracy of their eligibility checker, increasing customer satisfaction and

acquisition). The CMA should recommend that the FCA review the effectiveness of these overdraft checkers and how they can be made more effective following the introduction of APIs.

- (b) All providers should give Undertakings (or the CMA should adopt an Order) requiring customers to be given a firm decision on the overdraft they are offered before they switch accounts in all channels (rather than the current proposal for Bacs to accept Undertakings to work with CASS participants to achieve this – remedy C8). Providing overdraft certainty is important to give overdraft customers confidence in the switching process and to avoid any potentially poor experiences of switching. Asking Bacs to “work with CASS participants” will mean that certainty for overdraft customers does not come quickly enough or at all.

CASS should have stronger expertise in marketing and promoting CASS

- 1.8 CASS has successfully delivered a world class switching system. But customers' perceptions of the ease and speed of switching current accounts have lagged behind the quality of the new service. The CMA's proposal to increase awareness and confidence in CASS (remedy B2) are therefore welcome. However, there is a risk that the CMA's proposals will not lead to the high quality and creative marketing that is required to do this.
- 1.9 The CMA should include in its remedy two further recommendations to ensure that the promotion and marketing of CASS is successful:
- (a) the CMA should recommend to Bacs that the Independent Chair of the Management Committee is someone with a strong reputation, customer focus and marketing skills and that the additional members with specific skills and experience in marketing are appointed to the MC and Strategic Communication Group; and
- (b) the CMA should recommend that the CASS Management Committee or Strategic Communication Group should set an appropriate target for increasing awareness and confidence in CASS. The current HMT target to increase awareness of the name of the “Current Account Switching Service” itself may distort any funding away from increasing confidence in the actual experience of switching.

The CMA should require that an Industry Steering Group is established to ensure coordination across the SME initiatives

- 1.10 There are a significant number of linkages and a high level of inter-dependency between the remedies that affect SMEs and other actions and initiatives taken by both industry and Government.¹ These remedies and initiatives will only become truly effective if all the constituent parts come together as planned. There is a danger that a lack of coordination will put the effectiveness of the CMA's remedies at risk.
- 1.11 The CMA should therefore require that an Industry Steering Group with an Independent Chair is established. It should be the responsibility of industry to propose the appropriate governance arrangements for this group. However, the CMA may also consider recommending that the FCA help establish the group, given its responsibilities for monitoring implementation of the remedies.

¹ LBG's submission 'The interaction between the CMA's SME remedies and existing SME initiatives' of 2 March 2016

- 1.12 The Group should strike a sensible balance between over-arching, high-level, industry steering and oversight without introducing excessive bureaucracy and governance. To ensure the Group is effective, it must be trusted by industry, whilst also being an effective decision-making and implementation entity. As such, providers should nominate members to attend the Group, and other key stakeholders with a role in implementing the remedies could be permitted to observe to facilitate greater coordination.
- 1.13 The Independent Chair also has an important role. The Independent Chair should have strong SME experience, regulatory awareness and financial acumen. The Chair's responsibility would be to oversee the Industry Steering Group, facilitate effective decision-making and report back to interested stakeholders regularly on progress, including the FCA and HMT. Providers should provide assurances to fund the project management function to support the Group's activities, as they will benefit from the greater coordination of the implementation of the different initiatives. There are already similar models in SME banking, such as the Business Finance Taskforce or the Independent External Reviewer on Bank Lending Appeals.

The CMA needs to provide the right mechanisms to ensure preparatory work in advance of any Orders or Undertakings coming in to force

- 1.14 Formal requirements on providers (through an Order or Undertaking) are unlikely to come in to force before the end of 2016 at the earliest. However, the CMA states in the PDR that some remedies should be implemented soon after this date, which will in some cases require preparatory work in advance. For example, the CMA's first milestone for certain open data to be made available is in Q1 2017 (remedy A2).
- 1.15 Where such preparatory work is required in advance of an Order or Undertaking, the CMA needs to consider the appropriate mechanism to ensure relevant parties are incentivised or required to conduct such work, and should ensure that parties are provided with sufficient time to conduct that work. Even if any milestones occur after an Order has been adopted or Undertakings have been accepted, the CMA needs to ensure that parties are provided with sufficient time to conduct relevant work.

The CMA's remedies should apply to all providers, including the open API banking standard

- 1.16 The CMA proposes that many of its provisional remedies should apply to all PCA and BCA providers. However, it is seeking views on whether there should be a relatively low *de minimis* threshold for certain remedies (150,000 to 200,000 active PCAs and 20,000 to 25,000 active BCAs).² The CMA should not set a *de minimis* threshold and the remedies should apply to all providers.
- 1.17 It is in customers' interests that the remedies should apply to all providers; the remedies will be most effective with market-wide participation. It is important that remedies apply as widely as possible because of the potential damage from a small number of poor experiences on perceptions of the ease of shopping around and switching, and the need to ensure that no customers are excluded from the benefits of these remedies.
- 1.18 There is also a risk that millions of customers will not benefit from these remedies and will have an inferior experience compared to customers with other providers. For example, these excluded customers will find it harder to compare providers on price and service quality, or benefit from measure to help them manage their overdraft usage.

² PDR, footnote 696.

- 1.19 The CMA has proposed a *de minimis* threshold as a measure to ensure the cost of its remedies package is proportionate. The cost of these remedies should not be disproportionate to even the smallest start-ups. If the CMA decides there must be a *de minimis* threshold then it should be smaller than the current proposal. The CMA should also ensure these remedies apply to smaller providers when they grow beyond the *de minimis* threshold.
- 1.20 The CMA has chosen a much higher threshold for the open API banking standard (remedy A1), with the consequence that more than 6 million PCA customers would currently be excluded. This risks excluding some customers from the benefits of open data and the ability to use comparison tools. The CMA should ensure that all the main providers, including TSB, Co-operative Bank and Clydesdale Bank, are within the scope of this remedy.
- 1.21 In the remainder of this response, LBG provides specific detailed comments on each of the remedies.³

³ LBG has adopted the remedy numbering set out in PDR, paragraph 9.1.

2. OPEN API BANKING STANDARD (REMEDIES A1 TO A3)

Effectiveness of remedy

- 2.1 World class application programming interface ("**API**") functionality is a necessary and critical input to all of the CMA's remedies relating to the creation of new comparison tools and functionality in both business and personal current accounts. It will also enable new business models and technologies to develop and compete with existing providers and services. The CMA's remedies improve the governance of an Open API banking standard and accelerate the timetable for delivering full read/write functionality of customer transaction data. Together, these will ensure that the Open Banking API programme will avoid the risks and potential mistakes which otherwise appeared likely.

Issues relating to design, effectiveness, proportionality, cost and timing

- 2.2 The design of this remedy still leaves open the risk that an Open Banking API Standard will fall short of its potential, and the CMA should therefore go further in its proposed remedy:

- (a) **Participating providers and *de minimis*.** There is a risk that over 6 million customers will be excluded from the benefits of open APIs that enable them to compare prices using their own data (remedy A3) because the CMA is proposing to limit the scope of this remedy to the six largest providers. The CMA states that it will rely on commercial pressure and the requirements of the Payment Services Directive ("**PSD2**") to drive compliance by smaller providers.⁴ This is unlikely to be effective, and is in contrast with the CMA's approach to a *de minimis* threshold for its remedies more generally (as set out in footnote 696). Whilst there is a commercial incentive for a provider to make data available to allow potential customers to compare its prices and products alongside others (remedy A2), there is not a commercial incentive to allow existing customers to use their data to compare the prices of other providers (remedy A3). Relying on implementation of PSD2 may further delay the availability of comparison tools for all customers. The CMA should amend its proposal in the following way:
- (i) the CMA should not apply a *de minimis* threshold to the Open Banking API Standard. However, if the CMA does decide to apply a *de minimis* threshold then this should be substantially lower than its current recommendation. As a minimum, the CMA should ensure that all the main providers, including TSB, Co-operative Bank and Clydesdale Bank, are within the scope of this remedy; and
- (ii) if the CMA does adopt a *de minimis* threshold, then the CMA should recommend to the Implementation Entity that any providers below the *de minimis* thresholds that choose to adopt the relevant standards should not be allowed to exclude their customers from access to personalised price comparison tools. This means that providers that adopt the standards must be required to provide both open data (remedy A2) and read/write access to customer transaction data (remedy A3).
- (b) **Appointment of Independent Chair.** The Chair of the Implementation Entity will be in a pivotal position. The Chair therefore needs to be someone with relevant senior experience and a strong reputation to take decisions where there is no consensus and to drive through requirements on providers, given the potential for debates and disagreements between members. The CMA proposes to handle

⁴ PDR, paragraph 3.64

the appointment of the Independent Chair as it would that of a Monitoring or Divestment Trustee.⁵ Such a process does not normally select from a pool of candidates that meet the demanding criteria for the Independent Chair. A different process is therefore required that is able to search for a candidate with the appropriate seniority, experience and reputation. To achieve a timely implementation, providers should appoint the Independent Chair on an interim basis soon after the CMA's final report is published, subject to the CMA agreeing in principle. The appointment can then be confirmed by the CMA once the Order is in place.

- (c) **Scope of Implementation Entity.** Open Banking is wider in scope than the CMA's remedy for PCAs and BCAs, and there will be important linkages between product areas. In particular, there is an opportunity to leverage the capabilities and governance of the Implementation Entity to ensure the development of Open Banking more generally than within the reference markets. The CMA should recommend that HMT consider giving responsibility for Open Banking across all product areas to the Implementation Entity, and requiring providers to agree to be bound by the decisions of the Independent Chair in these other product areas.
- (d) **Removal or reduction of redactions on customer transaction-level data.** The redaction of all third-party data on statements has limited the effectiveness of midata in providing a full and accurate picture of their outgoings. Some of the redactions affect the ability of a permitted third-party to calculate, for example, PCA-driven rebates on utility expenditure. The Implementation Entity should therefore seek to reduce the extent of redactions as much as possible, subject to meeting data protection requirements. As such, the Implementation Entity should engage with the ICO and be aware of the impending European General Data Protection Regulations.

2.3 The CMA envisages the first milestone for the provision of data to be the end of Q1 2017 (remedy A2).⁶ However, the establishment of the Implementation Entity and the Order requiring providers to be bound by the decisions of the Independent Chair are unlikely to be completed before the end of 2016 given the CMA's current timescales. Without a mechanism to make decisions on the required standards prior to the establishment of the Implementation Entity, it is unlikely that such a timetable could be met if a consensus does not quickly emerge. The CMA should prioritise the establishment of the Implementation Entity and the appointment of the Independent Chair and make progress in achieving them prior to its Final Decision. It should also seek assurances from providers to use their best endeavours to achieve the CMA's timetable and agree to be bound by the decisions of the Independent Chair in advance of a formal Order requiring them to do so.

Answers to specific questions raised by the CMA in the PDR

2.4 The CMA has asked for views on:

- (a) the implementation timetable for the provision of PCA and BCA transaction data.⁷ Accelerating the Open Banking Working Group ("**OBWG**") timetable for the availability of read/write transaction data from Q1 2019 to Q1 2018 will be challenging for the industry to meet. However, making this data available is critical to the success of the CMA's remedies. LBG supports this timetable and will

⁵ PDR, paragraph 3.89

⁶ PDR, paragraph 3.79

⁷ PDR, paragraph 3.84

commit to use its best endeavours to achieve it, working with the Implementation Entity;

- (b) structure and membership of the Implementation Entity.⁸ LBG supports the CMA's proposals set out paragraphs 3.87 to 3.93 in principle, subject to the points above regarding the early participation of providers and the criteria for selecting the Independent Chair. Given the need to establish the Implementation Entity quickly, LBG is willing to have further discussions when a specific proposal emerges so that the design of the Entity can be set out in the CMA's Final Report; and
- (c) costs of the remedy.⁹ The CMA's estimate of the costs is reasonable, and proportionate given the benefits of prompt implementation of this remedy.

⁸ PDR, paragraphs 3.92 and 3.94

⁹ PDR, paragraph 3.102

3. SERVICE QUALITY INFORMATION (REMEDIES A4 AND A5)

Effectiveness of remedy

- 3.1 Service quality is important for customers and needs to be part of any comparison tool to allow customers to make informed decisions about providers, and to help focus competition on service quality as well as on price and product features. The CMA's remedies to require providers to publish and make available objective service data through open APIs (remedy A5), in addition to transaction data (remedy A3), will create the ecosystem for financial technology firms and existing providers to develop PCA comparison and other tools, including both price and service.

Issues relating to design, effectiveness, proportionality, cost and timing

- 3.2 The CMA will also require providers to prominently display the results of satisfaction surveys in branches, on websites, statements and product literature (remedy A4). Such satisfaction metrics are flawed:
- (a) they are based on averages and not personalised to the customer (e.g. channel usage, account usage and turnover, business sector, business size);
 - (b) there are problems with definitions of different service elements (e.g. differences in relationship management services between brands and for businesses of different size); and
 - (c) simple customer satisfaction metrics are not an objective measure of quality and depend on price and external factors, such as brand and media coverage.
- 3.3 The CMA should therefore recommend to the FCA that it undertakes work to assess the ongoing effectiveness of this remedy in helping customers to make correct decisions about the quality of a provider, and to enhance its effectiveness. This review should consider moving to metrics developed by comparison tools based on objective service metrics as these emerge as an alternative to satisfaction.
- 3.4 LBG agrees with the CMA that the additional service quality indicators should be predominantly sourced from providers' own data¹⁰ given these indicators are objective measures. The FCA is also best placed to determine the precise measures to be used¹¹ following an assessment of what customers would find most helpful. This assessment could rely on a range of methods including lab tests and surveys.

Answers to specific questions raised by the CMA in the PDR

- 3.5 The CMA has asked for views on:
- (a) whether alternative measures are suitable (either instead of, or in addition to, willingness to recommend).¹² LBG has general concerns with using satisfaction metrics described above. Given these concerns, LBG does not propose any alternative metrics;
 - (b) using independent survey agencies to collect satisfaction metrics.¹³ Using a single external agency is appropriate. The current BBI survey could be adapted for the

¹⁰ PDR, paragraph 3.170

¹¹ PDR, paragraph 3.191

¹² PDR, paragraph 3.115

¹³ PDR, paragraph 3.168

purpose of the CMA's remedy, although there are also other options such as the Charterhouse survey which the CMA could consider. The CMA should decide on an appropriate third party for the PCA survey. However, PCA providers should be given the opportunity to review the methodology and results of each survey to ensure that results are representative and reliable, and the external party should be required to respond on any issues raised. All parties (other than those below any *de minimis* threshold) should be required to contribute to the funding of both surveys in proportion to their market shares; and

- (c) views on reducing the costs of the remedy:¹⁴
- (i) the demand for particular service metrics will evolve as comparison tools learn more about what customers want and develop their own metrics, and as the services themselves evolve. This also means that some or all of the metrics may not be required by comparison tools in future, and so the costs of providing data can be reduced by removing the requirement for redundant metrics. The CMA proposes to recommend to the FCA that it implements and monitors the requirement to provide objective service data, with periodic review,¹⁵ but proposes that there should not be a sunset clause for this remedy.¹⁶ It is therefore important that this remedy is subject to the CMA's usual remedy review and that the FCA's periodic review of this remedy includes reducing any redundant requirements to provide data. This would be consistent with the Government's on-going consultation on the Better Markets Bill, which suggests giving the CMA powers to "revisit remedies imposed following market investigations where they are shown not to be working".¹⁷ A similar principle could be included in the CMA's remedy to justify a periodic review by the FCA even if market conditions have not substantially changed but the remedy, or some parts of it, are no longer effective; and
 - (ii) the CMA proposes that the core indicators of service quality will be displayed in a manner specified by the CMA. In order to ensure the costs of this remedy are proportionate, the CMA should consider providing flexibility to providers on where this information is displayed, subject to meeting the CMA's criteria it must be displayed prominently. As such the CMA should offer guidelines on where information should be displayed, rather than prescriptive instructions.

¹⁴ PDR, paragraph 3.199

¹⁵ PDR, paragraph 3.191

¹⁶ PDR, paragraph 3.192

¹⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525462/bis-16-253-options-to-refine-competition-regime.pdf, (May 2016) para. 55

4. **CUSTOMER PROMPTS (REMEDIES A6 AND A7)**

Effectiveness of remedy

- 4.1 LBG has supported the need for behavioural testing of remedies that aim to change customer behaviour from the start of this investigation, and it has trialled a range of prompts and other alerts during the course of the CMA's investigation (see LBG's submission 'Trials design and extended report' of 5 April 2016). These provided evidence of the effectiveness or otherwise of different approaches and demonstrated the need to iterate and develop the design of communications to customers. The CMA's proposed recommendation that the FCA trial customer prompts (remedy A6) and requirement for providers to cooperate in trials (remedy A7) will ensure that the final remedies are as effective as possible at prompting customers to change their behaviour.

Issues relating to design, effectiveness, proportionality, cost and timing

- 4.2 It is important that the FCA now takes forward this programme of trials and devotes sufficient resources to ensure they are comprehensive and delivered to the CMA's timetable. LBG is willing to support the trial programme and will provide its views separately to the FCA about how to ensure the effectiveness of this programme.
- 4.3 The CMA is proposing an Order to require PCA and BCA providers to cooperate with the FCA in its trials, but is also considering seeking Undertakings.¹⁸ Although providers will be required to cooperate if asked by the FCA, there is a risk that some providers will make themselves less likely to be selected by failing to commit sufficient resource to the trialling process. The CMA should therefore recommend to the FCA that there is a fair allocation of the trialling burden across providers of all sizes.

¹⁸ PDR, paragraph 3.221

5. CASS GOVERNANCE (REMEDIES B1 AND B3)

Effectiveness of remedy

- 5.1 The CMA has proposed reforms to the corporate governance of CASS to improve its transparency and decision-making, accompanied by a recommendation to HMT to provide additional powers to the PSR for it to assume regulatory oversight of CASS.¹⁹
- 5.2 LBG supports this as an effective set of remedies. Appropriate oversight and governance will ensure that the CASS service is run and developed effectively in the interests of customers in the future. Greater transparency, customer focus and diversity of views resulting from these changes will strengthen the effective delivery of enhancements to the CASS service.²⁰

Issues relating to design, effectiveness, proportionality, cost and timing

The proposed changes to CASS governance are appropriate (Remedy B1)

- 5.3 The corporate governance of CASS should be strengthened by the appointment of additional non-bank members to the Management Committee ("**MC**"), each having full membership rights. This should be in addition to the existing 26 banking groups. The non-bank members should account for up to 30% of votes on the MC, to provide an appropriate balance between bank and non-bank members. The voting majority should remain 75%. The additional non-bank members should include representatives of customer groups and intermediaries,²¹ and (as explained in the LBG Comments on Remedies and Responses to CMA Questions) should include members with marketing expertise.²² Skills and experience in marketing, in particular in the MC and Strategic Communication Group, are vital to ensure the effective delivery of remedy B2.
- 5.4 LBG agrees that the MC should have an independent chair.²³ LBG considers that the key criteria for this role are a strong reputation, customer focus and marketing skills. The Independent Chair should be selected by the MC, subject to approval by the CMA (or, in future, the PSR).
- 5.5 The non-bank members of the MC should be entitled to appoint representatives with relevant expertise to the Operations and Governance Committee and the Strategic Communication Group.²⁴
- 5.6 LBG welcomes the proposal to improve transparency in connection with the MC's decisions and decision-making processes.²⁵ Regular publication of the MC's minutes and CASS's performance in achieving its target KPIs will strengthen incentives for the MC to ensure that CASS is run in the interest of customers. Any confidential information should be redacted from these documents prior to publication.

¹⁹ PDR, figure 4.2

²⁰ PDR, paragraph 4.27

²¹ PDR, paragraph 4.44

²² LBG Response to Remedies Notice (25 November 2015), Section 1, A, para 12.2(a)

²³ LBG Response to Remedies Notice (25 November 2015), Section 1, A, para 12.2(a)

²⁴ The PDR also refers to the Technical Redirection Group. However, this is not a standing committee and will only meet until the extension of CASS redirection has been implemented.

²⁵ PDR, paragraph 4,48

The PSR should have oversight of CASS (Remedy B3)

The CMA is proposing to make a recommendation to HMT to provide the PSR with additional powers to assume regulatory oversight of CASS.²⁶ As explained in LBG's Response to the Provisional Findings and Remedies Notice, LBG considers the PSR to be an appropriate regulator to oversee CASS.²⁷ This is appropriate subject to HMT carefully considering whether the PSR currently has sufficient powers, and granting it additional powers if necessary.

Implementation and monitoring

- 5.7 Seeking Undertakings from Bacs to implement changes to the CASS corporate governance²⁸ is an appropriate method of implementing this remedy. LBG agrees that in preparation for implementation, Bacs should review its own organisational structure and implement any necessary changes.²⁹
- 5.8 LBG agrees with the proposed level of oversight of CASS by the PSR.³⁰ Until HMT provides the PSR with the necessary additional powers to assume regulatory oversight, LBG agrees that the CMA would be the appropriate regulator to monitor compliance with this remedy.³¹
- 5.9 The CMA expects that implementation of changes to CASS's corporate governance will be achieved within six months of the CMA's acceptance of Undertakings from Bacs.³² LBG considers that this time period is appropriate and achievable.

²⁶ PDR, paragraph 4.68

²⁷ LBG Response to Remedies Notice (20 November 2015), Section A, para 8; Section C, para 1.5(b)

²⁸ PDR, paragraph 4.66

²⁹ PDR, paragraph 4.45

³⁰ PDR, paragraph 4.64

³¹ PDR, paragraph 4.72

³² PDR, paragraph 4.67

6. INCREASING AWARENESS AND CONFIDENCE IN SWITCHING (REMEDY B2)

Effectiveness of remedy

- 6.1 The CMA is proposing to seek Undertakings from Bacs to work with CASS participants to increase customer awareness of and confidence in the switching process.³³ This is to be implemented through sustained investment over time into a long-term promotional campaign.³⁴
- 6.2 CASS currently works well operationally, and will be further enhanced by the CMA's other remedies, such as extended redirection and changes to its corporate governance.³⁵ However, LBG agrees that customer awareness of and confidence in CASS can be improved, and that such a measure will support the effectiveness of the other current account switching remedies.³⁶
- 6.3 There is a risk that the CMA's proposals will not lead to the high quality and creative marketing that is required to increase awareness and confidence. The CMA should include in its remedy two further recommendations to ensure that the promotion and marketing of CASS is successful:
- (a) the CMA should recommend to Bacs that the Independent Chair of the Management Committee is someone with marketing skills and the non-bank members of the Strategic Communication Group should have marketing expertise. CASS should engage external marketing consultancies where relevant, in order to maximise the effectiveness of its campaigns; and
 - (b) the CMA should recommend that HMT consider a proposal from the Independent Chair (to be made within three months of his appointment) as to the appropriate target for increasing awareness and confidence in CASS. The current target to increase awareness of the "Central Account Switching Service" itself may distort any funding away from increasing confidence in the actual experience of switching.

Issues relating to design, effectiveness, proportionality, cost and timing

Appropriate targets are required

- 6.4 LBG agrees that the focus should be on communicating to customers the security and convenience of using CASS to switch and addressing any negative perceptions of the process.³⁷ Any awareness and confidence targets must be relevant and appropriate. The current HMT awareness and confidence targets were set before CASS was launched, and should now be reviewed. For example, the current target to increase awareness of the "Central Account Switching Service" itself may distort any funding away from increasing confidence in the actual experience of switching. Moreover, there is a risk that excessive marketing of CASS will crowd out provider and product-specific marketing, which is also important in increasing customer engagement.
- 6.5 Once CASS governance has been reformed, the MC or Strategic Communication Group should consider what an appropriate target should be and the CMA should recommend that HMT consider this. It may be beneficial to have different targets by customer group

³³ PDR, figure 4.6

³⁴ PDR, paragraph 4.198

³⁵ Remedies B1 and B4.

³⁶ PDR, paragraph 4.184

³⁷ PDR, paragraph 4.194

(e.g. consumers and SMEs). Transitional annual targets should also be set as a glide path towards any long-term targets because, as the CMA recognises, it takes time to raise awareness and confidence.³⁸

Focus of CASS promotional activity

- 6.6 LBG agrees that mass promotional activity is unsuitable to raise awareness of the benefits or rewards of switching as explained in LBG's Response to the Remedies Notice, as these are customer-specific and there is a risk that mass communications will mislead and damage customer trust.³⁹ In any event, personalised comparisons will become available following implementation of the CMA's Foundation Remedies.
- 6.7 As previously explained to the CMA, future CASS promotional activity must be informed by third party marketing expertise.⁴⁰ The CMA and third parties have recognised that more targeted and effective promotion is required to maximise the effectiveness of promotional spend.⁴¹ This should include the use of regional trials and different campaigns/messages for different customer groups.
- 6.8 It will only be appropriate for Bacs⁴² to manage CASS promotional activity if it takes marketing expertise on board, as explained above and in connection with remedy B1.
- 6.9 LBG agrees that future CASS promotional activity should:
- (a) reflect any operational changes made to CASS (including as a result of the CMA's other remedies);
 - (b) align with the CMA's measures to increase customer awareness of the potential benefits of switching and prompt further investigation of other providers;⁴³ and
 - (c) continue to target customer groups with lower awareness of CASS, and those who could gain most from switching - e.g. SMEs, overdraft users, customers with high credit balances, the young and the financially disadvantaged.⁴⁴ The customer groups to be targeted should be reviewed annually, based on insight from CASS awareness and confidence metrics.

Implementation and monitoring

- 6.10 LBG agrees that this remedy can be implemented by seeking Undertakings from Bacs.⁴⁵ The proposed changes to CASS corporate governance and oversight will facilitate the implementation of this remedy.⁴⁶ LBG agrees that the CMA should monitor this remedy, until the PSR assumes oversight of CASS.⁴⁷

³⁸ PDR, paragraph 4.197

³⁹ LBG Response to Remedies Notice (25 November 2015), Section B, para 2.2; PDR, 4.193

⁴⁰ LBG Response to Remedies Notice (25 November 2015), Section B, para 2.2(b)

⁴¹ PDR, paragraphs 4.204-4.206, 4.225

⁴² PDR, paragraph 4.218

⁴³ However, LBG does not consider that PDR 4.196 (promoting the benefits of switching via a mass advertising campaign following the occurrence of a data breach or data security issue) provides an appropriate example for CASS promotional activity.

⁴⁴ PDR, paragraphs 4.202-4.203

⁴⁵ PDR, paragraph 4.216

⁴⁶ PDR, paragraph 4.217

⁴⁷ PDR, paragraph 4.218

- 6.11 LBG does not object to the continuation of the CASS funding mechanism based on market share. However, it is essential to set a cap on total spending by CASS participants on CASS promotion. This should be set at £10m p.a., with a contingency fund of an extra £5m p.a. to be utilised if the CASS Management Committee can demonstrate to the PSR (based on research evidence) that such additional spend will materially increase awareness and confidence.
- 6.12 LBG agrees that a sustained long-term promotional campaign is required.⁴⁸ However, the remedy should not be perpetual, and should be subject to a mandatory review by the CMA 5 years after the CMA's overall package of remedies has been fully implemented.

⁴⁸ PDR, paragraph 4.197

7. EXTENSION OF CASS REDIRECTION PERIOD (REMEDY B4)

Effectiveness of remedy

- 7.1 The CMA has proposed extending the CASS redirection period beyond the current 36 months to provide perpetual redirection for customers as long as they have had a redirected payment within the preceding 13 months.⁴⁹
- 7.2 LBG supports this remedy, as it will improve the quality of CASS and customers' confidence in the switching process. This measure is a proportionate and effective solution.
- 7.3 The CMA also considered an alternative approach of requiring an unlimited redirection period.⁵⁰ LBG believes that the proposed remedy is preferable to unlimited redirection, as Bacs research shows that it will be effective⁵¹ and it minimises the operational risks to the payment systems and to financial stability identified by the Bank of England.⁵² However, as the redirection period will potentially be perpetual, the remedy may result in multiple redirections where customers have switched on multiple occasions. In these circumstances, there is a risk that the regulatory requirements for the timings of certain payments may not be met. The CMA should consider with other regulators (including the FCA and PSR) how this potential conflict with other regulations can be addressed.

Issues relating to design, effectiveness, proportionality, cost and timing

- 7.4 LBG agrees that inviting Bacs to provide Undertakings would be the most appropriate method of implementing this remedy.⁵³ As Bacs is already developing this proposal, it is in the best position to provide appropriate Undertakings.
- 7.5 LBG agrees that the CMA should monitor compliance with this remedy.⁵⁴ Once the PSR assumes regulatory oversight of CASS, it would be appropriate for the PSR to assume the responsibility for monitoring compliance.
- 7.6 The CMA has proposed implementation of the extended redirection period to be required within six months of accepting Undertakings from Bacs. LBG considers that this is achievable. Any Undertakings should include flexibility for the CMA to extend the deadline for compliance. This will avoid redirection errors and negative effects on customer confidence in CASS which could result from seeking to implement the required measures within an unreasonably short deadline.
- 7.7 LBG estimates that it will cost c. [£2-5m] to implement this remedy.

Remedies not pursued by the CMA

- 7.8 The CMA has provisionally decided not to implement account number portability ("**ANP**"). LBG agrees with this approach and, as stated in LBG's Response to the Remedies Notice⁵⁵, the very substantial cost and complexity of developing ANP would be unnecessary and disproportionate. Implementation of ANP would also create additional risks, such as the

⁴⁹ PDR, figure 4.4

⁵⁰ PDR, paragraph 4.87

⁵¹ PDR, paragraph 4.86

⁵² PDR paragraphs 4.87-4.88

⁵³ PDR paragraph 4.123

⁵⁴ PDR paragraph 4.126

⁵⁵ LBG Response to Remedies Notice (25 November 2015), page 42.

potential for fraud.⁵⁶ These factors would exert a negative pressure on pricing and innovation. Even if ANP were successfully implemented, LBG agrees that there is insufficient evidence that it would be more effective than the proposed extended redirection period.⁵⁷

7.9 LBG agrees with the CMA's provisional decision not to pursue the partial switch guarantee.⁵⁸ LBG considers that the proposed remedies package will be effective, and the incremental benefits of the partial switch guarantee do not justify its inclusion. LBG has previously noted the potential to confuse customers by having two accounts with payments in/out of each.⁵⁹ The difficulties in implementing a defined time period for completing the switch is also an important consideration.⁶⁰ The complexities and costs explained by Bacs⁶¹ are further evidence that inclusion of this remedy would not be justified.

7.10 LBG notes that the CMA does not propose to require the automatic transfer of continuous payment authorities during the CASS switching process on the basis that it would not be proportionate.⁶² LBG considers that this could be a positive enhancement to CASS, as 1.5 million LBG customers have incorrect card details on their accounts.⁶³ LBG considers that the CMA should recommend that the PSR keep this question under review when it has assumed oversight of CASS and when the CMA's other remedies have been implemented. This would require the engagement of the card schemes (such as Visa and MasterCard) as well as merchants.

⁵⁶ PDR, paragraph 4.111

⁵⁷ PDR, paragraph 4.113

⁵⁸ PDR, paragraph 4.239

⁵⁹ LBG Response to Remedies Notice (20 November 2015), Section C, para 3.5

⁶⁰ PDR, paragraph 4.233

⁶¹ PDR, paragraph 4.232

⁶² PDR, paragraph 4.262

⁶³ PDR, footnote 392

8. REQUIRING TRANSACTION HISTORY TO BE MADE AVAILABLE (REMEDY B5)

Effectiveness of remedy

- 8.1 As LBG explained in response to the Remedies Notice, LBG supports providing customers with access to their transaction histories as they are an important record,⁶⁴ and the proposed remedy could help to address some of the barriers to switching identified by the CMA in its Provisional Findings. The proposed remedy, in conjunction with the CMA's other remedies, will effectively reduce these barriers. The proposed 5 year period for retaining/providing customer transaction history is appropriate and proportionate, as banks are already required to retain data for this period to comply with the Money Laundering Regulations.
- 8.2 Whilst the CMA considers the proposed remedy to be a simpler and less onerous solution than porting transaction histories as part of the CASS switching process (as suggested by LBG),⁶⁵ the remedy should be considered in the context of the other remedies proposed by the CMA. In particular, the creation of APIs will create common standards for sharing data between providers, which is likely to make the porting of transaction histories between providers much easier, whilst also helping to guard against the potential risks of identity theft and other fraud which the retention model presents. Accordingly, to the extent that the remedies package creates other viable solutions in the near future which are equally or more effective and less onerous for providers, LBG would encourage the CMA to keep this remedy under review.

Issues relating to design, effectiveness, proportionality, cost and timing

- 8.3 LBG agrees that customers should be able to receive their transaction history at the time of closing their account (on an opt-out basis) free of cost.⁶⁶ Following closure of the account, providers should be entitled to charge the same fee as would be payable under the Data Protection Act 1998 (which is currently £10)⁶⁷ on the basis that the customer would already have received (or had the opportunity to receive) this data free of cost at the time of account closure.
- 8.4 The CMA has proposed that all PCA and BCA providers must comply with this remedy.⁶⁸ Consistent with the Terms of Reference and the AEC identified, the Final Order should clarify that the remedy should only apply to customers who were SMEs at the time of account closure, and not to larger BCA customers.
- 8.5 A key issue to consider, particularly in the context of BCAs, is the potential difficulty in confirming the identity of individuals requesting access to their transaction histories, which creates a fraud risk. This is because the names of an SME, its directors and the individuals with rights to access its BCA change over time, whilst there is significant natural churn amongst SMEs. Accordingly, verifying the identities of individuals may not be a straightforward task, particularly where the request is made some time after the account has been closed. Whilst this should not dissuade the CMA from adopting this remedy, providers should be given sufficient time to conduct their own identification checks before any transaction history is disclosed.

⁶⁴ LBG Response to Remedies Notice (25 November 2015), Part A, para 9.1

⁶⁵ LBG Response to Remedies Notice (25 November 2015), Part A, para 9.2

⁶⁶ PDR, paragraph 4.158

⁶⁷ PDR, paragraph 4.159

⁶⁸ PDR, figure 4.5

- 8.6 LBG already has a policy of sending statements following account closure and customers can request copies following closure. LBG considers that the remedy should require the provision of hard copy statements, and should only extend to electronic format to the extent that a provider offers electronic statements to its current customers. This will avoid the costs involved in creating a secure electronic statement capability exclusively for former customers. These costs may be substantial and disproportionate for providers with legacy IT systems.
- 8.7 In relation to compliance, LBG agrees with the CMA that this could involve banks providing an annual compliance statement to the CMA.⁶⁹

Timing considerations

- 8.8 The CMA expects this remedy to be implemented within 6 months of the CMA's Final Order. LBG considers that this timescale is achievable as providers are already required to retain transaction data for five years to comply with the Money Laundering Regulations 2007.⁷⁰
- 8.9 The CMA also proposes that transaction histories would need to be provided no later than one week after the customer's request, subject to the customer providing the necessary identity/other documentation required by the bank.⁷¹ The requirement should be clarified to ensure that transaction histories should be provided within a defined period from the date on which the customer has provided the necessary information required by the bank to conduct its identity checks (rather than one week after the customer's request). LBG considers that a seven working day period would be appropriate based on the time required to extract data from IT systems, and that the providers should be required to meet the target for at least 95% of requests. Transaction histories would be "provided" at the time they were posted.

Answers to specific questions raised by the CMA in the PDR

- 8.10 The CMA proposes that the remedy should apply to all PCA and BCA providers, but is seeking views on whether there should be a *de minimis* threshold (for example, 150,000 to 200,000 active PCAs and 20,000 to 25,000 active BCAs).⁷²
- 8.11 In order to avoid competitive distortions and, importantly, to avoid creating confusion amongst customers, the remedy should apply to all PCA and BCA providers. If customer transaction histories are not provided by certain small providers or start-ups, for example, this could create gaps in a customer's transaction history, which would affect the switching process and deter switching to and from smaller providers. As noted above, all banks are already under an obligation to keep this data, so the cost of compliance with this remedy will be low.

⁶⁹ PDR, paragraph 4.174

⁷⁰ PDR, paragraphs 4.178-4.179

⁷¹ PDR, figure 4.5

⁷² PDR, paragraph 4.173

9. **OVERDRAFT ALERTS (REMEDIES C1 AND C3)**

Effectiveness of remedy

- 9.1 LBG responded to the CMA’s Provisional Findings that additional behavioural remedies should have been considered to change how customers behave with their existing account, and suggested an opt-in to balance alerts as an additional remedy.⁷³ The results of LBG’s trial of opting customers into alerts showed that some customers could save up to 25% of their overdraft fees. This impact was similar to that reported by the FCA⁷⁴ for mobile alerts (in combination with mobile banking) and, when combined with additional interventions around customer communications and statements, the cumulative effects could be even bigger.
- 9.2 The CMA’s remedy to require PCA providers to enrol all their customers automatically in alerts to inform them of unarranged overdraft usage (remedy C1) will have a dramatic effect on unarranged overdraft usage for the 24% of customers that use unarranged overdrafts. There may also be scope to learn from best practice across the market and improve the existing range of unarranged overdraft prompts offered by providers. The CMA’s remedy to require the FCA to identify, research, test and, as appropriate, implement measures to increase overdraft customers’ engagement with their overdraft usage and charges (remedy C3) is therefore an important next step after auto-enrolment is successfully underway that will ensure unarranged overdraft alerts maximise their effectiveness.

Issues relating to design, effectiveness, proportionality, cost and timing

- 9.3 As with customer prompts (remedies A6 and A7), it is important that the FCA takes forward this programme of trials and devotes sufficient resources to ensure they are comprehensive and delivered to the CMA’s timetable, and that there is a fair burden of requests to support trialling across providers. LBG is willing to support the trial programme and will provide its views to the FCA about how to ensure the effectiveness of this programme.

Answers to specific questions raised by the CMA in the PDR

- 9.4 The CMA has asked for views on:
- (a) when the alert should be triggered and sent.⁷⁵ LBG agrees with the CMA’s proposal for alerts. In particular:
 - (i) alerts should only be sent at the start of an unarranged overdraft episode. However, the use of repeated alerts should be investigated further by the FCA; and
 - (ii) for payments that are not scheduled (e.g. debit cards), the requirement should mean that a provider cannot charge for the use of an unarranged overdraft facility until it has sent at least one unarranged overdraft alert. The CMA is also considering an alternative approach where a provider does not charge for the use of an unarranged overdraft facility in any day where it has not sent at least one unarranged overdraft alert. This alternative

⁷³ LBG Response to Remedies Notice (20 November 2015), paragraph 9

⁷⁴ PDR, paragraph 5.14

⁷⁵ PDR, paragraph 5.64

approach is not appropriate as providers are only required to send an alert at the start of an episode of unarranged overdraft usage;⁷⁶ and

- (b) LBG agrees that the requirement that providers comply with the Order within six months⁷⁷ is a reasonable timescale for implementation.

⁷⁶ PDR, paragraph 5.63

⁷⁷ PDR, paragraph 5.76

10. **GRACE PERIODS (REMEDY C2)**

Effectiveness of remedy

- 10.1 The CMA's proposed remedy is to require all PCA providers to implement a minimum grace period during which PCA customers may avoid unarranged overdraft charges by adding sufficient funds to their account.⁷⁸ PCA providers must also communicate the grace period cut-off to customers via alerts.⁷⁹
- 10.2 LBG supports this remedy. The remedy, in combination with overdraft alerts (remedies C1 and C3), will be effective in helping customers to manage their unarranged overdraft usage. In particular, communicating the grace period cut-off to customers will make overdraft alerts more effective by giving customers a window to take action and avoid unarranged overdraft charges.

Issues relating to design, effectiveness, proportionality, cost and timing

- 10.3 The CMA has provisionally decided that the grace period should apply to all charges relating to unarranged overdrafts including paid items, debit interest, daily and monthly charges.⁸⁰ This is an appropriate metric that will help ensure customers have the opportunity to take action to avoid all charges relating to unarranged overdraft usage. It is also appropriate to exclude unpaid items from this definition, which is covered by existing voluntary retry periods across the market.

⁷⁸ PDR, paragraph 5.98

⁷⁹ PDR, paragraph 5.122

⁸⁰ PDR, paragraph 5.131

11. MONTHLY MAXIMUM CHARGE (REMEDIES C4 AND C5)

Effectiveness of remedy

- 11.1 The CMA's proposed remedy is for providers to publicise the Maximum Monthly Charge ("MMC") with customers (remedy C4). Communicating the MMC could be an effective way to engage unarranged overdraft customers, but this is not necessarily the case and there may be negative impacts. For many customers that do not use unarranged overdrafts, or are light users, the MMC may not be relevant. Even for heavy unarranged overdraft customers, the MMC could potentially confuse customers or lead them to ignore other information depending on how it is used. Providers may re-price unarranged overdrafts to reduce the MMC and increase average fees.
- 11.2 The only way to find out how the MMC can be effective, and that it does not have any negative impacts on customer understanding, is to use targeted trials and behavioural tests of different communications. The CMA therefore proposes recommending to the FCA that it undertakes work to assess the ongoing effectiveness of the MMC and consider whether measures could be taken to further enhance its effectiveness (remedy C5).⁸¹ The CMA should recommend that this review looks at both customer behaviour as well as any adjustments to pricing behaviour.
- 11.3 However, the CMA proposes that it is left to the FCA to decide on the appropriate timing of any research.⁸² Given the risk of unintended consequences of publicising the MMC, the CMA should recommend that the FCA undertakes tests of the MMC in parallel with its introduction so that any adverse impacts are detected at an early stage.

Issues relating to design, effectiveness, proportionality, cost and timing

- 11.4 The CMA has provisionally decided that the calculation of the MMC would include interest for the amount borrowed beyond the arranged limit, as well as monthly charges, daily charges, paid and unpaid item fees and all other fees applying in the above circumstances.⁸³ This is an appropriate metric that avoids the risk of providers increasing unarranged overdraft interest rates without affecting the MMC.
- 11.5 However, the CMA will need to explain how interest is to be included in the calculation of the MMC as this will depend on the value of the unarranged borrowing, which is not explicitly limited and will depend on how much a customer borrows and for how long. An alternative metric would be to include in the MMC only interest paid that is above the rate of arranged borrowing, which would be both simpler to calculate for most providers and avoid the risk of re-pricing unarranged interest.

⁸¹ PDR, paragraph 5.201

⁸² PDR, paragraph 5.201

⁸³ PDR, paragraph 5.190

12. OPENING AND SWITCHING PROCESS (REMEDIES C6, C7 AND C8)

12.1 Please refer to the executive summary for LBG's comments on these remedies.

13. LOAN RATE TRANSPARENCY (REMEDY D1)

13.1 This remedy comprises two parts:

- (a) **The "SME information remedy" ("Remedy D1A"):** an Order requiring all lenders that provide unsecured loans and overdrafts to SMEs to:
 - (i) display on their websites rates showing the cost of these products up to the value of £25,000 in a prescribed (APR and EAR) format;
 - (ii) make available these charges, terms and conditions (and how rates vary with loan size and length) as open data to third parties, such as comparison sites and finance platforms, including the eventual Nesta Challenge Prize winner or winners; and
 - (iii) advertise prices for SME lending in marketing materials in the same (APR and EAR) prescribed format as the existing (personal) consumer credit regime; and
- (b) **The "SME price and eligibility tool remedy" ("Remedy D1B"):** an Order requiring RBSG, LBG, Barclays, HSBCG, Santander, Danske, BoI and AIBG to:
 - (i) provide a tool on their websites to enable SMEs to obtain an indicative price quote and indication of their eligibility in relation to all unsecured and secured loans and overdrafts up to £25,000; and
 - (ii) make the tool available, for a period of three years, to any two finance platforms designated under the SBEE Act and any two comparison sites, including the eventual winner(s) of the Nesta Challenge Prize.

A. THE SME INFORMATION REMEDY (REMEDY D1A)

Effectiveness of remedy

13.2 As previously submitted, LBG is supportive of remedies that increase transparency and help consumers to compare offers between providers.

13.3 However, the CMA's proposal to publish rates for overdrafts in an EAR format and SME term loans in a representative APR format could require changes to products and pricing that would constitute a regulatory-mandated product change which would lead to unintended consequences (both for providers and customers) for a potential short-term gain. This aspect of Remedy D1A may therefore not be proportionate to the potential benefits that might be gained. The reasons for this are outlined below.

13.4 LBG has, however, provided below a number of alternative options to the proposed EAR and representative APR remedy which will help to increase transparency in this sector.

Unintended consequences of the current EAR/APR proposal

For providers

13.5 SMEs are diverse, operating across a range of sectors and with different risk profiles. SME lending providers may choose to compete by providing facilities for specific sectors, or a range of sectors, or for a particular size or risk profile of SME. Different risk assessment and delivery models provide choice and are an important aspect of competitive differentiation.

- 13.6 Providers adopt different pricing models for SME lending. Some providers, such as LBG, adopt risk-based lending assessment and pricing determined by variables including the amount requested, type of product, amortisation profile, level of security, risk profile and sector. A requirement to publish one single APR rate which must be available to at least 51% of SME customers that are offered the loan could:
- (a) limit the scope of risk/price models that offer differentiated propositions and prices based on customer variables, thus reducing the range of options a provider could offer its customers (thus impacting on how providers compete in the market); and
 - (b) result in significant product changes. It would require the development of new pricing models and product infrastructure which could take c.18 months to implement and at significant cost.
- 13.7 In other words, the EAR/APR aspect of this remedy could result in more changes to some providers' products, prices and systems than the CMA may have initially anticipated.
- 13.8 These consequences for providers in turn could contribute to unintended consequences for customers outlined below.

For customers

- 13.9 The CMA's current proposal regarding the publication of EARs and representative APRs for SME term loans could have the following unintended consequences for SME customers:
- (a) in order to attract SME customers, providers could be incentivised to quote the lowest representative APR consistent with the CMA's proposed 51% rule. This would mean that:
 - (i) SME loan providers could be less inclined to lend to more risky (i.e. higher priced) SME segments in order to meet the proposed 51% rule. Such segments will include a material proportion of start-ups, thus reducing their access to finance; and
 - (ii) low risk customers may also be adversely affected, as pricing for their loans may increase so as to achieve the 51% target. If such customers signal that they are prepared to accept the published rate applicable to the median customer, a provider may choose to issue them with a quote at that level (rather than the lower rate they would otherwise have been offered but for the CMA's proposed remedy). In other words, some providers may not have an incentive to provide their lowest rate to certain low risk customers.
 - (b) in the consumer lending market, it is not uncommon for some lenders to manage their credit approval cut-off points to ensure that no more than 49% of approved applications are above the representative rate. This might be done by declining applications and diverting them to alternative, more expensive, products.

The short-term gain

- 13.10 Any gain resulting from the remedy as currently proposed by the CMA would be short-lived and therefore disproportionate in relation to the unintended consequences outlined above. This is because:
- (a) given that relevant SME customers would be able to receive indicative tailored prices from the output of the proposed SME price and eligibility tool, it would be disproportionate for the unintended consequences attached to the proposed

remedy outlined above to continue after the launch of this tool. i.e. the remedy as currently proposed should not be required after launch of this tool; and

- (b) in this context, the proposed period between the requirement to publish representative APRs/EARs and the launch of the proposed SME price and eligibility tool is only three months⁸⁴ - which is too short a period to justify the product changes (and resulting costs) required by providers to implement the current proposal.

Alternative options

- 13.11 As consistently submitted, LBG is supportive of remedies to increase transparency. It therefore sets out below a number of alternative options to the proposed remedy currently set out in the PDR. These options would not require material changes to how providers price and structure their existing products, but would still allow SME customers to make initial comparisons before utilising the SME price and eligibility tool.

Option A: Focus on Remedy D1B (the SME price and eligibility tool remedy)

- 13.12 As outlined above, given that relevant SME customers would be able to receive indicative tailored prices from the output of the proposed SME price and eligibility tool, the CMA could drop the EAR/APR aspect of Remedy D1A and focus its resources on the SME price and eligibility tool remedy. The SME price and eligibility tool remedy would mean that customers can obtain transparency (and make comparisons) in relation to SME loan and overdraft pricing both on providers' websites and on third party comparison sites.
- 13.13 In this context, there are already personal loan price comparison website ("**PCW**") tools in the market which provide (soft search-enabled) indicative price and eligibility comparisons across a range of providers.⁸⁵

Option B: APR ranges

- 13.14 An alternative approach to the EAR/APR aspect of the SME information remedy would for relevant providers to specify a range (for example, which applies to a significant number of a provider's SME lending customers). The rate range could be presented in various different ways. For example:
 - (a) to present the range which applies to X% of SME customers (e.g. 80% of customers receive a rate of between Y and Z%);
 - (b) to present a range for customers between certain percentile (e.g. the first and third quartile) so as to exclude those with either with very low rates or very high rates; or
 - (c) to present the proportion of a provider's SME lending customers with EARs/APRs at various different pricing points.

Issues relating to design, effectiveness, proportionality, cost and timing

- 13.15 Unless specified otherwise, the text below applies to Remedy D1A generally.

Products

⁸⁴ PDR, figure 6.1 provides that Remedy D1A (the SME information remedy) must be implemented "within three months of the order", and that Remedy D1B (the SME price and eligibility tool remedy) must be implemented "within six months of the order".

⁸⁵ See, for example <https://www.moneysavingexpert.com/eligibility/loans-calculator/>

13.16 LBG agrees with the CMA's provisional decision that the SME information remedy envisaged by Remedy D1A should apply to all unsecured loans and overdrafts to SMEs up to the value of £25,000. In this connection, LBG makes the following observations:

- (a) LBG has previously submitted that comparison tools would work best for smaller SMEs; accordingly, this remedy should apply only to small business loans, i.e. loans up to a value to £25,000;⁸⁶ and
- (b) LBG agrees with the CMA that it would be inappropriate to require lenders to publish rates for more complex SME lending products such as secured loans, invoice finance and large asset finance products for similar reasons to those identified by the CMA:⁸⁷
 - (i) the nature of the assets involved in secured lending can vary significantly between SMEs, with the consequence that any published rates would vary to such an extent that any simple comparison could be misleading;
 - (ii) the valuation of assets and receivables in the case of larger asset finance and invoice discounting is frequently not a straightforward process; and
 - (iii) providers do not generally publish representative prices for secured lending, other than for residential mortgages.

13.17 However, LBG supports the extension of Remedy D1A to smaller asset finance products up to a value of £25,000.

Providers

13.18 The SME lending sector is becoming more disintermediated and is now populated by a vast number of smaller providers. LBG therefore agrees that the SME information remedy should apply to all providers of the relevant lending products to ensure a good coverage of the relevant sectors and providers.

Information to be published

13.19 In relation to the information to be published by providers, see paragraphs 13.2 to 13.14 above.

Timing

13.20 The PDR provides that the requirements proposed by the SME information remedy must be implemented within three months of the Order coming into effect. It may not be feasible for providers offering risk based pricing to adapt their pricing model to accommodate a representative APR/EAR format, as currently proposed in the PDR, for the reasons outlined above.

Cost

13.21 In relation to costs, see paragraphs 13.2 to 13.14 above.

⁸⁶ As previously submitted, larger SME businesses tend to have more complex needs, and are more likely to have dedicated advisors or internal experts. They are more likely to negotiate bespoke offers, and tend to make sophisticated decisions around their banking needs.

⁸⁷ PDR, paragraph 6.48.

Answers to specific questions raised by the CMA in the PDR

13.22 The PDR requests the views of parties on a number of issues relating to Remedies D1A. These questions and LBG's responses are set out below.

- (a) *In the context of requiring lenders to publish a representative rate, we welcome views on whether representative APR (for unsecured loans) and EAR (for overdrafts) is the most appropriate information to publish:*⁸⁸

See LBG's submissions at paragraphs 13.2 to 13.14 above.

- (b) *CMA is proposing to order lenders to publish prices as a representative APR/EAR, which is applicable to at least 51% of SME customers. We would welcome views on whether this is the correct information we should require lenders to publish, or whether a different choice of information [such as those outlined in PDR paragraph 6.53] would be more suitable*⁸⁹:

See LBG's submissions at paragraphs 13.2 to 13.14 above.

- (c) *The requirement to publish representative rates will apply to all relevant lenders, regardless of size, on the basis that the measure should not be disproportionately onerous for them, and that requiring all lenders to publish prices would allow widespread comparisons to be made. We would welcome views on this issue*⁹⁰:

LBG agrees with the CMA's proposals. See LBG's submissions at paragraph 13.18. above.

- (d) *We do not expect the cost to parties of publishing prices for SME lending products to be significant and will welcome further information in this regard*⁹¹:

See LBG's submissions at paragraphs 13.2 to 13.14 above.

B. THE SME PRICE AND ELIGIBILITY TOOL REMEDY (REMEDY D1B)

Effectiveness of remedy

13.23 LBG supports this remedy and submits that, subject to the key issues set out in this response, it will be effective in resolving the AECs provisionally identified by the CMA. In particular, LBG agrees that loan price and eligibility indicators will provide further clarity and certainty on the cost of lending, and the likelihood of an SME being accepted in advance of making a loan or overdraft application. This will help to reduce any product linkages between BCAs and SME lending.

13.24 LBG is fully supportive of enhancing customer engagement in relation to SME lending, including the extension of comparison remedies to SME loan price and eligibility checkers. LBG believes that the most effective remedy to facilitate SME loan comparisons is to develop and improve the ability of customers to make personalised comparisons across providers. In this regard, as previously submitted, LBG believes that the proposed Nesta Challenge Prize is the best way of ensuring effective use of loan price and eligibility checkers (alongside comparisons of service quality) in the process of comparing offers, because it will ensure that they are linked to the market-led solutions driven by

⁸⁸ PDR, paragraph 6.50(a).

⁸⁹ PDR, paragraph 6.55.

⁹⁰ PDR, paragraph 6.59.

⁹¹ PDR, paragraph 6.114.

competition. LBG therefore welcomes the CMA's provisional decision that access to these tools are shared with the Nesta Challenge Prize winner(s).

Issues relating to design, effectiveness, proportionality, cost and timing

Products

- 13.25 LBG agrees with the CMA's provisional decision that the SME price and eligibility tool remedy envisaged by Remedy D1B should apply to all unsecured loans and overdrafts to SMEs up to the value of £25,000 for the same reasons set out in relation to the SME information remedy above (see paragraph 13.18 above). LBG also supports the extension of Remedy D1B to smaller asset finance products up to a value of £25,000. The proposed remedy, however, is not appropriate for larger amounts or for any other products that require security.
- 13.26 In this context LBG notes that in the PDR the CMA has proposed that this remedy should be extended to secured loans, and has invited views on whether it would be feasible for the specified banks to provide online tools for values up to £50,000. Whilst LBG sees the potential value to customers in extending the SME price and eligibility tool remedy to loans above £25,000, any Order should be limited to loans of up to £25,000. This is because LBG loans over this amount generally require security and, as outlined at paragraph 13.16 above, secured lending products are generally more complex for providers to offer accurate price and eligibility indicators, given that the nature and availability of security affect both eligibility and price. Applying this remedy to secured loans could therefore lead to misleading comparisons of price and eligibility.
- 13.27 If the CMA were minded to extend this remedy to loans between £25,000 and £50,000, it should allow providers that require security for such loans to notify customers that any indicative price and eligibility results would be subject to the provision of adequate security (in accordance with the provider's own security requirements).

Providers

- 13.28 LBG agrees that the SME information remedy should apply to at least RBSG, LBG, Barclays, HSBCG, Santander, Danske, BoI and AIBG in order to ensure a good coverage of the relevant sectors. However, ideally, the CMA's market share threshold for determining the applicability of this remedy should be set at 2% at any given time.⁹² This threshold would therefore:
- (a) also apply to Co-op, Clydesdale and TSB; and
 - (b) ensure that it captured all other significant SME lending providers, even if they do not have a significant (or any) BCA market share.

Information to be published

- 13.29 The SME price and eligibility tool remedy proposes that the rates published by SME lending providers must be:
- (a) displayed in a standard form, in particular, that used under the existing (personal) consumer credit regime as follows: (i) a representative annual percentage rate (APR) for unsecured loans; and (ii) an equivalent annual rate (EAR) for overdrafts to enable SMEs to make comparisons on the total cost of credit; and

⁹² The CMA currently proposes a market share threshold of 5 per cent at paragraph 6.100 of the PDR.

- (b) that in each case they must be made available to at least 51% of SME customers offered these products.

13.30 LBG's views set out above in relation to Remedy D1A apply equally to this proposal.

Sharing of the tool with third parties

13.31 At paragraphs 6.103-6.106 of the PDR, the CMA considers which entities should be provided with access to the tools' outputs. The CMA provisionally concludes that it is minded to require banks to *"disclose the algorithms which they use to determine price and eligibility offers to SMEs within the tool to these finance platforms and comparison sites so that these third parties could run calculations themselves"* .

13.32 Requiring providers to share their credit assessment models with third party comparison sites would involve LBG making available its detailed credit policies and proprietary scoring models. LBG would have significant concerns about sharing this competitively sensitive information with a third party. Strict legal and security controls would be required, in addition to clearly defined arrangements regarding the rights, ownership and management of customer supplied data (and any data outputs created by the PCWs). These arrangements would also need to be updated to reflect ongoing changes to LBG's policies and models. As such LBG does not support the requirement to share their credit models with a third party or black box provider.

13.33 Accordingly, for the reasons set out above, LBG considers that the only appropriate approach for sharing the outputs of tools developed by banks is the option set out at paragraph 6.104(b), in which *"banks could connect up their systems such that finance platforms and comparison sites could transmit information entered by SME customers on their websites to banks, which would then be required to run their algorithms and return the results to a platform or comparison site to display."* LBG's considers that APIs would facilitate this exchange of data/information between comparison sites and provider's credit decision systems in real time and notify either a firm decision or predictor of likely decision that could then be presented to the customer as part of the search rankings i.e. show relative cost, eligibility and quality metrics. This is already developing very rapidly in other lending products such as credit cards where a number of aggregators have recently launched smart search capability so that customers provide minimal personal details and the aggregator is then able to present eligibility for offers as well as price/cost and service.

13.34 LBG understands that some credit card providers already use APIs to allow real time eligibility queries by the aggregator. LBG's analysis of the impact of smart search and providing customers with eligibility as well as price has a significant impact on customer's choice and click through rates as customers clearly value the certainty that they are eligible for the product. This creates a strong commercial incentive for providers to develop the capability to provide real time eligibility to aggregators through APIs. LBG considers that such APIs will develop rapidly without the need for regulatory intervention. However, if the CMA remains concerned then the Implementation Entity for APIs could assess the speed and likelihood of delivery, and if it deems it necessary bring this within the scope of its work and make it part of any API scheme rules.

Cost

13.35 LBG would need to conduct some development work to scale up its current tool, with a forecast investment requirement of £1-2m. LBG would also need to put in place a commercial agreement to charge back the credit agencies' transaction costs to the PCWs.

This option would also involve operational and legal complexities (with strict legal and security controls being required), together with additional costs in connection with setting up and managing an outward facing service. The costs and risks associated with the approach currently proposed by the CMA (i.e. the sharing of algorithms with third parties) would be significantly greater than a black box approach, and LBG would have significant concerns about sharing this competitively sensitive information with a third party.

Timing

- 13.36 The PDR provides that the requirements proposed by the SME price and eligibility tool remedy must be implemented within six months of the Order coming into effect. LBG considers that this timing is appropriate, subject to the observations made above in relation to this remedy.

Answers to specific questions raised by the CMA in the PDR

- 13.37 The PDR requests the views of parties on a number of issues relating to Remedy D1B. These questions and LBG's responses are set out below.

- (a) *CMA proposes tool to cover secured lending as there may be a standard approach to valuing certain assets:*⁹³

See paragraph 13.25 et seq. above.

- (b) *CMA considers application of tool to higher threshold of £50k. Results need not be correct for 51% of applicants as with published rates:*⁹⁴

See paragraph 13.25 et seq. above.

- (c) *Whether the tool format should be standardised. CMA considers inputs should be determined by lenders with input from comparison sites to develop minimum standards. CMA asks if a third party coordinator is needed?:*⁹⁵

LBG would support a degree of standardisation, in order to facilitate comparison of results. There is to be a working group chaired by the Lending Standards Board to develop the principles of lending practice which will succeed the Lending Code and should be completed by end of 2016. LBG submits that this working group could take a coordinating role in this regard.

- (d) *Are the key information inputs suggested by the CMA sufficient to produce an indication of price/eligibility?:*⁹⁶

The key inputs suggested by the CMA would be appropriate to produce indicative results. These would include: information about the business and the lending request (amount of borrowing, the business activity and legal structure, but also the age of the business); information about the people involved in the business; and credit agency credit report.

- (e) *What minimum information the tool should provide to the SME and how quickly it should do so?:*⁹⁷

⁹³ PDR, paragraph 6.78-6.81.

⁹⁴ PDR, paragraph 6.82-6.83.

⁹⁵ PDR, paragraph 6.84-6.88.

⁹⁶ PDR, paragraph 6.84-6.88.

The CMA's suggestion of a likelihood presented as a representative percentage and within 24 hours is reasonable. See LBG's response to Remedy D1A in relation to the appropriateness of representative APRs.

- (f) *How to ensure the price and eligibility indicators give meaningful quotes?⁹⁸ (The CMA is minded to require lenders to give information on the proportion of customers who have received a final quote that is the same or very similar to their indicative quote).*

LBG is supportive of this requirement. As covered in para 13.36(c) above, a degree of standardisation in respect of information inputs will be required to enable providers to provide quotes on a comparable basis, i.e. a provider's tool that requires less information to generate a quote may not deliver the same level of quotes to offer ratios as a tool that requires more in depth information.

- (g) *Which banking groups should be required to implement this remedy?:⁹⁹*

See paragraph 13.28 above.

- (h) *Who should be provided access to the tools' outputs? The CMA is minded to require banks to disclose algorithms to finance platforms/PCWs for them to run calculations:¹⁰⁰*

See paragraph 13.31 et seq above.

⁹⁷ PDR, paragraph 6.89-6.91.

⁹⁸ PDR, paragraph 6.92-6.98.

⁹⁹ PDR, paragraph 6.99-6.102

¹⁰⁰ PDR, paragraph 6.105.

14. SME COMPARISON TOOL (REMEDY D2)

Effectiveness of remedy

- 14.1 LBG supports this remedy and submits that, subject to the key issues set out in this response, the remedy will be effective in resolving the AECs provisionally identified by the CMA, i.e. Remedy D2 will make it easier for SMEs to undertake comparisons of price and service quality.
- 14.2 Remedy D2 imposes the following requirements on relevant providers:
- (a) **Provision of product and customer data:** To provide complete relevant information for use by entrants to the Nesta Challenge Prize before, during and after the associated 'data sandbox';
 - (b) **Funding:** To contribute to the costs of the Nesta Challenge Prize process;
 - (c) **Provision of product data on comparison tools:** To make product data available on two or more comparison tools, one of which must be a Nesta Challenge Prize winner;
 - (d) **Provision of product data on finance platforms:** To make available product data through finance platforms; and
 - (e) **Continued support of BBI:** Continued support of the Business Banking Insight service for a transitional period.
- 14.3 LBG outlines in this sub-section the key aspects of Remedy D2, as set out in the PDR, which LBG supports. It sets out in the next sub-section the key practical considerations that need to be addressed in order for the remedy to be effective, proportionate and practicable (in terms of time and cost).

Issues relating to design, effectiveness, proportionality, cost and timing

General comments

- 14.4 LBG agrees that, as a minimum, the comparison services envisaged by Remedy D2 should apply to all BCAs and SME standard tariff overdraft and unsecured small business loan products (i.e. small unsecured lending products, consistent with Remedy D1). However, it could also apply to small secured asset finance facilities. In this connection LBG makes the following comments:
- (a) **Value:** LBG has previously submitted that bespoke comparison sites would work best for smaller SMEs, and so it is right that this remedy should only apply to small business lending/finance facilities (i.e. up to a value of £25,000);¹⁰¹
 - (b) **Products:** LBG welcomes the expansion of this proposed remedy from BCAs into standard tariff overdrafts and unsecured small business loan products. LBG agrees with the CMA's provisional decision that it should not oblige providers to list on comparison websites products such as larger asset finance or invoice financing.¹⁰² However, LBG supports the extension of Remedy D2 to smaller asset

¹⁰¹ As previously submitted, larger SME businesses tend to have more complex needs, and are more likely to have dedicated advisors or internal experts. They are more likely to negotiate bespoke offers, and tend to make sophisticated decisions around their banking needs.

¹⁰² PDR, paragraph 6.168.

finance products up to a value of £25,000, which would make for a more effective remedy; and

- (c) **Future potential:** as previously submitted, midata (customer transaction histories) transferred through APIs (as envisaged by the CMA's Foundation Remedies) also creates the possibility of more powerful easy-to-use, individualised price and quality comparisons for potentially other important business products and services such as deposits.¹⁰³

Price and quality

- 14.5 As the CMA has recognised, service quality needs to be part of the comparison for customers to make good decisions. LBG agrees that price alone does not facilitate effective comparisons. LBG therefore welcomes the CMA's provisional decision that the comparison tool envisaged by this Remedy D2 should encompass both price and quality.¹⁰⁴

Providers

- 14.6 In relation to the *Provision of product and customer data*, LBG submits that, in order to ensure the best coverage of the relevant sectors and the most effective comparison tools possible:

- (a) all providers of BCAs and relevant lending products should be required to provide prices and terms and conditions for use in the sandbox; and
- (b) the requirement to contribute customer transaction data is limited to RBSG, LBG, Barclays, HSBCG, Santander, Danske, BoI and AIBG,¹⁰⁵ as the data from these providers should be sufficient for the development of effective comparison tools. However, all providers should be free to contribute this data should they wish.

- 14.7 If the CMA ultimately concludes in its Final Report that the requirement to provide all such data is limited to RBSG, LBG, Barclays, HSBCG, Santander, Danske, BoI and AIBG, then, as a minimum, all providers should be free to contribute this data to the sandbox should they wish.

- 14.8 In relation to the "*Provision of product data on comparison tools*" and the "*Provision of product data on finance platforms*", LBG submits that this should be applicable to all providers (not just RBSG, LBG, Barclays, HSBCG, Santander, Danske, BoI and AIBG).

- 14.9 LBG also agrees that the obligations relating to the continued support of BBI should be limited to existing supporters of the scheme. In this regard, consistent with LBG's submission in paragraph 14.6(b) above, Santander should also be obliged to contribute to the support of the BBI in the same way from the next renewal.

Standardisation of terminology

- 14.10 LBG agrees with the comments made by Danske Bank¹⁰⁶ that for comparison sites to be effective, a degree of standardisation of terminology would need to be used in order to

¹⁰³ LBG SME Initiatives Submission (2 March 2016), paragraph 2.3.

¹⁰⁴ LBG's submissions in relation industry-wide agreed quality metrics are set out in its response to Remedy A4.

¹⁰⁵ Paragraph 6.171 of the PDR states that: "*To ensure good coverage of the market, we thought it reasonable to include only those banking groups with a BCA share of over 5% in GB or NI and a share of over 5% by volume of SME lending in the UK*" (emphasis added). In this connection, LBG has presumed that this should read "*... NI or a share of over 5% by volume of SME lending in the UK*".

¹⁰⁶ See SME Comparison Site Working Paper, paragraph 14.

facilitate objective and effective like-for-like comparisons between providers.¹⁰⁷ This would apply to whichever products fall within the final scope of the comparison services.

Provision of product and customer data, Funding and Provision of product data on comparison tools

14.11 LBG is fully supportive of the CMA's provisional decision, which also reflects LBG's position that the proposed Challenge Prize is the best way forward for achieving one or more effective and commercially sustainable SME comparison tools, because it provides a market-led solution driven by competition rather than regulatory design.

14.12 In this context, LBG makes the following observations:

- (a) **"Data Sandbox" contributions:** LBG agrees that the relevant providers (as set out in paragraph 14.6-14.9 above) should be obliged to supply data for the proposed Challenge Prize "data sandbox" in advance of the introduction of banking APIs, as well as during and after the "data sandbox" process. As previously submitted, midata (customer transaction histories) transferred through APIs (as envisaged by the CMA's Foundation Remedies) will create the possibility of more powerful easy-to-use, individualised price and quality comparisons through the Nesta Challenge Prize and providing continuous access to this data will allow the winner(s) to continue to refine and improve these tools;
- (b) **maintaining CMA involvement:** The CMA has expressed a preference for maintaining involvement with the Challenge Prize process after the inquiry has finished and has sought views in this regard.¹⁰⁸ LBG agrees that ongoing monitoring of some form would be required and has already suggested that this could take the form of the CMA appointing a monitoring trustee, and/or appointing a representative to the governance body overseeing the proposed Challenge Prize competition.¹⁰⁹ Whilst LBG would support either approach, it may not be necessary to have both. LBG would therefore suggest that:
 - (i) the CMA appoints its own representative to the governance body in order to monitor progress first hand; and
 - (ii) this CMA appointee remains in place after the Nesta Challenge Prize has concluded, to ensure that the remedies package is delivered beyond the end of the Nesta Challenge Prize (as supported by HSBCG).

In response to the CMA's specific question regarding whether CMA involvement on the Nesta judging panel is necessary or desirable,¹¹⁰ as previously submitted by LBG, it is important that any CMA (or other regulator) involvement is kept to a monitoring role and that the proposed Challenge Prize judging process is left to determine the winner(s). The judging panels will comprise established figures with expertise across a range of fields such as SME business management, FinTech, and Venture Capital, but will exclude providers funding the prize. The judges will be guided in their decisions by the prize assessment criteria and the reports of specialist assessors focused on data management and security, compliance etc. CMA representation on this panel would not be appropriate;

¹⁰⁷ As submitted in LBG's Response to Remedies Notice, (25 November 2015), paragraph 3.4.

¹⁰⁸ PDR, paragraph 6.188.

¹⁰⁹ LBG SME Initiatives Submission (2 March 2016), 3.7(c).

¹¹⁰ PDR, paragraph 6.186.

- (c) **the "safeguard remedy":** The CMA has proposed that the larger SME banking providers in GB and NI would be required to bring about the creation of an industry-funded SME comparison tool, to a specification approved by the CMA, in the event that either (a) the Nesta process did not identify entrants that met the assessment criteria, or (b) the sites resulting from the Nesta process were not found to be viable at the time of review by the CMA (because they were not, for example, operationally and/or commercially viable). Whilst LBG expects the proposed Challenge Prize process to be successful, LBG supports this fallback provision (having suggested this to the CMA in previous submissions¹¹¹). However, as previously submitted, the CMA would have to clearly define the criteria for the activation of such a safeguard remedy under scenario (b), i.e. what are the criteria to being considered "operationally or commercially viable"? These criteria should be determined with the input of Nesta and such an assessment would necessarily be qualitative. Following the conclusion of the challenge, a process of engagement with active services would allow the CMA to review factors such as:
- (i) the extent to which the winner(s) are featuring a sufficiently broad range of products from across the relevant BCA and lending sectors;
 - (ii) evidence that the comparison services are being used by SMEs;
 - (iii) evidence that there is a good level of transparency and objectivity in the comparisons being generated; and
 - (iv) evidence that there is a developing or established level of viability/sustainability in the commercial model(s); and
- (d) **Nesta's project plans:** Whilst the CMA intends to review Nesta's project plans (to ensure that Nesta has "*suitable and sufficient project management resource and expertise in order to bring the necessary discipline to the process and ensure its successful conclusion*"¹¹²), LBG is confident of Nesta's credentials in this regard. (Please refer to the Executive Summary above in relation to the need for an industry coordinating body to monitor and report on the progress made of the inter-related SME initiatives as a whole).

14.13 In relation to timing, the PDR envisages that the "*Provision of product and customer data*" takes place within a time frame and in a manner agreed with Nesta and approved by the CMA. When determining this time frame, the CMA should take into account that the ultimate success of the solutions when launched to the market will depend on the implementation of the CMA's Foundation Measures, in particular the successful implementation of APIs.

[Provision of product data on finance platforms](#)

14.14 LBG supports the CMA's proposal to require SME providers to make available BCA data through finance platforms designated under the Small Business, Enterprise and Employment Act 2015 ("**SBEE Act**"), where these sites currently provide, or will provide in the future, BCA comparisons. However, this obligation should be required of all BCA providers. This will ensure the best coverage of the BCA sector, making for a more effective remedy.

¹¹¹ LBG SME Initiatives Submission (2 March 2016), 3.8 and LBG's Response to the SME Comparison Site Working Paper, paragraph 2.6(c).

¹¹² PDR, paragraph 6.191.

Continued support of BBI

- 14.15 LBG submits that the BBI is complementary to the Nesta Challenge Prize proposal. LBG has already submitted that the BBI is a credible initial candidate to supply service quality comparison data for use in the winning Challenge Prize service(s) for an initial period.¹¹³ BBI is already operational, and the largest providers have committed to fund it for 2016, with an agreed development and investment plan in place for 2016.
- 14.16 LBG therefore supports the CMA's proposal to mandate continued support of the BBI for an transitional period and also submits that:
- (a) the BBI should be obliged to share its data with Nesta prize entrants as required by Nesta;
 - (b) the BBI should be entitled to compete for the Challenge Prize itself and/or innovate further to compete or collaborate with entrants; and
 - (c) the CMA should engage with the BBI and discuss how the survey can be improved, to provide more robust results.
- 14.17 LBG also agrees that the requirement to support the BBI should fall away once the core SME service quality indicators envisaged by remedy A4 are available.

Answers to specific questions raised by the CMA in the PDR

- 14.18 The CMA has specifically asked for parties' views on the following issues:
- (a) views on whether CMA involvement on the Nesta judging panel is necessary or desirable;¹¹⁴ and
 - (b) views on the desirability of appointing a monitoring trustee to oversee the Nesta process and report to the CMA.¹¹⁵
- 14.19 Answers to these questions are set out in paragraph 14.12(b) above.

¹¹³ LBG SME Initiatives Submission (2 March 2016), paragraphs 3.26-3.27.

¹¹⁴ PDR, paragraph 6.186.

¹¹⁵ PDR, paragraph 6.188.

15. STANDARDISED BCA OPENING PROCEDURES (REMEDIES D3 AND D4)

- 15.1 These remedies seek to address the provisional AEC that *"for SMEs, the account opening process can be lengthy and onerous depending on the complexity of the businesses" which "reflected in part, banks' processes for undertaking anti-money laundering, counter financing of terrorism (AML/CFT) and consumer due diligence (CDD) such as KYC checks"*.¹¹⁶ The CMA has therefore proposed a remedy to standardise and simplify BCA opening procedures.
- 15.2 LBG supports making BCA opening easier for SMEs, subject to ensuring compliance with relevant legal and regulatory requirements. However, LBG considers that a distinction should be drawn between "standardising" and "simplifying" BCA opening procedures. Each provider already has an individual incentive to simplify its BCA opening procedure as far as possible, as this is a source of competitive differentiation. This incentive will be enhanced as the CMA's remedy package is implemented and results in increased shopping around and switching by SMEs. For example, LBG has made significant investments of [confidential] in improving its SME onboarding processes. Accordingly, the CMA's proposed remedy correctly focuses on standardising certain elements of the BCA opening process, so that existing substantive commonality between providers' processes is more apparent to SMEs. Based on its discussions with SME representative groups, LBG considers that material benefits can be achieved by providing clear, standardised and readily accessible guidelines to SMEs on the types of questions that may be asked by banks; the purpose of the questions being asked; and the types of response and evidence required. This will facilitate SMEs in opening new accounts (at start-up) and switching, whether they apply to a single provider or multiple providers.
- 15.3 LBG therefore considers that, subject to the points below, this remedy will be effective and proportionate in addressing the provisional AEC, without distorting competition between providers in relation to sector risk appetite (which may determine whether an individual provider is willing to open a BCA for a particular applicant), account opening, and other onboarding processes, and without mandating rigid, industry-wide systems which would deter innovation and impose disproportionate costs on smaller providers.
- 15.4 As the CMA is aware, LBG has participated in Project Bulldog and its observations below are informed by the progress of that project to date (in particular since LBG's submission of 2 March 2016).¹¹⁷ In particular, since March:
- (a) the five participant banks continued to make good progress in identifying common aspects of their BCA opening processes and the associated evidence requirements during the Project Bulldog workshops held in April and May 2016;
 - (b) there was significant convergence of requirements for sole traders and single director companies, as well as some convergence for simple partnerships and other limited companies (for which the participating banks' requirements were more diverse); and
 - (c) the output of Project Bulldog is being transferred to the BBA to enable continued development in line with the CMA's proposed remedies. LBG is committed to and looks forward to working with the BBA and other industry participants to deliver this remedy effectively and promptly.
- 15.5 The CMA considers that there would be practical difficulties in prescribing an outcome measure or a target for the average time it takes for a provider to open a BCA, and has

¹¹⁶ PDR, paragraph 6.247.

¹¹⁷ The interaction between the SME remedies and existing SME initiatives, section C.

provisionally decided not to mandate this.¹¹⁸ LBG agrees with this assessment as such measures may mislead SMEs and may undermine providers' incentives to conduct necessary due diligence.

Scope of remedy

- 15.6 The CMA considers that this remedy should harmonise the information and evidence required by banks to undertake essential CDD.¹¹⁹ This will enable an SME, or a third party on its behalf, to access and complete the standardised account opening question types and provide the required supporting evidence to a bank.¹²⁰
- 15.7 However, SME representative groups have explained to LBG that it is not necessary for each bank's questions and application processes to be completely 'standardised'. It is more important to simplify the process of engagement with banks, including by providing clear, standardised and readily accessible guidelines to SMEs on the types of questions that may be asked by banks; the purpose of the questions being asked; and the types of response and evidence required.¹²¹ To ensure broad awareness and accessibility of this information, these guidelines should be made available to SMEs in a range of different formats, for example downloadable online in PDF or other formats, or available in hard copy to any SMEs without online access. The guidelines could also be made available from a range of sources (e.g. the BBA website, CASS; business groups, banks' websites and PCWs).

Short term benefits

- 15.8 LBG considers that the key opportunity for this remedy to effectively and promptly address the AEC is for providers to:
- (a) identify the types of question all providers will ask in their BCA opening processes, together with the associated evidence requirements (the "standard question types"); and
 - (b) provide SMEs with clear, standardised and readily accessible guidelines on the account opening/switching process, the types of questions that they will be required to answer and the evidence they will be asked to produce in order to open or switch their BCA.
- 15.9 Importantly, as the CMA has observed,¹²² it is not necessary or proportionate to seek to standardise the complete set of each bank's questions and application processes. These vary by bank, channel and type of SME, and would involve significant additional time and cost to agree, change on providers' systems and subsequently update.¹²³ For example, HSBC has estimated that it would take around 24 months to implement such changes following agreement across the industry,¹²⁴ and although the timescales would require validation through detailed analysis, LBG considers that it would require a similar period. This would also create rigidity in the BCA opening process across the industry,

¹¹⁸ PDR, paragraph 6.283.

¹¹⁹ PDR, paragraph 6.252

¹²⁰ PDR, paragraph 6.260.

¹²¹ For example, the question "Describe the nature of your business" could be answered with a single word (e.g. "plumber") or with a lengthy response.

¹²² PDR, paragraph 6.260(b)

¹²³ These costs would include changing back office processes and IT systems to change question wording and/or data capture fields, and the costs of retraining front-line staff.

¹²⁴ PDR, paragraph 6.299.

constraining the ability of the banks to compete on this element or to react to regulatory developments.

- 15.10 Moreover, requiring providers to standardise the wording of questions could result in a more onerous customer experience. For example:
- (a) some providers will ask a UK registered limited company applicant for their registered name, registered address and the names of its directors. However, including these questions on a "standard form" would be detrimental to SMEs applying to other providers (such as LBG) who only request the company number, and use the Companies House database to obtain information on registered name, registered address and directors; and
 - (b) some providers have invested in electronic identification and verification to verify applicants' identities (LBG is able to do this for around [confidential] of its applicants) instead of requiring documentary evidence. Accordingly, it would be more onerous for SMEs applying to these providers to have to provide documentary evidence (if this were part of a "standard form").

Medium term benefits

- 15.11 The CMA has also suggested that the remedy will facilitate switching by enabling information to be shared between banks, particularly following the development of open APIs. For example, a customer could instruct their old bank to transfer relevant information it holds on the customer to new banks where they were seeking to open an account.¹²⁵
- 15.12 LBG considers that this has the potential to significantly improve the customer experience and to reduce friction in the account switching process. LBG considers that this should be explored, with detailed feasibility studies to be undertaken by the proposed industry group in order to develop the solution, or range of solutions, to achieve that outcome, which will require close coordination with the work required to deliver the API remedies.
- 15.13 There are certain practical issues which would need to be considered by the industry group, including:
- (a) regulatory liability. As the CMA has recognised, a new bank can only rely upon the CDD measures undertaken by the old bank if the old bank provides its consent, and the new bank remains liable for any AML deficiencies,¹²⁶ (as otherwise the old bank may expose itself to liability for the subsequent actions of the new bank in reliance on the old bank's checks);
 - (b) accuracy of information. Information provided by the SME to the old bank is likely to become "stale" for CDD purposes within 12 months (such information can become out-of-date at any time), and would therefore need to be refreshed by the new bank in any event;
 - (c) data protection and data privacy, where information on SMEs (and their key individuals) is to be transferred between providers; this was another point highlighted by Business Groups as being of particular concern to their SME members at the recent BBA Business Finance Taskforce discussion on this remedy;

¹²⁵ PDR, paragraphs 6.252-254 and 6.273.

¹²⁶ PDR, paragraph 6.264

- (d) the ownership of information and its use by the receiving bank, particularly where information provided by an SME has been enriched by a bank using third party sources (often for a fee, and subject to restrictions on use of the third party data); and
- (e) the development of appropriate APIs to enable transfer of relevant information between banks.

Aspects of the BCA opening process which should be standardised

- 15.14 As previously explained to the CMA,¹²⁷ and as set out in the PDR (paragraphs 6.260 and 6.261), LBG agrees that other aspects of the BCA opening process must be left to each bank to decide, based on its risk appetite, its operational process and technology strategies, and desire to differentiate its offering. In particular:
- (a) banks must be entitled to ask additional questions and request further information, to fulfil their AML obligations and for other reasons;¹²⁸
 - (b) banks must retain flexibility in how they incorporate the information provided in the standard question types into their BCA opening processes (which vary by bank, channel and type of SME). As the CMA has recognised, these processes are an important source of competitive differentiation for banks, which should not be muted. Moreover, attempting to streamline such processes would involve significant time and cost for banks (delaying the benefits of the remedy), and would create rigidity in the BCA opening process across the industry, constraining the ability of the banks to compete on this element or to react to regulatory developments; and
 - (c) other account onboarding processes (including issuing debit/credit card, cheque book, providing online access, communicating details about account features, facilities etc.) should not be standardised, for the reasons set out in (b) above.¹²⁹
- 15.15 Moreover, the overall aim of the remedy (and of each bank's own efforts to improve its BCA opening processes) should be to provide a better customer experience when SMEs shop around and switch (e.g. through improved user interfaces and guidance for SMEs in how to answer the questions). It would therefore be inappropriate to focus on the absolute number of common and additional questions.
- 15.16 Notwithstanding the observations above, LBG recognises the each bank should ultimately develop solutions to enable account opening data to be portable via APIs in order to achieve the medium term benefits set out above.
- 15.17 The majority of responses to the Remedies Notice suggested that this remedy would be practicable only for those SMEs that were likely to be 'low risk' from the point of view of AML compliance and CDD checks, since all banks are likely to ask for similar basic account opening information, and the CMA has recognised that there are limitations in the types of SME that can be covered by the remedy. However, the CMA has suggested that the remedy could be extended to other, more complex SMEs, with different standard question types and evidence requirements being developed for different types of SMEs.¹³⁰

¹²⁷ The interaction between the SME remedies and existing SME initiatives, 2 March 2016, paragraph 3.31.

¹²⁸ PDR, paragraph 6.265 and footnote 649.

¹²⁹ PDR, paragraph 6.271.

¹³⁰ PDR, paragraphs 6.274-278.

- 15.18 LBG agrees that the industry group is best placed to propose the coverage and applicability of the remedy.¹³¹ However, LBG considers that the initial focus of the remedy should be on building on the initial positive progress made by Project Bulldog in relation to simpler SMEs, such as UK domiciled firms that are sole traders, partnerships, or single director Limited Companies (who together are estimated by LBG to represent c 90% of all SMEs).¹³² The Order should therefore provide for other types of SME to be included within the remedy at a later stage if the industry group considers this to be appropriate, on a timescale to be determined by the industry group. As explained below, the CMA should have oversight of the industry group and LBG agrees with the proposal that the FCA should also be involved in the initiative as an observer.
- 15.19 In deciding which types of SME should be included within the remedy, the CMA should be mindful of the risk that customer confusion could undermine the effectiveness of the remedy if there are too many variants of the standard question types and guidance materials. It may also be disproportionate to agree, implement and subsequently update the remedy for categories of SME with few members.
- 15.20 LBG agrees that, in order to maximise the effectiveness of this remedy:
- (a) the standard question types and guidance materials (and any updates) should be in the public domain;¹³³ and
 - (b) the CMA should encourage the BBA to work with banks to develop an effective communication strategy to inform relevant stakeholders, including SMEs and SME trade associations/bodies about the implementation plan for this remedy.¹³⁴

Constitution and governance of the industry group

- 15.21 LBG agrees that, to ensure its effectiveness, the remedy should apply to all BCA providers (including smaller providers, new entrants and those from Northern Ireland), or alternatively only exclude very small BCA providers (e.g. those with fewer than 20,000 active BCAs). LBG would also welcome the participation of potential entrants to the BCA market and SME trade bodies.¹³⁵
- 15.22 LBG agrees that the proposed wider industry group is best co-ordinated by the BBA. LBG also agrees that the terms of reference of the industry group should include the matters set out at paragraph 6.294 of the PDR, with appropriate adjustments to reflect the scope of the remedy as set out above (i.e. agreeing standard question types and guidance materials).
- 15.23 It will be critical that the industry group has appropriate governance and sufficient authority to ensure the co-operation of all BCA providers. As with remedy A1, LBG considers that the industry group should be established by CMA Order, and that a suitably qualified and independent individual (paid for by providers and with a mandate approved by the CMA) should act as chair of the industry group. The Order should also require BCA providers to comply with the decisions of the industry group.¹³⁶

¹³¹ PDR, paragraph 6.278.

¹³² As explained in "The interaction between the SME remedies and existing SME initiatives", 2 March 2016, paragraph 3.30, Project Bulldog has focused on these types of SME.

¹³³ PDR, paragraph 6.291.

¹³⁴ PDR, paragraph 2.297.

¹³⁵ PDR, paragraphs 6.288 and 6.296.

¹³⁶ LBG suggested a similar approach in "The interaction between the SME remedies and existing SME initiatives", 2 March 2016, paragraph 3.33(c).

- 15.24 The CMA proposes to strengthen this remedy by making a recommendation to the FCA to attend the industry group as an observer, and has indicated that the FCA would be willing to do so.¹³⁷ LBG supports the involvement of the FCA in this remedy, and considers that its role in the industry group should be to:
- (a) confirm that the standard question types and guidance materials are not inconsistent with regulatory requirements for the relevant type of SME, subject to providers asking additional questions where individual circumstances require this; and
 - (b) inform the industry group if the FCA considers that changes in regulation or other developments necessitate changes to the standard question types and guidance materials.
- 15.25 As LBG has explained,¹³⁸ and the CMA has recognised,¹³⁹ it will be necessary for the standard question types and guidance materials to be updated (e.g. due to changes in legislation). In order to avoid inconsistency with other regulatory requirements, the industry group should co-ordinate as required with other relevant bodies, including the Joint Money Laundering Steering Group and the Payments Strategy Forum, and should share the output of its work with them. LBG considers that the Order should provide for the industry group to be reconvened as required to oversee such changes.

Implementation and monitoring

- 15.26 LBG considers that it is feasible for providers to present individual or joint proposals to the CMA regarding the composition and governance of the industry group within one month of the Final Report. Given the wide range of participants in the industry group, it may be challenging to finalise standard question types and guidance materials until the industry group has been established (with appropriate powers) by CMA Order, and its chair has been appointed.
- 15.27 LBG considers that it would be feasible for the industry group to agree standard question types and guidance materials for UK domiciled firms that are sole traders, partnerships, or single director Limited Companies within three to six months of the establishment of the industry group. Industry-wide implementation should then take place within a period of time defined by the industry group – sufficient time will be needed to ensure that the standard question types and guidance materials can be incorporated into providers' BCA opening processes appropriately (to simplify the SME customer journey). In this regard, LBG would observe that the need to rapidly "bolt-on" questions and document requests to meet evolving regulatory changes is a significant factor in the current complexity of many providers' BCA opening processes.
- 15.28 LBG agrees the remedy should be monitored by banks and/or the industry group providing periodic compliance reports to the CMA (e.g. annually).¹⁴⁰
- 15.29 The CMA has proposed an alternative remedy if the industry group is unable to produce a proposal that is acceptable to the CMA. The CMA plans to "*consult with relevant*

¹³⁷ PDR, paragraph 6.290.

¹³⁸ "The interaction between the SME remedies and existing SME initiatives", 2 March 2016, paragraph 3.33(b)

¹³⁹ PDR, paragraphs 6.291-293.

¹⁴⁰ PDR, paragraph 6.303

*stakeholders, and develop a standard BCA opening form and evidence requirements to address the AEC, and will reflect this in [its] final Order."*¹⁴¹

- 15.30 As explained above, LBG considers that the CMA's proposed remedy will be effectively implemented in a proportionate manner and within an appropriate timescale if the CMA makes an Order establishing an industry body with appropriate membership, powers, governance and oversight. If such an industry body is unable to reach agreement in certain areas (e.g. for certain categories of SME), this is likely to be due to insurmountable practical difficulties. It would therefore be inappropriate for the CMA to impose a common form and evidence requirements on the industry, as this would risk conflicting with existing legal and regulatory requirements, and may not result in a smoother BCA opening process for SMEs (e.g. if providers raise substantial additional questions).

¹⁴¹ PDR, paragraph 6.301.

16. **"SOFT" SEARCHES (REMEDY D5)**

Effectiveness of remedy

- 16.1 LBG agrees in principle with the proposed remedy. As previously mentioned, LBG considers that the effect of multiple credit searches on an SME's credit rating is an important issue for the CMA to consider, as it can deter SMEs from shopping around and switching. It is important, therefore, that shopping around for BCAs and SME lending does not have an unwarranted negative impact on SMEs' eligibility for products.
- 16.2 LBG also agrees that HMT is the department best placed to take this recommendation forward given its involvement in working with Credit Reference Agencies ("**CRAs**") under the SBEE Act and similar initiatives in connection with consumer lending.

Issues relating to design, effectiveness, proportionality, cost and timing

- 16.3 An important issue for the CMA/HMT to consider is the possible interaction between "soft searching" and other remedies proposed by the CMA, including the PCW, the eligibility checker and the provision of indicative offers, all of which require customers to input a certain amount of information. The more information that can be provided for a search to remain "soft" (i.e. the absence of an imprint on a customer's credit file), the more reliable the PCW and indicative offers will be.
- 16.4 The CMA states that it expects HMT to start to undertake this work shortly after publication of its final report. Whilst it is ultimately for HMT to decide whether to take this recommendation forward and over what timescales, given the potential interaction with some of the other remedies proposed by the CMA, LBG would welcome a prompt start to this initiative.

17. **SHARING SME INFORMATION WITH CRAS (REMEDY D6)**

Effectiveness of remedy

- 17.1 LBG fully supports the proposed remedy (as set out in its response of 2 March 2016). The SBEE Act, which has only just come in to force, already includes provisions that require designated banks to share SME information with CRAs. It is therefore sensible from a policy perspective to consider the efficacy and impact of these recent measures before considering whether to extend the proposals further or make any further adjustments.
- 17.2 LBG also welcomes the fact that the CMA has decided at this time not to extend the sharing of information with CRAs to "transactional data" (as referred to in the Remedies Notice). As the SBEE Act already involves the sharing of key performance indicators with CRAs, it is important to evaluate the effectiveness of this information before considering extending the data requirements further, which would be a more intrusive remedy.

Issues relating to design, effectiveness, proportionality, cost and timing

- 17.3 The CMA's recommendation to HMT is that it conducts a review two years after the publication of the CMA's final report (i.e. in summer 2018), to allow sufficient time for the development of these initiatives. LBG agrees in principle with the proposed timing of this review, although it may need to be applied with some flexibility where there is clear evidence of other initiatives changing the competitive landscape. For example, the development of industry-wide APIs and open data (as proposed by the CMA) will enable the direct transfer of transactional data between SME providers without the use of a third party (such as a CRA), which could render the sharing of information with CRAs obsolete.

18. **ROLE OF PROFESSIONAL ADVISORS (REMEDY D7)**

Effectiveness of remedy

- 18.1 LBG agrees in principle with the proposed remedy as it will improve SME engagement. Accountants (and lawyers) play an important role in introducing start-up SMEs to a provider, together with providing advice to SMEs who are dissatisfied with their existing provider, or who have been declined for lending or other services by other providers.

Issues relating to design, effectiveness, proportionality, cost and timing

- 18.2 It is important to consider which bodies/associations are designated to provide the guidance, in what format the guidance should take, and whether it should be based on an objective criteria. For example, one option could be to channel advice through the PCW. The Institute of Chartered Accountants in England Wales ("**ICAEW**") also has an established financial management tool, which could be used for providing financial advice.
- 18.3 It should be noted that intermediaries (also known as introducers) fall into two categories:
- (a) unpaid introducers (e.g. accountants and lawyers); and
 - (b) paid introducers (professionals whose business involves introducing lending to financial institutions), such as brokers.
- 18.4 Although both sets of intermediaries provide an important role in advising SMEs, LBG would envisage that the recommendation extends no further than the first category so that advisers provide impartial advice to SMEs and are not influenced by the level of payment offered.
- 18.5 As a minimum, LBG submits that the CMA's recommendation provides that the relevant bodies consider how their members could raise awareness of the CMA's remedies package (such as published SME rates, comparison sites, price and eligibility tools and standard BCA opening forms) amongst their SME clients.

Answers to specific questions raised by the CMA in the PDR

- 18.6 The CMA says that it welcomes views on which body or bodies is/are best placed to provide financial guidance to BCA customers. As mentioned above, LBG considers that this recommendation should be restricted to unpaid introducers (i.e. accountants and possibly lawyers), but should not be extended any wider.
- 18.7 The CMA's recommendation specifically refers to BIS working with the British Business Bank and the ICAEW to explore ways in which their members can channel advice on choice of providers and sources of finance to SMEs. There is also potential for similar guidance to be provided in Scotland and Northern Ireland.

19. REMEDIES THE CMA IS NOT MINDED TO PURSUE

19.1 LBG agrees with the CMA's decision not to pursue certain remedies, as the evidence does not support such interventions.

Measures to control outcomes

19.2 LBG agrees with the CMA that there would be unintended consequences of price control remedies for unplanned overdrafts. The Behavioural Insight Team responded to the CMA's energy market investigation that price controls can:

- (a) create a strong "anchor" price, which "might cut out some very high tariffs but that may also risk pulling other lower tariffs close to this margin up"; and
- (b) may reduce incentives for consumers to switch because "they may think they don't need to switch because they are 'safeguarded' ".¹⁴²

19.3 Price controls would undermine the effectiveness of other proposed remedies aimed at increasing competition for overdraft users, reduce differentiation between providers, harm entry and expansion and "a centrally regulated MMC might lead banks to become significantly more restrictive in allowing unarranged overdrafts, with the associated risk that some customers could lose access to this form of credit".¹⁴³ The experience of the price controls imposed following the Competition Commission's 2002 SME banking investigation suggest that such measures are unlikely to deliver lasting customer benefits.

Measures that would address perceived distortions arising from the widespread use of free-if-in-credit accounts

19.4 Any concerns with free-if-in-credit ("FIIC") products can only be expressed relative to some other (as yet unspecified by any regulator or commentator) pricing model that could replace FIIC. This alternative model may include higher credit interest rates, lower overdraft fees and the introduction of monthly fees or transaction charges. A monthly fee that replaced these sources of revenue would be between £10 to £15 per month for standard PCAs.

19.5 This outcome would not be welcomed by customers, and could not be achieved through regulation without harming competition or raising a significant risk of unintended consequences. Even if such an alternative pricing model could be introduced, it would not be the solution to any concerns - BCAs do not use FIIC and yet the problems with customer engagement are more serious. The underlying concerns with FIIC should be addressed through the CMA's package of remedies to enhance engagement and comparison, including providing personalised price comparison tools.

Structural remedies

19.6 Some have argued that existing providers have a scale advantage from having high market shares and large back books, and that a structural remedy, such as a divestment, would be a solution to this problem. It is not clear what these scale advantages are nor why a divestment would resolve such problems. Any issues with existing customers paying high prices can only be addressed by enhancing engagement. Moving such customers involuntarily to new providers does not alter providers' incentives to change pricing for existing customers or increase these customers' likelihood to switch, and it

¹⁴² See "Behavioural Insights Team response to Energy market investigation: Notice of possible remedies".

¹⁴³ PDR, paragraph 61.

could only be delivered at a very high cost, which would cause considerable disruption for customers that are required to change provider. As a result, LBG agrees with the CMA that a divestment remedy would be ineffective and highly disproportionate, and therefore has no justification.

20. 2008 NORTHERN IRELAND PCA ORDER

- 20.1 The CMA has provisionally decided to revoke the 2008 Northern Ireland PCA Order (the "**NI Order**") in its entirety, on the basis that its operative provisions are obsolete in view of market and regulatory developments (e.g. CASS, Banking Conduct of Business Sourcebook, and the Payment Accounts Directive) and the CMA's remedies as proposed in the PDR. The CMA also notes that a number of parties consider that the implementation of a single regulatory regime across the UK is preferable to the maintenance of separate requirements in Northern Ireland and Great Britain.
- 20.2 LBG agrees with the CMA's provisional decision for these reasons and considers that the NI Order should be revoked as soon as possible following the Final Report. In particular, the CMA should seek to avoid any period of overlap between the NI Order remaining in force and corresponding requirements in the CMA's new remedies package, as this will lead to increased complexity and cost for providers and risk confusing customers.

21. 2002 SME UNDERTAKINGS

Release of the 2002 SME Undertakings

- 21.1 The CMA has provisionally decided to release the 2002 SME Undertakings (the "**SME Undertakings**") with the exception of the bundling Undertakings (clauses 17-20) which it proposes to retain.
- 21.2 LBG agrees that the transparency, switching and portable credit history Undertakings should be released, as they are unnecessary and obsolete in view of market and regulatory developments (e.g. the SBEE Act and CASS) and the CMA's remedies as proposed in the PDR. LBG also agrees that the branch sharing Undertakings should be released on the basis that the banks have fulfilled their obligations, and that the related provisions (including the transitional Undertakings) should be released. As with the NI Order, these Undertakings should be released as soon as possible following the Final Report. In particular, the CMA should seek to avoid any period of overlap between the Undertakings to be released and corresponding requirements in the CMA's new remedies package, as this will lead to increased complexity and cost for providers and risk confusing customers.

Retention, and extension, of the bundling Undertakings

- 21.3 LBG does not object to the retention of the bundling Undertakings, with which LBG continues to comply. However, LBG considers that the Undertakings should be extended to protect a greater number of SMEs, and to effectively address the AEC in Northern Ireland as well as in Great Britain. In particular, LBG does not agree that the banks subject to the SME Undertakings "*would be better placed to compel a customer to open or maintain a BCA as a condition for granting a loan or deposit account if the Undertakings were not in place*".¹⁴⁴ There is no evidence that there are stronger product linkages between BCAs and SME lending at these banks (compared to other banks), or that there are greater information asymmetries between these banks (compared to other banks) and other lending providers.¹⁴⁵
- 21.4 LBG notes that when determining the scope of its proposed SME remedies, the CMA considered that including banking groups with a BCA share of over 5% in Great Britain and Northern Ireland would provide "good coverage" of the market.¹⁴⁶ LBG considers that

¹⁴⁴ Provisional Decision on review of SME Undertakings, paragraph 4.20.

¹⁴⁵ Provisional Decision on review of SME Undertakings, paragraph 4.19.

¹⁴⁶ PDR, paragraphs 6.169-172.

either 2% BCA market share or 25,000 active BCAs would be an appropriate threshold for applying the bundling Undertakings. However, even using a 5% threshold, the bundling Undertakings should be extended to Santander. LBG does not consider that the costs to Santander in complying with the remedy would be disproportionate relative to the benefits generated for its current and future BCA customers.